

Brecon Beacons National Park Authority

Member Officer Protocol



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Employment principles

1.23 Protocol for member and officer relations

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I. Introduction

- 1.1 The Local Government Act 2000 introduced a new ethical framework for local government with the introduction of a new statutory code of conduct for employees and requirement for local authorities to adopt a Members' code of conduct and appoint a Standards Committee.
- 1.2 The Members' code of conduct addresses in general terms the aspects of a Member's conduct in carrying out the whole range of official duties and has direct relevance to the relations between Members and officers.
- 1.3 The Authority seeks an excellent working relationship between Members and officers as the best means of ensuring clear and consistent strategy and proper representation by outside interests in the work of the Authority. Such good working relationships require this protocol as a framework.
- 1.4 This protocol guides Members and officers of the Authority in their relations with one another. To a large extent it is no more than a statement of current practice and convention. It is neither prescriptive nor comprehensive but aims to promote clarity and certainty. Accordingly it will be kept under review and amended as necessary. This first edition of the protocol addresses the issues which most commonly arise. As such, it may also serve to provide guidance on dealing with other issues.
- 1.5 The protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and officers. The shared objective of these Codes is to enhance and maintain the integrity of the Authority in the eyes of the people it serves.

2. Member / Officer relations

- 2.1 Both Members and officers are servants of the public and they are indispensable to one another but their responsibilities are distinct. Members

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represent the wider public and serve only so long as their term of office lasts. Officers are responsible to the National Park Authority. Their job is to give advice to Members and the Authority and to carry out the Authority's work under the direction and control of the Authority, its Committees and Sub-Committees.

- 2.2 Members should respect the role of the Authority's officers and treat them in a way that engenders mutual respect at all times which is essential to good local government.
- 2.3 Officers should respect the role of the Authority's Members and treat them in a way that engenders mutual respect at all times which is essential to good local government.

Expectations

2.4 Members can expect from officers:

- commitment to the Authority as a whole and not only to any part of it
- respect and courtesy
- the highest standards of integrity
- a working partnership
- an understanding of and support for respective roles, workloads and pressures
- timely responses to enquiries and complaints
- professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers
- regular up to date information that can be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions they hold

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- awareness of and sensitivity to the political environment
- training and development in order to carry out their role effectively
- appropriate confidentiality
- that they will not use their relationship with Members to seek to advance their personal interests or to influence decisions improperly
- support for the role of Members within the arrangements made by Authority compliance with the protocols at all times.

2.5 Officers can expect from Members:

- respect and courtesy
- the highest standards of integrity
- a working partnership
- an understanding of and support for respective roles, workloads and pressures
- leadership
- not to be subject to bullying, or discrimination or to be put under undue pressure
- that Members will not use their position or relationship with officers to seek to advance their personal interests or those of others or to influence decisions improperly
- compliance with the Members' Code of Conduct and protocols at all times.

Working relationships

- 2.6 Both Members and officers should take care not to give the impression that their distinct roles have become blurred in some way. Maintaining

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confidence in the separation of these roles necessarily imposes limitations on behaviour. Members and officers should exercise caution in forming close personal friendships between each other. This can confuse their separate roles and affect the proper discharge of the Authority's functions. The perception could be in others that a particular Member or officer may be able to secure advantageous treatment as a result of such a friendship. Where a relative or close personal friend of an employee becomes a Member of the Authority the employee should make the circumstances known to the Chief Executive (National Park Officer).

- 2.7 Any act against an individual officer may be regarded as a form of bullying, intimidation or harassment if it is intended to influence unfairly that person's actions, thoughts or deeds. Whilst no policy statement can give guidance on every instance where such behaviour may occur the Authority is committed to promoting standards of behaviour which reflect the proper, professional, working relationship which should exist between Members and officers at all times and to ensure normal standards of courtesy and behaviour between individuals.
- 2.8 All dealings between Members and officers should, therefore, observe reasonable standards of courtesy and neither party should seek to take advantage of their position. On occasions, Members may have reason to complain about the conduct or performance of an officer. All such complaints should be made personally to the Chief Executive, a Chief Officer or the Monitoring Officer. It is particularly important that such complaints are made in this way and are not aired in public such as at a meeting of the Authority, its Committees or Sub-Committees or other external bodies, or in the press.
- 2.9 The corollary to the Member's concern about an officer's performance is a concern by an Officer in

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relation to a Member's conduct. All such concerns should be brought personally to the attention of the Chief Executive or in his/her absence a Chief Officer and the Monitoring Officer. They will if necessary discuss the matter with the Chairman of the Authority and, where appropriate, with the Chairman of the Committee or Sub-Committee affected. In the absence of the Chairman, the Deputy Chairman should be approached.

