

# **BRECON BEACONS NATIONAL PARK AUTHORITY**

## **Protocol for Members Appointed to Outside Bodies**

### **I. Introduction**

It is possible for the Authority to appoint members to a range of outside bodies, including tourism partnerships, local authority working groups and Welsh Assembly Government advisory groups. This guidance gives advice to those members who have been appointed by the National Park Authority to represent it on outside bodies.

The National Park Authority can gain a number of benefits from such appointments:

- To provide knowledge, skills and expertise which might not otherwise be available
- To ensure that good relationships can be maintained with the body
- To deliver a partnership project that requires the input of other organisations or community groups
- To protect the Authority's investment or assets, ie, if the Authority has provided grant funding or provides funding for service delivery
- To lever in external funding which would not be available to the Authority on its own

There are a number of outside bodies in which members may become involved as a representative of the Authority:

- National or regional body (eg. Campaign for National Parks)
- Charitable Trust (eg. The Brecon Beacons Trust)
- Company limited by guarantee (eg. Regional Tourism Partnerships)

Regardless of how the appointment is made, the law lays down many requirements with which members must comply, which may include duties to the Authority as well as duties to the outside body and its members. *This means that you will not always be representing the Authority's interests on that outside body, and might be required to act in the interests of the outside body rather than the Authority's interests.*

You will only be considered a representative of the Authority if you have been formally appointed or nominated by the Authority to this role. You should not purport to act as an Authority representative on an outside body unless such a formal appointment has been made.

### **2. Appointment and Reporting Back**

The reasons for your appointment to an outside body should be made clear on appointment. It is important that you report back regularly to the Authority on what the outside body is doing. This can be via one or more of the following methods:

- Submitting a written report to Democratic Services (using the form available on the Modern.gov library)
- Making a verbal report at the next Authority meeting at the appropriate point on the agenda
- Asking Democratic Services to upload a written report to the Modern.gov library
- Advising relevant officers of any actions necessary from external meetings attended

You will need to ensure that the outside body provides you with sufficient information to enable you to make this report, BUT you are not required to disclose anything which is commercially sensitive as this may be in breach of:

- The Members' Code of Conduct
- Your duties of confidentiality to the outside body (whether as a director, trustee or more generally)
- May be a breach of confidence in the general sense

### **3. General Advice and Guidance to Members Appointed to Outside Bodies**

- Ensure that you know the legal status of the organisation and read the governing document to understand your responsibilities;
- Ensure that if you are appointed a director of a company the relevant form (form 288) is filed at Companies House upon your appointment and resignation;
- Make any general declarations of interest at your first meeting (see section 7 below);
- Ask if there is any personal liability insurance or indemnity in place – sometimes referred to as directors' liability insurance (see section 8 below);
- Clarify whether the organisation will pay allowances or expenses (see section 8 below);
- Ensure the board or management committee has regular financial and other reports which detail the current financial situation of the organisation and any liabilities – take an interest in the business plan
- Discuss with relevant officers any new activities that the outside body undertakes (you may need to provide them with copies of papers) and ensure that risks are properly identified in reports (consistent with local authority decision making – ensure that all relevant information is presented);
- Observe duties of confidentiality (in both directions) – see section 7 below;
- Carefully consider any conflicts of interest, declare interests, and if appropriate, leave the room for consideration of the business (see section 6 below);
- Take advice from the Monitoring Officer, the Finance Department and your led officer contact as appropriate – not just when the organisation is likely to become insolvent, but generally. Occasionally that advice may be to seek external advice on your position, especially if there is conflict of interest between the organisation and the Authority;
- Manage conflict – usually issues can be balanced, but ensure that when in meetings of the body you act in the body's best interests which may not necessarily be those of the Authority – if all else fails, resign. Do not just remain a director and fail to attend

meetings or you may find that you are in breach of your duty to act in the best interests of that organisation (see section 6 below);

- Finally, question the need for future Authority involvement! Has the organisation come of age, or has it changed direction from when the Authority first became involved – what useful purpose would ongoing representation serve?

#### **4. Particular Duties and Responsibilities of Directors and Trustees**

If you are appointed a director of a company then you must act in the best interests of that company. The main duties of a director are:

- To act honestly and in good faith and in the best interests of the company as a whole;
- A duty not to make a personal profit and to take proper care of the company's assets;
- To attend board meetings and follow the rules on the declaration of interests.
- To exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience and involves due diligence in the performance of his/her duties as a director);
- To comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the governing document.

If you are appointed as a trustee of a charity then the duties of trustees are generally the same as for a director but in addition you must make sure the trust acts in accordance with the aims and objectives of the trust and you should make sure that you have a clear understanding of what these are (there is normally a trust deed which sets these out).

