

To: All Members
of the Dartmoor National Park Authority
Standards Committee

(see below)

Please quote: NPA/SC/08/Agenda

Tel: (Direct Line) 01626 831001

Please ask for: **Lorna Brown**

All press enquiries to John Weir

Tel: 01626 832093

Date: 24 June 2009

DARTMOOR NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE

Friday 3 July 2009

A meeting of the Authority's STANDARDS COMMITTEE will be held on the above date at **10.00am in the Meeting Room at Parke, Bovey Tracey** to consider the following matters.

Lorna Brown
Monitoring Officer

Access to Information - Local Government Act 1972 (as amended)

Agenda and Reports

Copies of the Agenda and Part I reports are available for inspection by members of the public at the above address five clear days prior to the meeting. They are also published on the DNPA website prior to the meeting. A limited number of copies are available for reference at the meeting.

Background Papers

The Background Papers relating to Part I reports, except any containing exempt information, can be inspected by members of the public at the above address between the hours of 9:00 am and 4:30 pm, Monday to Friday, by prior arrangement.

AGENDA

PART I - OPEN PROCEEDINGS

- 1 **Welcome and Apologies**
- 2 **Election of Chairman**
- 3 **Election of Deputy Chairman**
- 4 **Minutes of the meeting held on Friday 28 November 2008 – attached (Page 1)**
- 5 **Declarations of Interest**
- 6 **Items Requiring Urgent Attention**
- 7 **Public Participation**

To answer any questions or to receive any statements, representations or petitions which relate to the published reports in Part I of the Agenda. Representations will be heard immediately prior to the item to which they refer.

8 **Local Assessment – Lessons Learned**

Report of the Head of Legal Services and Deputy Monitoring Officer (NPA/SC/09/001) (Page 5)

9 **Investigation of Complaint – Ref: 030409**

Report of the Head of Legal Services and Deputy Monitoring Officer (NPA/SC/09/002) (Page 24)

10 **Annual Report and Future Work Programme**

Report of the Director of Corporate Services and Monitoring Officer (NPA/SC/09/003) (Page 28)

11 **Nomination of Members to attend the 2009 Annual Assembly “Bringing standards into focus” at the Birmingham ICC, 12-13 October 2009**

PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED.

NIL

MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

Membership: Ms H Jenny, Mr R Blackshaw, Mrs C Marsh, Mr D Webber, Mr R Woodall, Ms P Woods, Mr P Cock, Vacancy

DARTMOOR NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE

Friday 28 November 2008

Present: Members: R Blackshaw, H Jenny, M Jeffery, D Webber, M Watson,
B Woodall, C Marsh

Officers: L Brown, C Walledge, K Tebbey

043 Apologies

There were no apologies.

044 Minutes of the meeting held on 1 August 2008

The Minutes of the meeting held on 1 August 2008 were agreed and signed as a true record.

045 Declarations of Interest

None

046 Items Requiring Urgent Attention

- (i) Revised Terms of Reference, previously agreed by Authority at the meeting on Friday 7 November 2008, were circulated to all Members. These replace page 5 of Independent Members' blue book.
- (ii) It was noted that the schedule of meetings in the blue book is out of date. Mrs Brown advised Members that the list can be found on the Authority's website. Copies will be sent to those Members who do not have access to the internet.
- (iii) Communication between Standards Committee and Authority – Mr Walledge advised Members that the Chairman of the Authority was keen to see a more formal discourse between Authority and Standards Committee. He suggested that a formal report detailing the performance of the Standards Committee, e.g., to include feedback on the recent conference, complaints etc, could be presented to Authority in February/March 2009. This would provide time for any suggestions to be discussed/adopted prior to the Annual meeting. It was also suggested that the two Chairmen could meet informally in the first instance. This was endorsed by the Committee.

It was agreed that the message should be emphasised that the Standards Committee is not just about 'telling people off'.

Members suggested that Standards Committee Members could attend each of the meetings held by the Authority, over a 12 month period. Care should be taken, however, to ensure that this was not considered as a monitoring exercise.

Mr Walledge reported that there have been up to four occasions in the last 12 months when he has provided advice to Members following misunderstandings. It was agreed that following the Chairman of the Authority's recent email to Members regarding protocol, this should have been copied to Standards Committee Members for information and discussion. The Monitoring Officer should also be included in this type of communication.

It was agreed that the Chairman and Deputy Chairman would, with immediate effect, receive all future Agendas and associated reports and papers of the Standards Committee meetings.

047 Public Participation

None.

048 Annual Assembly of Standards Committees

The Committee received the Report of the Director of Corporate Services (NPA/SC/08/002).