3. Roles of Members

3.1 The role of the Member is to foster and promote the core purposes of the National Park (as set out in the Environment Act 1995) and, in so doing:

- to provide strategic leadership and direction in partnership with the Executive
- to have regard to and contribute to the development of national and regional policies
- to monitor, review scrutinise and debate strategies, policies plans and performance
- to participate in community engagement with all stakeholders
- to represent the Authority to the public and stakeholders at all levels
- to represent national and local interests on the Authority.

3.2 The role of a Committee Chairman is legally recognised for procedural purposes such as chairing meetings and exercising a casting vote. In practice, Chairs are recognised as the 'lead members' on the areas and issues within the terms of reference of the Committee concerned. This involves working closely with officers and acting as the Authority's external 'spokesperson' on those issues.

3.3 Member Champions may be appointed with the role of working with the officers in driving

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forward new areas of work or where a transformation or stepped change is required in strategies or services. The themes for the Member Champions are linked to key areas of the Authority's work and may be subject to review. Member Champions need to ensure that in exercising their role that this does not conflict or become confused with the role of the relevant Committee Chairman.

4. Responsibilities and rights of Members

4.1 All Members appointed to the Authority have equal status, equal opportunity to hold office and are equally responsible. Members are expected to be equally committed to fulfilling the purposes for which National Parks exist and accept their appointment to the Authority with that commitment in mind.

4.2 Members of a National Park Authority, in their individual capacity, have no executive powers and can exercise no lawful authority to make decisions.

4.3 Members should be able to leave the day-to-day implementation of policies, including management to officers. Members have a right to ensure that their decisions for which they are statutorily responsible and accountable are implemented by officers. Officers should demonstrate that they are sensitive to Members' aspirations underlying those policies.

5. Rights and duties of individual Members

5.1 There are other clear rights for individual Members, principally:

- rights of access to Committee papers
- rights to attend meetings
- rights to see the accounts and make copies, and before the annual audit to inspect specific books, contracts, bills etc

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- rights to receive approved allowances.

5.2 There are also duties on individual Members, principally:

- to abide by the Authority's Members' Code of Conduct and all the Authority's approved protocols
- to disclose personal interests in any matter before meetings of the Authority, its Committees and Sub-Committees and other meetings
- to register the receipt of any gifts and hospitality
- to attend meetings of the Authority, its Committees, Sub-Committees, other events and any outside bodies that they have been appointed to
- to attend and participate in opportunities for training and development
- to take into account advice provided by the Chief Executive or officers of the Authority.

6. Inspection of documents

6.1 The Authority wishes to conduct its affairs in an open and transparent way and to give Members maximum access to information and documents to enable them to discharge their role as Members of the Authority. Requests for information can range from general information about some aspect of the Authority's work to specific requests for information on behalf of a member of the public. Under the Freedom of Information Act, both members of the public and Members of the Authority have the same rights of access to information. However, some types of information, such as information that would infringe someone's Data Protection rights or breach confidentiality, or where release of the information would prejudice an investigation, are exempt from the Act. Where requests for information are made by a Member on behalf of a member of the public, the Member should make this clear at the time of making the request. Such

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requests should be made to senior officers to avoid putting junior staff in a difficult position. This type of request will be treated in the same way under the Freedom of Information Act as if the member of the public has asked for the information direct.

- 6.2 The legal rights of Members to inspect Authority documents are covered partly by statute (the Local Government Acts) and partly by the common law. A Member will be permitted access to private Authority documents if he or she can demonstrate that access to the documents is reasonably necessary to enable him or her properly to perform his or her duties as a Member (the “need to know” principle).
- 6.3 Members wishing to inspect or obtain a copy of information which is in the public domain should approach the relevant officer in writing or by email.
- 6.4 Where information is not in the public domain, or there is doubt about this, an approach should be made to the Chief Executive, the appropriate Chief Officer or the Monitoring Officer. The officer whose unit holds the documents in question (with advice, where necessary, from the Monitoring Officer) will decide whether the information can be released. The Member will be expected to justify the request in specific terms. In the event of a dispute, the Standards Committee will be asked to decide.

7. Confidentiality of Committee Reports

- 7.1 All Officers have a duty to satisfy themselves that Committee reports to which they are signatories are only classified as ‘exempt information’ or ‘confidential information’ when the statutory criteria for confidentiality are met as set out in the Local Government Act 1972. The Monitoring Officer has an overriding responsibility to determine this compliance.
- 7.2 Once an exempt report has been issued with the

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agenda for a meeting a Member must respect the confidentiality of the report and not disclose its contents to a third party. However this restriction does not apply if the Committee decides at the meeting that the report should be discussed in the presence of the press and public.

