

Report to **Appointments, Management and Standards Committee**
Date **19 September 2023**
By **Head of Governance**
Title of Report **Request for approval of reason for non-attendance**
Decision

Recommendation: That the Committee:

- 1. Consider and approve, for the purposes of section 85(1) of the Local Government Act 1972, Chris Dowling’s reason for not attending the National Park Authority meeting on 11 July 2023.**
 - 2. Delegate Authority to the Chief Executive Officer, in consultation with the Chair of the Authority, to consider and determine, for the purposes of section 85(1) of the Local Government Act 1972, a request by any Member appointed as a Director of South Downs Commercial Operations Limited for approval of their reason for not attending a meeting provided that such a request is made and approved before the expiry of the six month period of non-attendance by the Member.**
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1. Introduction

- 1.1 Section 85(1) of the Local Government Act (LGA) 1972 sets out that “... if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.”
- 1.2 The terms of reference of the Appointment Management and Standards Committee include, should the need arise, that the Committee “... consider and determine a request by a Member or Co-opted Member for approval of their reasons for not attending meetings for a period of six consecutive months for the purposes of Section 85(1) LGA 1972, provided that such a request is made and approved before the expiry of the six month period of non-attendance by the Member or Coopted Member.”
- 1.3 The Committee is asked to consider a request by Chris Dowling, a Member of the SDNPA appointed by East Sussex County Council, for approval of his reason for not attending the National Park Authority (NPA) meeting on 11 July 2023.

2. Policy Context

- 2.1 The legal requirement for Members to attend a formal meeting of the Authority at least every 6 months helps to ensure Members are properly engaged in decision making and steering the strategic direction of the Authority.
- 2.2 At its meeting in October 2020, the NPA endorsed the principle of a small number of Members not being appointed to committees in order to undertake, within the parameters of the Member role description, other roles to support the work of the Authority. Therefore, for these Members, their engagement in the formal meetings of the NPA only includes the NPA meetings.

3. Issues for consideration

Request to approve reason for not attending NPA meeting on 11 July 2023

- 3.1 At its AGM in July 2022, when the Authority appointed Members to its committees, the Authority did not appoint Chris Dowling to a committee and, instead, he undertook a key role working with officers on initiatives to support businesses across the SDNP. On 1 April 2023 Chris Dowling was also appointed as a Director of South Downs Commercial Operations Limited (SDCOL). At its AGM in July 2023, the Authority did not appoint Chris Dowling to a committee and, instead, appointed him as a Director of SDCOL.
- 3.2 Chris Dowling has submitted a request for approval of his reason for not attending the NPA meeting on 11 July 2023. This request is included at **Appendix I**.
- 3.3 Chris Dowling attended the NPA meeting on 30 March 2023, which was the previous meeting of the NPA before 11 July 2023. He submitted his apologies for the NPA meeting on 11 July 2023 to the Chair, via the Governance Team, in good time for the meeting. The next meeting of the NPA that he would be expected to attend is scheduled for 19 October 2023. However, by that point, it is considered that a period of 6 months will have expired without his attending a meeting of the Authority for the purposes of section 85(1) LGA 1972, which would result in his ceasing to be a Member of the Authority at the expiry of the six-month period.
- 3.4 Consideration has been given to whether the meetings attended by Chris Dowling in his role as Director of SDCOL or in relation to his business support role, might satisfy the legal requirement contained in section 85(1) LGA 1972 for a Member to attend “any meeting of the authority”. However, by virtue of section 85(2), attendance at a meeting of the authority is defined as being attendance as a member at a meeting of any committee or sub-committee of the authority or any joint committee, joint board or other body by whom any of the functions of the authority are being discharged or who were appointed to advise the authority on any matter relating to the discharge of their functions and attendance as representative of the authority at a meeting of any body of persons. It is considered that a Director of SDCOL owes legal duties to the company and is not a representative of the NPA for the purposes of section 85(2) LGA 1972 and, in relation to the business support role, Chris Dowling has not been formally appointed as a representative of the NPA for the purposes of attending meetings of any body of persons. It is therefore considered that the meetings attended by Chris Dowling in his role as Director of SDCOL or in relation to his business support role do not satisfy the legal requirement contained in section 85(1) LGA 1972.
- 3.5 In his request for approval of his reason for not attending the NPA meeting on 11 July 2023, Chris Dowling has explained the reason why he didn’t attend the meeting and this is set out at **Appendix I**. He has also highlighted two mitigating factors for the attention of the Committee which compound this issue in his case.
- a) As a Director of SDCOL he is not appointed to any of the Authority’s committees meaning there are only a limited number of formal meetings across the year that he would be expected to attend. These are the four NPA meetings.
- b) As the Authority recently reduced the number of NPA meetings from five to four annually this has further reduced the number of meeting he would be expected to attend and has increased the likelihood that he would fall foul of the six month rule set out in section 85 of the LGA 1972.
- 3.6 The committee is recommended to consider and approve Chris Dowling’s request for approval of his reason for not attending the National Park Authority meeting on 11 July 2023.