Mrs Brown advised Members that the Annual Assembly was a useful experience for all. Particular issues raised included the resource costs of dealing with complaints, confidentiality, consistency and joint arrangements

The possibility of the Standards Committee taking on additional responsibilities was discussed e.g., general complaints. It was felt that if Standards Committee was provided with a report detailing types of complaint, the approach taken to solve the issue and outcomes then it could identify trends that maybe others would not see.

It was noted that Members would have to be careful not to become too involved with other Authority committee work as they could be perceived as no longer being unbiased.

In answer to Member queries, Mr Walledge advised that should the Standards Committee take on this task it would be a very specific function, therefore the terms of Reference would need to be re-written and approved by Authority.

Mrs Brown reported that Member/Officer Protocol is due for review and consideration. This is a task that Standards Committee could undertake.

It was agreed that a Standards Committee Work Plan for the next 12 months would be drafted by Mrs Brown and Mr Walledge. The plan will be circulated in early 2009. This could also be reported to Authority for information.

049 Communities in Control : Real People, Real Power : Codes of Conduct for Local Authority Members and Employees – A Consultation

The Committee received the report of the Director of Corporate Services and Monitoring Officer (NPA/SC/08/003)

Mrs Brown advised Members that there were two issues for discussion:

- (i) further review of the Code of Conduct for Members
- (ii) discussion regarding the proposed Code of Conduct for employees

It was proposed that each question be discussed independently and responses agreed.

Question 1 - The proposed response was agreed.

Questions 2 and 3 - Mr Walledge expressed concern regarding the definition of a criminal offence. Mr Watson suggested that the response should be that regardless of whether a Member is in his/her official role or not, if they are caught committing a criminal offence then they are in breach of the Code.

With regard to the definition of a criminal offence, Mr Walledge advised that in his view the bar is set too low. He would prefer to see the level of seriousness set at any offence capable of carrying a three month imprisonment sentence.

It was agreed that Mr Walledge's response would be to point out the flaws in the proposed definitions and suggest that the higher level offence would be a preferred option rather than the fixed penalty level.

It was also noted that within the consultation document, it was unclear whether a complaint would need to be present in order for an investigation to take place. Clarity on this point is required and will be requested.

Question 4 – With regard to the definition of the UK, Members were content with the proposal. However, the Committee would envisage the overall proposal as unworkable but were unsure of a solution.

Question 5 – It was agreed that a scenario should be the response – i.e., 'if a member was caught with his hand in the till but denies any wrong-doing, should he/she be able to continue as Chairman of the Finance Committee?'

Legislative Changes – It is proposed that the existing Code is revoked and the revised code would be in two parts, separating conduct of members into official and non-official capacities. It is also proposed that Members would have two months from the date the Authority adopts the new code to give a written undertaking that they will observe the code. Members agreed that there is no good reason to have two codes – this would over-complicate matters. Also, with regard to the two month deadline, Members felt that an 'exceptional circumstances' clause should be included e.g., to cover long term illness etc.

General Principles – There was a general feeling amongst members that this addition is unnecessary. Members agreed with the proposed response. There was one issue on which to seek clarification, however, that of the wording as follows: duty to ‘abide’ / ‘uphold’ each having different meanings – which word should be used in this instance?

Code of Conduct for Employees – Members agreed that there should no be two tiers to a code of conduct for employees. It should not be a separate document but should be incorporated into an employee’s terms of employment. The code of conduct should be cross-UK and should not be a ‘dictate’.

DARTMOOR NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE

3 July 2009

LOCAL ASSESSMENT - LESSONS LEARNED

Report of the Head of Legal Services & Deputy Monitoring Officer

1 Introduction

- 1.1 In April 2009 the Standards Committee received the first complaint under the Code of Conduct in relation to a Member of the Authority. This provides the Standards Committee with an opportunity to review the operation of the practices and procedures put in place to deal with the local assessment of complaints following the 2007 revisions to the Code of Conduct.
- 1.2 The emphasis in this report is identifying areas for improvement and lessons to be learned as well as highlighting processes and procedures which have worked well.

2 Receiving a Complaint

- 2.1 The complaint was received from a member of public and was made by email addressed directly to the Head of Legal Services. It therefore did not come down the anticipated route of communication via the Monitoring Officer or the Chairman of the Standards Committee.
- 2.2 In the event, the Chairman of the Standards Committee had been observing in the meeting room at the time of the matter which was the subject of complaint. The Monitoring Officer had also been present in the room at the relevant time. Given that the complaint related to words spoken and the manner in which they were spoken, it was determined that it would be prudent for the Monitoring Officer and the Chairman of the Standards Committee to refrain from participating in any process. This was to avoid any risk or perception that they might be influenced by a personal view or recollection of events that had taken place in their presence.
- 2.3 The Authority's Deputy Monitoring Officer was therefore instructed to handle the complaint, assisted by the Policy Officer and Assistant Solicitor as required.
- 2.4 As the complaint was received by email, it was unsigned. The member of the public was contacted and asked to provide a signed copy of the letter. This was in due course provided. However, given the 20 day target recommended by the Standards Board for completion of the local assessment process, it was deemed necessary to start the local assessment process before a signed copy of the complaint had been received.

