



## **South Downs National Park Authority**

# **Arrangements for Assessment, Investigation and Determination of a Complaint that a Member has failed to Comply with the Member Code of Conduct**

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Responsibility	Monitoring Officer
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## **1. Application of these Arrangements**

- 1.1 These are the Arrangements to be followed in the assessment, investigation and determination of a complaint that any Member of the South Downs National Park Authority (“the Authority” or “SDNPA”) has failed to comply with the SDNPA’s Member Code of Conduct. The Arrangements will be followed and applied in accordance with the requirements of the Localism Act 2011. Unless referred to specifically, any reference to “Member” includes “Co-opted Member” (for the avoidance of doubt, this includes the Independent (CIPFA) and other Co-opted Members of the Policy and Resources Committee).
- 1.2 A link to the Member Code of Conduct is included at **Appendix C** to these Arrangements.

## **2. Independent Person (s)**

- 2.1 The Authority is required by law to appoint an independent person (“the Independent Person”) whose views must be sought, and taken into account, by the Authority before it makes its decision on a complaint that it has decided to investigate (see Paragraph 10.8).
- 2.2 At any time that the Authority has more than one appointed Independent Person, the SDNPA’s Monitoring Officer (“the Monitoring Officer”) may, in relation to a particular complaint, arrange for more than one Independent Person to perform the Independent Person roles set out in these Arrangements.
- 2.3 The views of the Independent Person may also be sought by:
- 2.3.1 The Authority in relation to a complaint that it has decided not to investigate; and
- 2.3.2 A Member of the Authority who is the subject of a complaint.
- 2.4 The Independent Person should normally be involved in initial meetings and discussions concerning the handling of a complaint.
- 2.5 Where a Member of the Authority who is the subject of a complaint wishes to seek the views of the Independent Person, they may obtain the relevant contact details from the Monitoring Officer

## **3. Receipt of Complaint**

- 3.1 A complaint shall be made in writing addressed to The Monitoring Officer to South Downs National Park Authority, Corporate Services, The Castle, Winchester SO23 8UJ. The Complaint Form at Appendix I shall be used for this purpose. A completed Complaint Form may instead be submitted by email to [info@southdowns.gov.uk](mailto:info@southdowns.gov.uk) marked as confidential and for the attention of the Monitoring Officer
- 3.2 The Monitoring Officer shall normally acknowledge receipt of a complaint within five working days of receipt of a completed Complaint Form.
- 3.3 Where the Monitoring Officer considers that they should not perform any or all of the Monitoring Officer functions under these arrangements owing to an actual or potential conflict of interest, the Monitoring Officer shall instruct the Deputy Monitoring Officer or other suitably qualified and experienced officer to act in their place.

## **4. Initial Assessment of Complaint**

- 4.1 In consultation with the Chair of the Appointments, Management and Standards Committee and the Authority’s Independent Person and an opportunity for the Subject Member to submit a written response to the allegation(s), the Monitoring Officer shall carry out an initial assessment of the complaint to see if it falls within the Authority’s jurisdiction and shall then do one of the following:
- 4.1.1 Decide that no action should be taken in respect of the complaint; or
- 4.1.2 Following consultation in accordance with paragraph 6.1, arrange informal resolution if both parties agree (which may include a referral to a mediator); or
- 4.1.3 Convene a meeting of the Appointments, Management and Standards Committee in

accordance with Paragraph 9 below.