Delegation to the Chief Executive Officer

- 3.7 Whilst the majority of the Members of the SDNPA are appointed to one of the Authority’s committees and therefore have a number of opportunities in any six-month period to attend a formal meeting of the Authority or one of its committees, any Member appointed as a Director of SDCOL does not have the same opportunity as the current practice is that any

such Member is not appointed to one of the Authority's committees. Acting as a Director of SDCOL involves a significant time commitment from the Member and it is not, therefore, considered appropriate to also appoint them to a committee.

3.8 Due to the scheduling of the NPA meetings across the year there are occasions where, should a Member who is appointed as a Director of SDCOL miss one NPA meeting, they would be required to submit a request to this committee to approve the reason for their absence, otherwise their Membership of the Authority would cease by operation of law in line with section 85(1) of the LGA 1972.

3.9 As this is a situation peculiar to a very small number of Members, but one that it is foreseeable could arise on a fairly regular basis, a delegation of authority to the Chief Executive Officer, in consultation with the Chair of the Authority, is proposed. The delegation of authority would only apply to Members who are appointed as a Director of SDCOL.

3.10 The delegation would be that the Chief Executive Officer, in consultation with the Chair of the Authority, may consider and determine, for the purposes of section 85(1) of the Local Government Act 1972, a request by a Member of the Authority appointed as a Director of SDCOL for approval of their reason for not attending a meeting for a period of six consecutive months, provided that such a request is made and approved before the expiry of the six month period of non-attendance by the Member.

4. Options & cost implications

4.1 Should the Committee decide to not approve his reason for not attending the NPA meeting on 11 July 2023, Chris Dowling would cease to be a Member of the NPA by operation of law.

4.2 The proposed delegation to the Chief Executive Officer, in consultation with the Chair of the Authority, is considered a practical way to address a situation that it is foreseeable could arise on a fairly regular basis. This delegation is only in relation to any Member who is appointed as a Director of SDCOL. Any request to approve a reason for absence from any other Member would still come to this Committee for consideration and determination. However, should the Committee not consider this delegation appropriate then, should any request to approve a reason for absence be received it would continue to be considered at a meeting of this Committee, which may at times require an additional meeting of the Committee to be called.

5. Next steps

5.1 If the Committee approves the reason for Chris Dowling not attending the NPA meeting on 11 July 2023, the six-month period as set out in Section 85(1) of the LGA 1972 would restart from the 11 July 2023.

5.2 If the delegation to the Chief Executive Officer, in consultation with the Chair of the Authority, is approved any future requests from any Member who is appointed as a Director of SDCOL would be dealt with in line with the delegation.

6. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	No

Implication	Yes*/No
How does the proposal represent Value for Money?	These processes aim to ensure that Members are properly engaged in the work on the Authority and that their time, including their time attending committee meetings, is used to best effect.
Which PMP Outcomes/ Corporate plan objectives does this deliver against	Good governance procedures and robust arrangements to ensure high standards of conduct indirectly support the delivery of all PMP and Corporate Plan objectives.
Links to other projects or partner organisations	West Sussex County Council
How does this decision contribute to the Authority's climate change objectives	The proposed delegation would mean, if an additional meeting of the committee would have been required to deal with a matter, this meeting would no longer need to be held and Members would not have to travel to attend.
Are there any Social Value implications arising from the proposal?	No
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Yes. There are no equalities implications arising from this.
Are there any Human Rights implications arising from the proposal?	No
Are there any Crime & Disorder implications arising from the proposal?	No
Are there any Health & Safety implications arising from the proposal?	No
Are there any Data Protection implications?	Yes, this report relates to an individual.

7. Risks Associated with the Proposed Decision

- 7.1 There is potential reputational harm for the Authority and the affected Member should their Membership cease due to failure to comply with section 85(1) of the LGA 1972. Should that happen there would also be a vacancy on the Authority and on the SDCOL Board of Directors. This report seeks to mitigate both immediate and future risks in relation to this.

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Appendices

I. Request for approval of reason for non-attendance

This appendix is not for publication as it contains exempt information within Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972, being information relating to an individual, and that in all the circumstances of the case, the public interest in maintaining the exempt information outweighs the public interest in disclosing the information.

SDNPA Consultees Chief Executive, Monitoring Officer.
External Consultees None
Background Documents None