3 The Local Assessment Panel

- 3.1 All Members of the Standards Committee are eligible to sit on an assessment sub-committee. The sub-committee must be chaired by an Independent Member. It was very fortunate that the first three Members of the Committee to be approached were able to undertake the task of membership of the assessment sub-committee.
- 3.2 It also proved relatively straightforward arranging a meeting of the assessment sub-committee within the recommended 20 day time limit for this first part of the process.

4 Correspondence

- 4.1 Letters were sent to the complainant and the Member concerned informing them that a complaint had been received and that an assessment sub-committee would be convened. Both persons requested additional information to clarify the situation. This may indicate that the initial letter was not sufficiently detailed, despite being based on a template recommended by the Standards Board.
- 4.2 Both parties appeared to mis-understand the function of local assessment and the sub-committee. In particular, even after the decision of the sub-committee had been issued in writing, both parties did not appear to realise that no judgement had been made on the complaint and in particular whether it was well-founded. This tends to suggest that further information is necessary to accompany any Decision Notice.
- 4.3 The Member concerned expressed strong dissatisfaction that she felt unable to obtain advice from officers of the Authority regarding her situation when dealing with a complaint that she regarded as unfounded and unjustified. The Authority was clearly in some difficulty in this regard as the Monitoring Officer could take no active part, the Deputy Monitoring Officer was charged with managing the process and advising the assessment sub-committee and the Assistant Solicitor was supporting the Deputy Monitoring Officer.
- 4.4 Members may wish to consider what practical advice and support, in particular legal advice, can be offered by the Authority to Members who find themselves in the situation of facing a complaint against them under the Code of Conduct.

5 The Decision

- 5.1 The assessment sub-committee expressed themselves satisfied with the information provided in advance of the sub-committee meeting. The only difficulty arose when the sub-committee reached an initial view as to the appropriate way forward, but felt unable to confirm that view until efforts had been made to contact the Member concerned and the member of the public to check whether they were willing to co-operate.
- 5.2 During the course of this complaint, the Standards Board for England published detailed guidance for assessment sub-committees when considering referring a complaint to the Monitoring Officer for other action. The guidance is attached at Appendix 1.

- 5.3 Paragraph 24 of the guidance recommends that a Standards Committee should draw up assessment criteria to detail the matters they take into account for deciding what action, if any, to take. However, the officer view is that Members should be slow to devote significant time and resources in drawing up extensive criteria when it is hoped that the incidence of complaints will remain very low.
- 5.4 The Standards Board guidance accepts that some assessment sub-committees will be reluctant to refer a complaint to the Monitoring Officer for "other action" without knowing whether the Member concerned will co-operate with the proposed approach (paragraph 7.25).
- 5.5 One way of addressing this issue is to adjourn the assessment sub-committee meeting for the Monitoring Officer to check whether the Member concerned will co-operate. However, although this may provide an initial sounding, it does not confirm that the Member will in fact co-operate or participate; circumstances may change and views may alter. Furthermore, it may be seen as the sub-committee giving a strong indication of its intentions which should not subsequently be departed from, even if one of the parties refuses to co-operate.
- 5.6 As an alternative to adjourning the assessment meeting, it could become a matter of standing practice that the Monitoring Officer writes to the complainant and the Member(s) concerned immediately after the receipt of a complaint to ask for written confirmation that they will co-operate with the local assessment process and undertake to participate in any "other action" which may be deemed appropriate.
- 5.7 Members are invited to consider whether this would provide a realistic approach, given that the parties may be very reluctant to sign up to a commitment to co-operate without specific information as to what process they are being asked to co-operate with and the time commitment it might involve.

6 Reporting Outcomes

- 6.1 It is fortuitous that the receipt of the complaint, conduct of the local assessment process and production of the Monitoring Officer's report has coincided with a scheduled meeting of the Standards Committee. When an assessment sub-committee decides to refer a complaint for "other action" the Monitoring Officer is required to present a report within 3 months of the referral.
- 6.2 The Standards Board guidance envisages the possibility that the report could be received by a duly authorised sub-committee of the Standards Committee, possibly even the three members who dealt with the local assessment.
- 6.3 Members are invited to consider whether it would be appropriate to delegate to the Monitoring Officer in consultation with the Chairman of the Standards Committee the power to convene a sub-committee to receive the statutory report on "other action". In the event that this is considered acceptable, Members views would be appreciated as to whether any such sub-committee should usually be comprised of the same members who dealt with local assessment (subject to availability) or whether it would be more desirable for different members to receive the report.
- 6.4 When an assessment sub-committee decides to refer a complaint for investigation, the Monitoring Officer is required to carry out the investigation and present a report.