- 4.2 In reaching a decision under Paragraph 4.1, the Monitoring Officer shall have regard to the Local Assessment Criteria in **Appendix 2**.
  - 4.3 Where the complaint is in respect of a person who is no longer a Member of the Authority but is a Member of another relevant authority (as defined in section 27(6) of the Localism Act 2011), the Monitoring Officer shall refer the allegation to the Monitoring Officer of that other Authority.
  - 4.4 The initial assessment of the complaint shall normally take place within 20 working days of the date of receipt of the complaint (excluding the notification period referred to below).
  - 4.5 Where a matter is referred for further action under Paragraphs 4.1.2 or 4.1.3, it does not mean that there have been findings of fact made in regard to the matter. It simply means that the Monitoring Officer, in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person, considers that the alleged conduct, if proven, may amount to a failure to comply with the Member Code of Conduct, and that some action should be taken in response to the complaint.
  - 4.6 If the complaint does not fall within the Authority's jurisdiction or if it is decided that, for some other reason, no action should be taken in respect of the complaint, the Monitoring Officer shall notify the person making the complaint ("the Complainant") in writing that the complaint will not be investigated as a breach of the Member Code of Conduct, giving reasons for the decision. This notification shall normally be given within five working days of the decision being made. This will be the end of the process.
  - 4.7 Further to a decision being taken under Paragraphs 4.1.2 or Paragraph 4.1.3, the Monitoring Officer shall notify the Complainant in writing of the decision. This notification shall normally be given within five working days of the decision being made.
  - 4.8 If the Monitoring Officer, in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person, determines to convene a meeting of the Appointments, Management and Standards Committee, the Monitoring Officer shall arrange a formal investigation of the complaint in accordance with Paragraph 8 below.
  - 4.9 Normally within five working days of the decision being made, the Monitoring Officer shall inform the Chair of the Authority and the Chair of the Appointments, Management and Standards Committee in writing of the outcome of the initial assessment.
- 5. Notification to Member**
- 5.1 Normally within five working days of receipt of the Complaint Form, subject to any decision made under Paragraph 5.3 below, the Monitoring Officer shall provide the Member who is the subject of the complaint ("the Subject Member") with written notification that a complaint has been made, the name of the Complainant and a written summary of the complaint and shall give the Subject Member an opportunity to submit a written response to the allegation(s) normally within 5 working days of receipt of the Monitoring Officer's notification to them. The Monitoring Officer will not enter into correspondence with the Subject Member over the details of the allegation(s). Any written response provided by the Subject Member will be considered as part of any subsequent investigation undertaken and included in any reports arising from this process.
  - 5.2 The Monitoring Officer shall provide the Subject Member with written notification of the outcome of the initial assessment of the complaint and, where further action will be taken under Paragraph 4.1 in regard to the complaint, the relevant paragraphs of the Member Code of Conduct that may have been breached. This notification shall normally be given within five working days of the decision being made.
  - 5.3 The notification to the Subject Member under Paragraph 5.1 shall include the name of the complainant and a written summary of the complaint unless it is determined that to do so would be contrary to the public interest. In considering this issue, the factors referred to in the Local Assessment Criteria, paragraphs 13-17, of Appendix 2, will be taken into account.

## **6. Referral for Informal Resolution**

- 6.1 Where a referral for informal resolution under Paragraph 4.1.2 above is being considered, the Monitoring Officer shall contact the Complainant, and the Subject Member, seeking confirmation that they would co-operate with the action proposed if such a decision were made. It shall be made clear that the decision to refer the matter for informal resolution, if made, will normally close the opportunity for the complaint to be investigated.
- 6.2 Where it is determined that a referral for informal resolution will be made, the Monitoring Officer shall determine the timescale for, and the format and objectives of, the informal resolution process having consulted the Chair of the Appointments, Management and Standards Committee, the Subject Member, the Complainant and the Authority's Independent Person.
- 6.3 The Monitoring Officer in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person may, in exceptional circumstances, cease the informal resolution process and refer the matter to the Appointments, Management and Standards Committee in accordance with paragraph 4.1.3.