#### **5. General Duties of a Representative on an Outside Body**

In carrying out your duties as a Trustee or Director of an outside body you must take decisions without being influenced by the fact that you are a member of the National Park Authority. Your primary duty in acting as a representative making management decisions for the outside body is to make these decisions in the interests of the organisation. Members should always ensure that their fellow directors/trustees are aware of the fact that they are members of the National Park Authority.

In these cases, you must act in the interests of the body and exercise independent judgement in making decisions, in accordance with your duty of care to the body. You are not there just to vote in accordance with the Authority's wishes. You may have regard to the interests of the Authority, but this should not be the overriding consideration. In some cases voting in the Authority's interests could be a breach of a director's duty to a company.

In other cases the Authority may have expressed a view or formulated a policy and would expect you to convey that view or policy to the outside body. It is acceptable for you to do this as the Authority's representative provided that it does not conflict with your particular duties as director or trustee or where it is clearly not contrary to the interests of the organisation.

The overriding responsibility is to seek to avoid a situation where duty and interest conflict and therefore if you are unsure about declaring an interest, it would be wise to declare and leave the meeting during consideration of the business.

## **6. Managing Conflicts of Interest**

In general terms the purposes of an outside body and what it wants to do often coincide with the Authority's interest and so conflicts may be rare. However, there may be difficulty in some circumstances, for example if the body is not complying with the terms and conditions of a funding agreement between the Authority and the body, or the organisation wishes to appeal against a planning decision made by the Authority or where the organisation has wider objects than the reason behind the Authority's appointment and wishes to pursue activities which would conflict with Authority policy.

You will need to manage the conflicts that will arise appropriately and in certain circumstances you may feel that your only option is to resign from the company or body. Similarly if the Authority does not feel that a representative on an outside body is properly fulfilling their role and responsibilities eg. if the member is not attending meetings or is voting in ways which may be inappropriate, then the Authority could choose to change its representation on the outside body. Clearly there is greater scope for conflicts to arise where you hold an office on the outside body, eg. Chair, Vice Chair, Secretary or Treasurer, than if you are a general member.

## **7. Declarations of Interest and Duties of Confidentiality – the Members' Code of Conduct**

When outside bodies consider issues related to your Council or where you may have a personal interest in relation to the body's activities, these need to be declared in line with the rules of the outside body and the Members' Code of Conduct. The specific rules adopted by each body will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer as appropriate.

When the Authority considers issues relating to or affecting the outside body to which you have been appointed as the Authority representative you must declare your personal interest in the matter in accordance with the Members' Code of Conduct. If this is your only interest then it will not be considered a prejudicial interest unless the matter relates to an approval, consent, licence, permission or registration. You will also need to ensure details of your appointment are included on the Register of Interests kept by the Democratic Services Manager.

Confidential information must be treated with care and if you have any doubt over the status of any information then you should keep that confidential and check with the relevant officer, whether or not it is something which is already in the public domain or which may be disclosed.

The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will also be a breach of the Members' Code of Conduct.

Where you act as a representative of the Authority on an outside body, you must comply with the Code of Conduct of that body, if it has one. If it does not, you must comply with the Members' Code of Conduct unless observance of the Code would conflict with any other obligations (ie. the duty to act in the best interests of the outside body).

Under the Code you must not:

- Disclose information given to you in confidence by anyone, or information acquired which you believe is of a confidential nature, without the consent of a person authorised to give it, or unless you are required by law to do so;
- Prevent another person from gaining access to information to which that person is entitled by law.

Disclosing confidential information may also contravene other parts of the Code, eg.

- it may be regarded as bringing the office of National Park Authority member into disrepute; may compromise the impartiality of people who work for the Authority;
- may improperly confer or secure an advantage or disadvantage for you or any other person

## **8. Allowances, insurances and indemnities**

The Authority may have authorised attendance at meetings of outside bodies as an approved duty for members, in line with the Authority's Scheme of Members' Allowances. Alternatively, any expenses may be defrayed by the body itself, in accordance with its own rules. If the body does pay expenses, you may not claim from the Authority. For further information on allowances contact the Democratic Services Manager.

In some instances members who represent the Authority on outside bodies may carry personal liability for decisions they make and actions which they take in their representative capacity. This is most likely to arise if you have been appointed as a director of a company or a trustee of a charity or onto the management board of an organisation. The outside body may have insurance to cover your liability in these cases and you should check with the organisation. Alternatively the Authority may have agreed to provide an indemnity to cover any liabilities incurred by members acting in a representative capacity. The Monitoring Officer or Democratic Services Manager will be able to provide further information on this.

***NB. This document is based on the WLGA Members' Toolkit: Appointments to Outside Bodies: The Councillors' Roles – General Guidance and Potential Pitfalls and Conflicts – adapted for National Park Authority use.***