As in the case of reports on “other action”, Members are invited to determine whether a special meeting of the full Standards Committee should be convened to receive the investigation report, or whether it would be appropriate to delegate to the Monitoring Officer in consultation with the Chairman of the Standards Committee the power to convene a sub-committee to receive the report.

- 6.5 In considering this issue, Members attention is drawn to the fact that the meeting at which the Monitoring Officer's report is considered will be a public meeting, subject to the general notice and publicity requirements under Regulation 8 of the Standards Committees (England) Regulations 2008.

7. Matters for Further Discussion

- 7.1 The assessment sub-committee identified two questions which they believe merit further consideration and discussion by the Standards Committee:
- (i) in the event that a Member on DNPA premises can reasonably be regarded as engaged in official duties and subject to the Code when not actively engaged in Authority business (*e.g. during lunch breaks, walking down from the car park, standing outside in the courtyard*)
 - (ii) the process to be followed in the event that a Member declines to participate / co-operate with a decision of the Standards Committee or any of its sub-committees (*e.g. will a "new" complaint be necessary; who should give evidence of the alleged failure to co-operate*)

CHRISTOPHER R WALLEGE

OTHER ACTION GUIDANCE

contents

introduction	2
what is other action?	3
what might other action involve?	4
deciding on other action	5
when is other action appropriate	7
adjournment	8
role of the monitoring officer	10
consideration of the monitoring officer's report	11
what if other action does not work?	12
why other action closes the opportunity to investigate	13

introduction

- 1) This guidance on other action is aimed at members of standards committees. It is not mandatory but has been written to help describe what other action is, when it might be used, and how the process can be managed.
 - Although there is no formal route for dealing with a member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.
- 2) Advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local Investigations and Other Action and How to Conduct an Investigation**.
- 3) The Standards Board's key messages on other action are:
 - Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the member's honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
 - A referral for other action closes the opportunity to investigate.
 - A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
 - Assessment sub-committees cannot direct the subject member or any other party to take action. The direction is to the monitoring officer.

what is other action?

- 4) An assessment sub-committee has **three** options when dealing with a complaint that a member has failed or may have failed to comply with the Code of Conduct. The Local Government Act 2000, as amended, states that it can decide to refer the complaint to the monitoring officer of the authority concerned, refer it to the Standards Board, or take no action.
- 5) If the assessment sub-committee decides to refer a complaint to the monitoring officer, it can direct them to investigate the matter. Alternatively, it can direct them to take steps other than carrying out an investigation. This is known as other action.
- 6) Generally, there are **two** indicators for other action. The **first** is when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. The **second** indicator for other action is when relationships within the authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the council.
- 7) The Standards Committee (England) Regulations 2008 explain that the steps a standards committee can direct a monitoring officer to take are:
 - arranging for the member to attend a training course
 - arranging for the member and complainant to engage in a process of conciliation
 - any other steps (not including an investigation) which appear appropriate
- 8) Suggestions as to types of training courses a member might attend, and other steps a standards committee might consider appropriate, are listed in the next section (**What might other action involve?**).

what might other action involve?

- 9) The Standards Committee (England) Regulations 2008 specifically provide that a referral for other action may consist of a direction to the monitoring officer to arrange for the member to attend a training course. Training may be in anything the assessment sub-committee deems appropriate, such as:
- chairing skills
 - working with external bodies and partnerships
 - governance issues
 - the Code of Conduct
 - council procedures and protocols
 - legal matters
 - planning and licensing
 - working with officers
 - use of council resources
- 10) In general, other action may take the form of directing the monitoring officer to arrange for the:
- redrafting of council procedures or policies
 - training of members of the council as a whole
 - mentoring of a member or members, or whole council
 - management of conflict
 - development of council protocols
 - implementation of a council complaints procedure
- 11) A referral for other action does not mean that the member has been found to have done anything wrong (see the next section '**Deciding to take other action**'). It is therefore very important that the action proposed does not imply this. Other action cannot, for example, take the form of requiring the subject member to apologise. Of course, in those cases where the member has admitted the breach and offered an apology, the assessment sub-committee may decide that no further action is necessary.
- 12) **It is particularly important to remember that an assessment sub-committee can only direct a monitoring officer to take other action. It has no power to direct anyone else to do so.**