## **7. Withdrawal from SDNPA duties**

- 7.1 Where a complaint is referred to the Appointments, Management and Standards Committee for consideration, the Chair or Deputy Chair of the Authority may, in exceptional circumstances, consider that it would be in the interests of the Subject Member and/or the Authority for the Subject Member to withdraw from SDNPA duties pending the outcome of the hearing of the Appointments, Management and Standards Committee.
- 7.2 In such circumstances, and after reasonable consultation with the Monitoring Officer and the Authority's Independent Person, the Chair or Deputy Chair of the Authority shall invite the Subject Member to a meeting to discuss the matter and may formally request that the Subject Member voluntarily withdraws from SDNPA duties pending the resolution of the complaint. The Chair or Deputy Chair of the Authority shall confirm that this is a neutral action and in no way implies that the Subject Member has failed to comply with the SDNPA's Member Code of Conduct. The Chair or Deputy Chair of the Authority and the Subject Member may agree additional or alternative measures be taken pending the resolution of the complaint.
- 7.3 Such a discussion may also take place in circumstances where, although no complaint has been submitted to the Monitoring Officer and there is no action being taken by the Authority in respect of the Member's alleged conduct, the Chair or Deputy Chair of the Authority is aware that a third party is investigating a complaint concerning a SDNPA Member.

## **8. Referral for Investigation**

- 8.1 Where the matter has been referred to the Appointments, Management and Standards Committee, before the Committee meets, the Monitoring Officer shall arrange for an investigation to be carried out promptly by the Deputy Monitoring Officer, or other person the Monitoring Officer considers to be suitably qualified and experienced to undertake the task ("the Investigating Officer"). This may include:
  - 8.1.1 Making inquiries of such persons as the Investigating Officer considers necessary or appropriate. This may include making inquiries of the relevant authority responsible for appointing the Subject Member to the Authority;
  - 8.1.2 Requesting such persons to give such information or explanation as the Investigating Officer considers appropriate;
  - 8.1.3 Inspection of such documents as the Investigating Officer considers appropriate.
- 8.2 The Monitoring Officer, in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person, may decide to cease the investigation and decide that no further action should be taken in respect of the complaint or, in relation to Sub-Paragraph 8.2.1 below, to arrange informal resolution if both parties agree where:

- 8.2.1 As a result of new evidence or information, the Monitoring Officer is of the opinion that the matter is materially less serious than may have been apparent when the decision to refer the matter to the Appointments, Management and Standards Committee was made, and that a different decision would have been made had that new evidence or information been available; or
  - 8.2.2 The Subject Member has died, resigned, or is seriously ill, and the Monitoring Officer is of the opinion that it is no longer appropriate to continue with an investigation.
- 8.3 On completion of an investigation, the Investigating Officer shall prepare a written report of the investigation which must indicate the Investigating Officer's opinion as to whether or not the Subject Member has failed to comply with the Member Code of Conduct.
- 8.4 Before issuing the final investigation report, the Investigating Officer shall write to both the Subject Member and the Complainant, providing each of them with the draft report and inviting them to respond with their written comments in relation to the draft report. Any such comments must be provided to the Investigating Officer within twenty-one days of the date of the Investigating Officer's covering letter.
- 8.5 Following the expiry of the twenty-one-day period and after having made any amendments they consider appropriate, the Investigating Officer shall issue the final investigation report which they shall provide to the Monitoring Officer together with any written comments provided by the Subject Member and/or the Complainant.
- 8.6 The Monitoring Officer shall send a copy of the final investigation report, together with any written comments provided by the Subject Member and/or the Complainant, to the Subject Member, the Complainant, the Appointments, Management and Standards Committee, the Authority's Independent Person and, where appropriate, the Chair of the Authority.
- 9. Convening a meeting of the Appointments, Management and Standards Committee**
- 9.1 Where, under Paragraph 4.1.3, a decision is made that the complaint should be referred for consideration at a meeting of the Appointments, Management and Standards Committee, the Monitoring Officer shall convene a meeting of the Appointments, Management and Standards Committee for this purpose.
- 9.2 The Authority may appoint substitute Members to the Appointments, Management and Standards Committee and the Committee convened for the purposes of this paragraph may comprise substitute Members provided that at all times the composition of the Committee complies with Paragraph 9.3.
- 9.3 The Appointments, Management and Standards Committee shall comprise three Members. At least one of the Members shall be appointed to the Authority by the Secretary of State and at least one of the other Members shall be appointed by a local authority (in accordance with the rules relating to quorum set out in the Authority's Standing Orders for Regulation of Authority Proceedings and Business).
- 9.4 The meeting shall normally be held within six weeks of the date of issue of the final investigation report (or as soon as reasonably practicable thereafter).
- 9.5 In consultation with the Chair of the Appointments, Management and Standards Committee, the Monitoring Officer shall determine the date of the meeting of the Committee.
- 9.6 The meeting of the Committee shall be open to the press and public unless the Committee decides that, in accordance with Part VA of and Schedule 12A to the Local Government Act 1972 and having taken into account any relevant representations made pursuant to Paragraphs 11.3-11.4 below, the matter should be considered in private session.
- 9.7 The meeting of the Committee may proceed in the Subject Member's absence if the Subject Member does not attend the hearing. If the Committee is satisfied with the Subject Member's reasons for not being able to attend the meeting, it may arrange for the hearing to take place on another date.