8. Roles and responsibilities of officers

- 8.1 A mutual and working understanding of the roles and responsibilities of officers is essential to the Authority developing and applying a clear and consistent approach to the role and responsibilities of its Members.
- 8.2 Officers, through reports, formal and informal advice, play an essential role in the formation and carrying out of the Authority's decisions and policies. If officers, in their professional judgement, consider a proposed course of action is imprudent they will advise Members accordingly. The prime responsibility of officers in the matter of all challengeable decisions is in advising Members before such decisions are reached. In such cases, the advice should include clear legal and financial advice, on what are relevant and irrelevant factors and on how to approach decision-making. The fact that such advice has been given and considered will be material in any court proceedings that will be concerned to see that the Authority has properly applied its mind to the relevant issues.
- 8.3 If despite officers' advice the Authority decides to proceed with its course of action, officers will implement the decision unless it contravenes their professional statutory codes of practice or ethics to such an extent as to place their continued professional practice at risk. In these circumstances an officer must take advice from the Monitoring Officer.
- 8.4 An officer is under a duty not to implement a decision or take any action that is contrary to statute law or is unlawful. An officer will also not implement a decision where the Monitoring Officer or Chief Finance Officer has issued a

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statutory report that has not yet been considered by the Authority or has not yet been complied with.

9. Roles of specific officers

9.1 Three officers have specific roles defined by statute:

i) Head of Paid Service: is under a duty, 'where he or she considers it appropriate' to report to the Authority and Members on:

- the manner in which the discharge by the Authority of its different functions is co-ordinated;
- the number and grades of staff required by the Authority for the discharge of its functions;
- the organisation of the Authority's staff; and
- the appointment and proper management of the Authority's staff.

ii) Section 151 Chief Finance Officer: (designated under S.151 of the Local Government Act 1972) is responsible for the proper administration of the Authority's financial affairs. He or she is under a duty to report, to both Members of the Authority and to the District Auditor, any decision involving unlawful, (or potentially unlawful), expenditure by the Authority; any unlawful course of action likely to cause a loss or deficiency on the part of the Authority; or an unlawful entry of an item of account.

iii) Monitoring Officer: (designated under s.5 of the Local

Government and Housing Act 1989) has a duty to put a formal report to the Authority where it appears that the Authority, its Committees or officers are involved in any proposal, decision or omission which is likely to be illegal or give rise to maladministration or injustice. It is also implicit in legislation, and indicated elsewhere in guidance, that the Monitoring Officer may give informal advice, including to individual Members, and that they may also seek guidance on legal or propriety matters. The Monitoring Officer also has specific legal duties and

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10 Delegation of functions to the Chief Executive and other officers

powers in respect of the Members' Code of Conduct and the Standards Committee. The Monitoring Officer's duties may be performed by a nominated Deputy.

10.1 The Authority's Standing Orders set out the various powers delegated to the Chief Executive (National Park Officer) and other officers. In exercising delegated functions, the Chief Executive (National Park Officer) is obliged to act in accordance with:

- i) the overall policies approved by the Authority or any of its Committees or Sub-Committees;
- ii) standing orders including those relating to contracts; and
- iii) financial regulations.

10.2 Additionally, the Chief Executive (National Park Officer) is expected in appropriate cases to consult Members as follows:

- i) to maintain a close liaison with the Authority's Chairman and/or the appropriate Committee Chairman or Sub-Committee Chairman (or in his or her absence the Deputy Chairman or appropriate Vice-Chairman); and/or
- ii) to consult as necessary with any other Member who has specific local or specialist interest in the matter.

10.3 In all cases it is open to the Chief Executive (National Park Officer) to refer a matter to the Authority, Committee or Sub-Committee for decision if in his or her opinion the matter is of such a nature that it should more properly be referred to Members. Such referrals will include items of controversy or where a Member of the Authority has specifically asked for the matter to be referred to a Committee. The scheme of delegation specifically enables Members to ask for a planning application to be so referred. Such a

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request must be made within 15 days of the receipt of the Schedule of Planning Applications (the Weekly List).

- 10.4 The Chief Executive will not act under delegated powers where any planning application involves a Member or officer of the Authority. All such matters shall be referred to the Authority for a decision.
- 10.5 Officers are responsible to their appropriate line manager and whilst officers should always seek to assist Members, they must not, in doing so, go beyond the bounds of whatever authority that has been delegated to them by the Chief Executive.