deciding on other action

- 13) A decision to refer a complaint for other action – like all assessment decisions – does not involve making any findings of fact. All parties should understand that a decision to take other action means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member failed to comply with the Code.
- 14) Similarly, everyone involved in a decision to take other action must understand that the purpose of such a referral is not to find out whether the member breached the Code of Conduct. This is regardless of how simple it may be to establish the facts. A decision to direct the monitoring officer to take other action is an alternative to an investigation. It cannot ever result in a finding that the member has or has not failed to comply with the Code.
- 15) The assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be behaviour which would necessarily require the subject member to face one of the sanctions it could impose. This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing. The assessment sub-committee should also be satisfied that other action could assist the proper functioning of the council.
- 16) Other action is not intended to be a quick and easy means of dealing with matters which the assessment sub-committee considers to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action. While other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Furthermore, other action should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.
- 17) Standards committees should take care to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.
- 18) Importantly, if a complaint merits being investigated, then it should be referred for investigation. For example, complaints should not be referred for other action when an investigation would be in the public interest. Other action should also be avoided where the allegation fundamentally challenges the member's honesty or integrity. It should additionally be avoided where the allegation, if proven, would warrant any of the sanctions (apart

deciding on other action

from training) available to a standards committee after a hearing.

- 19) Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer, who will often be present at the assessment meeting. If the monitoring officer is not present, and has not given any indication of their views on other action, the assessment meeting may need to be adjourned.
- 20) The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is, by providing information on the resources available to them. They may be able to tell the assessment sub-committee how much any proposed other action might cost. They might also be able to advise whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as trained mediators.

when is other action appropriate?

- 21) The first stage in assessing a complaint is to determine whether it is within jurisdiction. In other words, the assessment sub-committee needs to decide whether, if what the complainant alleges were true, the Code of Conduct would apply. If the Code would not apply to the alleged conduct, the only decision an assessment sub-committee is able to make is to take no action. Other action will never be appropriate in these cases.
- 22) In general, the Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones. The action proposed does not have to be limited to the subject of the complaint. Several members, or indeed a whole authority, could be included in the action the monitoring officer is asked to take.
- 23) Matters which standards committees might consider referring for other action include:
- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures
 - a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the council
 - misunderstanding of procedures or protocols
 - misleading, unclear or misunderstood advice from officers
 - lack of experience or training
 - interpersonal conflict
 - allegations and retaliatory allegations from the same members
 - allegations about how formal meetings are conducted
 - allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves
- 24) We advise standards committees to draw up assessment criteria which detail the matters they will take into account when deciding what action, if any, to take. Every decision to take other action – like all assessment decisions – can then be made with reference to these criteria.

adjournment

- 25) Some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the proposed approach.
- 26) One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation, we do not consider that it is prohibited. Meetings may also be adjourned to enable the monitoring officer to find out more information about the complaint.
- 27) It is up to each authority to decide whether their assessment of a particular complaint should be adjourned. They should consider the advantages and disadvantages of adjournment when making this decision. They should also bear in mind that we advise that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that that the average assessment time increases.
- 28) Advantages of adjournment are:
- Those sitting on the assessment sub-committee will know what the members think about the proposed solution, and may therefore be more confident in making their decision.
 - Members may be likely to cooperate if they are made aware of the options available.
 - When members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
 - Further information obtained by the monitoring officer may mean that the complaint is effectively resolved, enabling the sub-committee to decide to take no action.
- 29) Disadvantages of adjournment are:
- Finding out members' views runs the risk of putting the decision about what action to take into the hands of the member, rather than the sub-committee.
 - The authority of the standards committee may be undermined if other action is agreed through negotiations between the monitoring officer and the member or members.
 - By making further enquiries, the monitoring officer may end up starting an investigation before the assessment decision is made.

adjournment

- The member or members may try to pass on more information to the monitoring officer, to persuade the sub-committee to take no action.
- 30) As an alternative to adjourning the assessment meeting, the standards committee could agree that the monitoring officer seeks views on other action when they receive a complaint.

role of the monitoring officer

- 31) When a matter has been referred for other action, it is the monitoring officer's duty to give notice to the relevant parties. These relevant parties are:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority concerned
 - any parish council concerned
- 32) If the standards committee issues a decision notice that goes to all these parties, the Standards Board considers that the monitoring officer's responsibility is met.
- 33) Whoever notifies the parties of the decision should take care over how the decision is conveyed. It is important that the wording does not imply that the member is culpable. It is also important that members do not feel they have been found guilty without an investigation of the allegation. Note that both parties could end up potentially feeling dissatisfied. This is because complainants and subject members do not have the right to have the decision to refer a matter for other action reviewed under Section 57B of the Local Government Act 2000.
- 34) When a monitoring officer receives a referral with a direction to take other action, they must deal with it in accordance with the direction. They do not have discretion to take a different course of action and should make every attempt to ensure that the action specified is carried out successfully.
- 35) Information and advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local investigations and other action** and **How to conduct an investigation**.
- 36) The monitoring officer must submit a written report to the standards committee within three months of receiving the direction, or as soon as possible after that. This report must give details of the action taken or the action proposed to comply with the direction.