- 9.8 The meeting of the Appointments, Management and Standards Committee may proceed in the Complainant's absence if the Complainant does not attend the hearing. If the Committee is satisfied with the Complainant's reasons for not being able to attend the meeting, it may arrange for the hearing to take place on another date.
- 10. The remit of the Committee and Meeting Procedure**
- 10.1 The Appointments, Management and Standards Committee will make one of the following findings:
- 10.1.1 That the Subject Member did not fail to comply with the Member Code of Conduct; or
  - 10.1.2 That the Subject Member did fail to comply with the Member Code of Conduct, but that no action needs to be taken in respect of the matters considered at the hearing; or
  - 10.1.3 That the Subject Member did fail to comply with the Member Code of Conduct and that one of, or any combination of, the following sanctions should be imposed:
    - 10.1.3(a) Censure of the Subject Member:
    - 10.1.3(b) Restriction for a period not exceeding six months of that Member's access to any of the premises of the Authority or that Member's use of the resources of the Authority, provided that those restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the Subject Member's ability to perform the functions of a Member;
    - 10.1.3(c) A recommendation to the Authority that the Subject Member be removed from any or all Committees or Sub-Committees of the Authority or from any other role to which they are appointed by the Authority.
    - 10.1.3(d) A report of its findings be made to the Authority and/or the relevant authority responsible for appointing the Subject Member to the Authority (providing an explanation of the matter).
- 10.2 In any case where the Committee makes a finding under sub-paragraph 10.1.2 or sub-paragraph 10.1.3 above, the Committee may instruct the Monitoring Officer to arrange such training for the Subject Member as the Committee considers appropriate and this may be done in addition to the imposition of any of the sanctions set out in sub-paragraph 10.1.3 above. The Committee shall consider the final investigation report and any comments provided by the Subject Member and/or the Complainant.
- 10.3 The Investigating Officer shall be invited to attend the meeting in order to present their investigation report and to answer any questions that the Committee may have in respect of the investigation report. The Investigating Officer may call relevant witnesses to give evidence where this has been agreed by the Monitoring Officer in accordance with paragraph 11.2 below.
- 10.4 The Subject Member and the Complainant shall be invited to attend the meeting for the purposes of observing the proceedings and answering any questions of clarification that the Appointments, Management and Standards Committee may wish to ask. The Subject Member and the Complainant shall each be given the opportunity to make an oral statement to the Committee.
- 10.5 The Subject Member and the Complainant may each be accompanied at the meeting by a person of their choice but may not normally be represented by another person unless this has been agreed by the Monitoring Officer in accordance with paragraph 11.5 below.
- 10.6 The Authority's Independent Person shall be invited to attend the meeting.
- 10.7 The procedure followed at the meeting will be confirmed in the pre-hearing process summary referred to in Paragraph 11.6.
- 10.8 The Investigating Officer, the Subject Member (together with a person accompanying them, if any), the Complainant (together with a person accompanying them, if any) and the Authority's Independent Person, as well as any other person the Committee determines should be present,