11. Relationships with the Authority Chairman, Deputy Chairman and Committee Chairmen and Vice Chairmen

- 11.1 The Chief Executive and Chief Officers should foster close working relationships with the appropriate Authority Chairman, Deputy Chairman and Committee Chairmen and Vice Chairmen. However, these relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Chief Executive's (or Chief Officers') ability to deal properly with other Members and to discharge his duty to serve the Authority as a whole. In some circumstances it may be necessary for the Chief Executive or a Chief Officer to bring forward reports on a particular matter in furtherance of this general duty.
- 11.2 The law only allows for decisions relating to the discharge of any of the Authority's functions to be taken under delegated authority by a Committee, Sub-Committee or an officer. Individual Members including Chairmen are not allowed to act (save in the case of a Chairman who under local government law may decide that an item of business is 'urgent').
- 11.3 Where action is likely to be required between meetings the usual method of authorising it is to delegate action to the Chief Executive or a relevant Chief Officer in consultation with the

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Chairman or a group of named Members. The officer must nevertheless reach a decision to act on a delegated matter independently.

12. Urgent Business

- 12.1 Members or officers wishing to raise an item of urgent business should contact the Chief Executive or the relevant Chief Officer before the meeting who will then discuss the request with the relevant Chairman. The decision as to whether an item of business is urgent is one for the Chairman of the meeting to take under powers granted by the Local Government Act 1972. The Chairman's decision on whether an item is urgent is final and is not open to discussion or debate.

13. Support Services to Members

- 13.1 The only basis on which the Authority can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport etc) to Members is to assist them in discharging their role as members of the Authority. Such support services must therefore only be used for Authority business and never in connection with party political or campaigning activity or for private purposes.

14. Attendance by Members at meetings arranged by officers

- 14.1 Officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Authority or to action its decisions. The convention is that Members will not be present at these meetings but will be advised either informally or through reports to Committees, of any relevant discussions and/or outcomes. There may be occasions where a Member may be invited to attend a meeting by the appropriate officer or by a resolution of a Committee.

15. Confidentiality and the Press and Public

- 15.1 Any information provided to a Member in his/her capacity as a Member must only be used by the Member in connection with the proper performance of their duties. Confidential information should not be disclosed to the press or public, discussed or released to any other

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persons. Members should not disclose or use confidential information for the personal advantage of themselves or anyone known to them or to the disadvantage or the discredit of the NPA or anyone else.

Officers and Members have a responsibility to protect the NPA's reputation. The leaking of confidential information including exempt agenda items and minutes to the press or public and the public criticism of individual Officers by Members or of individual Members by Officers is unacceptable. There are clear requirements set out in both the Members' Code of Conduct and the Officer Code of Conduct regarding confidentiality.

Duties of confidentiality (under common law) arise when one person (the 'confidant') is provided with information by another (the 'confider') either orally or in writing in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. Examples of this duty are:-

- if the relationship is inherently confidential e.g. lawyer and client
- If the relationship is personal e.g. between colleagues in circumstances that suggest an expectation of confidentiality
- If there is risk through identification e.g. whistle blowers

The fact that information is not marked 'confidential' does not necessarily prevent it from being confidential as this may be inferred from the subject matter and the surrounding circumstances. Confidentiality is unlikely to be established where the information is already known to a wide circle or is in the public domain. Wherever possible, officers and Members should clearly indicate in correspondence or orally when they expect information to remain confidential to avoid

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confusion. Whilst this Protocol is not intended in any way to restrict a Member's freedom of speech or right to contact the press or public, Members must distinguish between acceptable levels of political debate and unacceptable or derogatory personal comments or remarks when they comment on particular issues. Comments to the press and public should not challenge the integrity and good faith of other Members or be based on inaccurate information offered without due regard or attempt to establish the facts

If Members wish to seek advice on whether documents should be disclosed to the Press they should contact the Communications Manager or the Chair of the relevant committee.

16. Breaches of the Protocol

16.1 Specific breaches of this protocol may be dealt with under the National Park Authority's procedures for breaches in local protocols and may ultimately be the subject of either grievance or disciplinary procedures or in the case of a Member by a complaint to the Standards Committee or Public Services Ombudsman for Wales. Potential problems may be resolved by early discussion between a Member and the Chairman. If the Chairman wishes an independent member of the Standards Committee may also be involved in this discussion. More general concerns about relationships between Members and officers or perceived breaches of the principles embodied in this Protocol can be discussed with the Authority's Monitoring Officer.

17. Training and briefing

17.1 Training and briefings on the operation of the Protocol for Members and Officers will be arranged as required.

18. Advice

18.1 The Authority's Monitoring Officer and Deputy Monitoring Officer will give advice on the interpretation and operation of this Protocol.

19. Review

19.1 The operation of the protocol shall be regularly monitored and reviewed annually and any appropriate amendments made when necessary.

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