consideration of the monitoring officer's report

- 37) The standards committee or an appropriate sub-committee should consider the monitoring officer's report and decide whether it is satisfied with the action described. The meeting at which the report is considered is subject to the general notice and publicity requirements under regulation 8 of the Standards Committee (England) Regulations 2008.
- 38) The monitoring officer's report can be considered by the same members who initially assessed the complaint, by another sub-committee, or by the standards committee as a whole. This is a decision to be made by each authority, and will depend on the way in which the committee has been set up, what sub-committees it has and the terms of reference of each body.
- 39) The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However, some authorities may consider that convening a sub-committee simply for this purpose is not a good use of time and resources. They might instead choose to include consideration of the monitoring officer's report as an item on the agenda of the regular meeting of the standards committee.
- 40) If the standards committee or sub-committee **is** satisfied with the action described in the monitoring officer's report, it should give notice of this to all of the following:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority involved
 - any parish council concerned
- The matter is then closed.
- 41) If the standards committee or sub-committee is **not** satisfied, it must give another direction to the monitoring officer, which must again be to take some kind of other action. The standards committee cannot at this stage decide that the matter should be investigated. This is discussed further in the section below.
- 42) If the report describes action which has been proposed but not yet taken, the standards committee should decide whether this is satisfactory. If it has doubts about whether the action will take place, it should consider whether or not to give a further direction to the monitoring officer. The standards committee or sub-committee may also consider making a further direction where the report indicates that the member has refused to cooperate, has done so unwillingly or inadequately, or has not engaged with the process.

what if other action does not work?

- 43) Each time a standards committee or sub-committee directs a monitoring officer to take other action, the monitoring officer must submit a written report detailing the action taken or proposed. If dissatisfied, the standards committee can direct the monitoring officer to take further other action.
- 44) In theory, if a standards committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, standards committees should be proportionate and reasonable in their directions. We believe that the process should be drawn to a close after a limited number of attempts by the monitoring officer to bring about other action – even where this has not occurred in accordance with the direction.
- 45) There is no formal route for dealing with a member who categorically refuses to comply with other action. However, the Standards Board believes that deliberate and continued failure to cooperate with a monitoring officer who is trying to carry out the directions of a standards committee may potentially amount to conduct which brings the office of councillor into disrepute. Furthermore, an assessment sub-committee may take this into account when deciding what action to take if they are assessing a complaint about a member who has previously failed to cooperate.
- 46) If a standards committee receives a complaint that a member did not cooperate with other action in relation to a previous complaint, they should only assess the complaint about the failure to cooperate. They should not take into account the conduct which led to the original complaint.
- 47) If the complaint is accepted for investigation then it is vitally important that any investigation focuses on the lack of cooperation and not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the member says that the lack of cooperation was because they had done nothing wrong.

why other action closes the opportunity to investigate

- 48) Once an assessment sub-committee has decided to refer a matter for other action, this becomes the way forward in that particular case. If a standards committee is not satisfied that the action taken has not achieved the aim of the direction to take other action, it cannot then decide the matter should be investigated. The assessment sub-committee needs to be clear at the outset that should other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.
- 49) The legislation is clear on this issue. Once an allegation is referred under Section 57A(2) of the Local Government Act 2000 to the monitoring officer to take steps other than investigation, those steps are the ones referred to in regulation 13(3) of the Standards Committee (England) Regulations 2008. They are limited to arranging for training, a process of conciliation or such other steps – not including investigation – which the standard committee considers to be appropriate. There is no power that allows the case to be referred on for investigation if these options under regulation 13(3) are perceived to have failed.
- 50) Regulation 14(1) of the same regulations says that regulation 14 applies only if regulation 13 is not applied. If other action has been attempted, regulation 13 has been applied.
- 51) As well as being set out in statute, there are sound reasons why complaints which have been referred for other action should not then be investigated. Firstly, there are difficulties in deciding why the action has ‘failed’; whether it has failed and if so, why an investigation is thought to be needed. This subjective judgment has the potential to increase the complainant or the subject member’s dissatisfaction with the process. In some circumstances, it may also risk deliberate non-cooperation with the action prescribed in order to secure an investigation.
- 52) An investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

why other action closes the opportunity to investigate

- 53) The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it. Where other action is undertaken before an investigation, there is the risk that the case will be prejudiced. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

DARTMOOR NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE

3 July 2009

INVESTIGATION OF COMPLAINT - REF: 030409

Report of the Head of Legal Services & Deputy Monitoring Officer

- Recommendation:** **That Members note the report and consider whether to:**
- (i) issue a further direction to the Monitoring Officer for "other action" or**
 - (ii) determine that the matter should be closed and the parties informed.**

1 Introduction

- 1.1 On Monday 6 April 2009 the Standards Committee received an allegation that a Member of the Authority had failed to comply with the Authority's Code of Conduct.
- 1.2 The complaint was received in writing from a member of the public who alleged that the Member concerned spoke to them in a way that was impolite, disrespectful and embarrassing at a recent meeting of the Development Management Committee.
- 1.3 After consultation with the Chairman of the Standards Committee and the Monitoring Officer it was agreed to convene a local assessment sub-committee.