may continue to attend the meeting even if the Committee decides that, in accordance with Part VA of and Schedule 12A to the Local Government Act 1972, the matter should be considered in private session. Only the Authority's Independent Person and the Monitoring Officer shall normally be present during the Committee's deliberations.

- 10.9 Before it makes its decision on the complaint, the Committee shall seek, and take into account, the views of the Independent Person and the Monitoring Officer.
- 10.10 Any sanction imposed shall take effect immediately, except where the Committee directs that it shall take effect on a later date within the following six months.
- 10.11 The meeting is a formal meeting of the Authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The meeting will be conducted in a fair, independent and impartial way, so that members of the public and members of the Authority have confidence in the Authority's procedures and findings.

## **11. Pre-Meeting Procedure**

- 11.1 The Monitoring Officer shall write to the Investigating Officer informing them of the date of the meeting, inviting them to attend the meeting in order to present their investigation report and to answer any questions that the Appointments, Management and Standards Committee may have in respect of the investigation report. The letter shall outline the meeting procedure and shall enquire whether the Investigating Officer wants to make any representations regarding whether any part of the meeting should be held in private. The letter shall ask for a response within a set time.
- 11.2 Where the Investigating Officer wishes to call relevant witnesses to give evidence at the meeting of the Appointments, Management and Standards Committee, they must send a written request to the Monitoring Officer, giving their reasons for the request. The Monitoring Officer in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person, may agree for the Investigating Officer to call relevant witnesses to give evidence. The Monitoring Officer shall send written notification to the Investigating Officer of their decision.
- 11.3 The Monitoring Officer shall write to the Subject Member informing them of the date of the meeting and inviting them to attend the meeting. The letter shall outline the meeting procedure and shall enquire whether the Subject Member wants to make any representations regarding whether any part of the meeting should be held in private. The letter shall ask for a response within a set time.
- 11.4 The Monitoring Officer shall write to the Complainant informing them of the date of the meeting and inviting them to attend the meeting. The letter shall outline the meeting procedure and shall enquire whether the Complainant wants to make any representations regarding whether any part of the meeting should be held in private. The letter shall ask for a response within a set time.
- 11.5 Where either the Subject Member or the Complainant wishes to be represented at the meeting of the Appointments, Management and Standards Committee, they must send a written request to the Monitoring Officer, giving their reasons for the request. The Monitoring Officer in consultation with the Chair of the Appointments, Management and Standards Committee and the Authority's Independent Person, may, in exceptional circumstances, agree for the person to be represented at the meeting. The Monitoring Officer shall send written notification to the person of their decision.
- 11.6 At least two weeks before the meeting, the Monitoring Officer shall prepare a pre-hearing process summary and send it to the members of the Appointments, Management and Standards Committee, the Independent Person, the Investigating Officer, the Subject Member and the Complainant copied for information to the Chair of the Authority, where appropriate. This should summarise the complaint, outline the main facts that are agreed and those which are not agreed, note whether the Subject Member and/or Complainant will attend and outline the



procedure to be followed at the meeting.

## **12. Notification of Findings**

- 12.1 Within a period of 14 days of the Appointments, Management and Standards Committee making its finding on the matter, the Monitoring Officer shall provide the Committee's Decision Notice to the Subject Member and the Complainant. The Decision Notice shall include a brief statement of facts, the provisions of the Member Code of Conduct engaged by the allegations, the view of the Independent Person, the reasoning of the Committee and any sanction applied.
- 12.2 The Decision Notice shall normally be published on the Authority's website. Where appropriate, and after taking account of the Authority's duties under data protection legislation, the Monitoring Officer may, in consultation with the Chair of the Appointments, Management and Standards Committee, determine that a redacted version of the Decision Notice should be published on the Authority's website.
- 12.3 This is the end of the process.