2 Notifications

- 2.1 The Member concerned was informed in writing on 8 April 2009 that a complaint had been received. The Member was told that an assessment sub-committee of the Standards Committee would meet on Friday 24 April 2009 to consider the allegation. The Member was advised that at this stage the assessment sub-committee was not required to decide if the Code of Conduct has been breached. It would only consider if there was enough information which shows a potential breach of the Code of Conduct to warrant referral for investigation or other action.
- 2.2 The member of the public who made the complaint was also informed of the decision to convene an assessment sub-committee to consider the allegation.

3 Local Assessment

- 3.1 The assessment sub-committee was convened on Friday 24 April 2009 at Parke. The members of the sub-committee were Mr R Blackshaw (independent member), Mr B Woodall (independent member) and Mr M Jeffrey, advised by Mr C Walledge,

the Head of Legal Services & Deputy Monitoring Officer. Mr R Blackshaw was elected chairman of the sub-committee.

3.2 The assessment sub-committee considered the statutory threshold criteria and found them to be satisfied, namely that:

- the person subject to the complaint was a Member of the Authority at the time of the complaint;
- the Authority had adopted a Code of Conduct which was in force at the time of the complaint;
- the Member concerned had signed a declaration undertaking to observe the Code of Conduct;
- at the time of the matter alleged, the Member was engaged in the business of the Authority.

3.3 The sub-committee found that the complaint disclosed a potential breach of the Code of Conduct, namely paragraph 3(1) - duty to treat others with respect. The sub-committee determined that although the allegation related to events alleged to have occurred during a lunch break between two sessions of a meeting of the Development Management Committee, the conduct alleged occurred on the premises of the Authority and in the public part of the meeting room itself. The public were present as were Members of the Authority and therefore there could be no question of the Member about whom the allegation was made being regarded as "off duty".

4 Decision

4.1 In accordance with Section 57A(2) of the Local Government Act 2000 as amended, the assessment sub-committee decided to refer the allegation to the Monitoring Officer for "other action", namely conciliation.

4.2 This decision to refer the matter to the Monitoring Officer for other action amounts to a disposal of the complaint under the Standards Committee (England) Regulations 2008. However, it is not a finding that the Member concerned has breached the Code of Conduct.

4.3 It is the duty of the Monitoring Officer to bring a written report to the Standards Committee regarding the outcome of the process within three months of receiving the direction, or as soon as possible after that. The report must give details of the action taken or the action proposed to comply with the direction.

5 Outcomes

5.1 The Member concerned and the member of the public were both contacted in writing and asked to confirm their willingness to participate in a conciliation process and to indicate their availability.

5.2 It proved difficult to secure a commitment from the member of public to participate in any conciliation process, despite an initial indication that she would be willing to do so.

- 5.3 It also proved more difficult than anticipated to make contact with the Member concerned regarding the conciliation process and/or meeting.
- 5.4 Repeated efforts were made to identify a way forward. However, the member of the public has stated that she is not willing to participate in any conciliation process, stating that her personal feelings regarding the alleged behaviour of the Member are so strong that she would not be able to engage in a conciliation meeting or mediated discussion. Unfortunately, the member of the public has failed to confirm her position and reasons in writing, despite an express request that she do so.
- 5.5 The member of the public has also verbally indicated she is dissatisfied with the decision of the assessment sub-committee to refer her complaint for conciliation stating that she regards it as an inappropriate and ineffectual option.
- 5.6 I am pleased to report that the Member concerned has now confirmed in writing her willingness to participate in a conciliation process, although expressing strong reservations about the prospect of any face to face meeting.
- 5.7 The Member concerned remains strongly of the view that the allegation is groundless, that her behaviour was not inappropriate or disrespectful and that there is no basis to suggest that she has failed to observe the requirements of the Code of Conduct.

6 Conclusion on Referral for Conciliation

- 6.1 The assessment sub-committee referred the matter to the Monitoring Officer to address the complaint through a conciliation process. The Member concerned has stated that she is willing to participate in that process. Unfortunately, it has not been possible to secure the agreement of the member of the public. This has prevented any meaningful conciliation taking place.
- 6.2 The member of the public was informed that her non-participation would prevent an effective conciliation process and could lead to the complaint being closed without any further action.
- 6.3 Given the above, I regret to report that I do not believe that there is any realistic prospect of conciliation being successfully arranged.