Appendix 1: Complaint Form

Appendix 2: Local Assessment Criteria

Appendix 3: South Downs National Park Authority's Member Code of Conduct

Adopted by the South Downs National Park Authority Date: 11 December 2012

Reviewed by the Standards and Audit Committee: 24 September 2013

Amended by the South Downs National Park Authority: 15 October 2013

Updated:

Reviewed and amended by the Governance Committee: July 2015

Reviewed by the Appointments, Management and Standards Committee

## **Appendix I: Complaint Form**

Insert link to this

## Appendix 2: Local Assessment Criteria

The following criteria shall apply when considering complaints that a Member has failed to comply with the Member Code of Conduct.

- I. Whether the complaint falls within the jurisdiction of the Committee:
  - I.1 Is it a complaint against one or more named Members or co-opted Members of the Authority covered by the Member Code of Conduct?
  - I.2 Was the named Member in office at the time of the alleged conduct and was the Member acting in their official capacity as a Member of the SDNPA at the time of the alleged conduct?
  - I.3 Might the alleged conduct, if proven, amount to a failure to comply with the SDNPA Code of Conduct under which the Member was operating at the time of the alleged misconduct?

NOTE If the complaint fails one or more of the above tests, it cannot be investigated as a breach of the Member Code of Conduct.

Proportionality – any decision to investigate an allegation that the Member Code of Conduct has been breached should be a proportionate response to the issues raised and expected outcomes, taking into account the public interest (see below) and the resources required to undertake an investigation. Complaints should only be investigated where the allegation is reasonably considered to be a serious matter.

2. Factors which should be taken into account include:
  - 2.1 Is there prima facie evidence of a breach of the Code of Conduct?
  - 2.2 Is it serious enough to warrant a sanction?
  - 2.3 What are the views expressed by the complainant about the impact that the alleged conduct has had on them?
  - 2.4 Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Authority and is there no other avenue left to deal with it except investigation?
  - 2.5 How much time has passed since the alleged conduct occurred?
  - 2.6 Would an investigation serve a useful purpose?
  - 2.7 Is the case suitable for local investigation?
  - 2.8 Does it appear that the complaint is really about dissatisfaction with an authority decision?
  - 2.9 Is there insufficient information to justify a decision to refer the matter for investigation?
  - 2.10 Are the Subject Member and the Complainant willing to pursue informal resolution of the complaint?
3. Factors to consider when deciding whether the identity of the complainant and/or a written summary of the complaint should be disclosed to the Member the subject of the complaint:
  - 3.1 Are there reasonable grounds for believing that the complainant will be at risk of

physical harm if their identity is disclosed?

- 3.2 Is the complainant an officer who works closely with the Member and is afraid of the consequences to their employment if their identity is disclosed?
- 3.3 Is there evidence of any medical risks associated with the complainant's identity being disclosed?
- 3.4 Is it feasible for the complaint to be investigated without the complainant's identity being disclosed (e.g. where the complaint is bullying of the complainant)?
- 3.5 Are there reasonable grounds for believing that disclosure of the complainant's identity and/or the provision of a written summary of the complaint, may lead to intimidation of witnesses or the destruction of evidence?

#### Public Interest

The public interest may be described as something which is of serious concern and benefit to the public. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context may refer to a distinct section of the public such as a small community or interest group.

### **Appendix 3: South Downs National Park Authority's Member Code of Conduct**

The SDNPA Member Code of Conduct can be found on the Authority Website:

<http://www.southdowns.gov.uk/about-us/about-the-authority/governance/code-of-conduct>