7 Other Action

- 7.1 The Standards Board of England has recently published guidance to Standards Committees on the effective and appropriate use of "other action".
- 7.2 At paragraphs 37 to 46, the guidance sets out the process for receiving a report from the Monitoring Officer following a referral for "other action". Paragraph 41 expressly states that if the Standards Committee is not satisfied with the report of the Monitoring Officer, it **must** give another direction to the Monitoring Officer, which must again be to take some kind of "other action". This will give rise to an obligation on the Monitoring Officer to submit a further written report within three months detailing the action taken or proposed.

- 7.3 Given that the failure to achieve a satisfactory conciliation process appears to be due to the non-cooperation of the complainant, Members are asked to consider whether it is appropriate to issue a further direction and if so, what type of "other action" should be pursued.
- 7.4 In the alternative, the matter should be marked closed and the parties informed accordingly.
- 7.5 Finally, it must be emphasised that in the local assessment process to date, no finding has been made, whether expressly or by implication, that the matters complained of took place as alleged, or at all. Furthermore, the decision of the assessment sub-committee to refer the matter to the Monitoring Officer for conciliation does not amount to a finding that the Member concerned has breached or may have breached the Code of Conduct.

CHRISTOPHER R WALLEGE

Background Papers: Decision Notice 030409

DARTMOOR NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE

3 July 2009

Annual Report and Future Work Programme

Report of the Director of Corporate Services and Monitoring Officer

Recommendations: That Members:

- (i) **Agree the Annual report and work programme for presentation to the Authority**
- (ii) **Recommend to the Authority an amendment to Standing Orders regarding ex officio membership of the Standards Committee as outlined in paragraph 3.4**
- (iii) **Recommend to the Authority an amendment to the Terms of Reference for the Standards Committee to include an overview of the Complaints procedure for the Authority and the monitoring of its effectiveness as in paragraph 7.1 and Appendix 1**

1 Annual Report

- 1.1 At a meeting of the Authority on 27 June 2008, Members approved revised arrangements for the local assessment of complaints in respect of Members (NPA/08/041), and requested that the Standards Committee present a report to the Authority after 12 months operation of the new arrangements.
- 1.2 It is proposed that an Annual Report shall be agreed by the Standards Committee each year at its annual meeting. This report will then be submitted to the next meeting of the Authority for approval. The report will also be made available for publication on the Authority's website and as may otherwise be appropriate.
- 1.3 The purpose of the Annual Report is to record a summary of the activities of the Committee over the preceding twelve months, including:
 - (a) considering and determining complaints against Members under the Code of Conduct;
 - (b) providing and maintaining high standards of conduct by Members of the Authority; and
 - (c) assisting Members of the Authority to observe the Code of Conduct.

It is further proposed that the Annual Report should contain a planned work programme for the forthcoming year.

2 Terms of Reference

- 2.1 The high level of change over the past year can be seen in the three sets of amendments to the Authority's Standing Orders on 27 June 2008, 5 September

2008 and 7 November 2008. These included amendments to the terms of reference of the Standards Committee in November 2008 to recognise the new process for local assessment of complaints.

- 2.2 Members of the Committee have agreed a rolling programme for Independent Members to attend the Authority's meetings as observers. This has worked well in introducing the Independent Members to Authority Members and officers and also introducing the Independent Members to the work streams of the Authority. It is recommended that this should continue and that in future a brief written report be submitted by the Independent Member outlining any particular matters observed meriting comment.

3 Membership

- 3.1 It is pleasing to be able to report that the Standards Committee is in a much stronger position than at the end of last year. Two additional Independent Members have joined the Committee, following a rigorous selection and induction process. This brings the complement of Independent Members to four, which it is very important to maintain.
- 3.2 The functions of the Standards Committee are set out in Section 54 of the Local Government Act 2000 as amended. These functions must be carried out by a Committee which is comprised of Authority Members and Independent Members. The Committee must be chaired by an Independent Member and any Sub-Committee must also be chaired by an Independent Member.
- 3.3 The Standards Committee is constituted as a Sub-Committee of the Authority. As such it is subject to the Authority's Standing Orders and Scheme of Delegation. Appendix 2, paragraph 1.3 of the Authority's Standing Orders provides that the Chairman and Deputy Chairman of the Authority shall be ex-officio Members of every Committee and Sub-Committee, unless they decline to serve. Read literally, this may be taken to imply that the Chairman and the Deputy Chairman of the Authority are ex-officio Members of the Standards Committee.
- 3.4 This has not been the practice of the Standards Committee or of the Chairman and Deputy Chairman in recent years. However, in the interests of clarity and certainty, it is recommended that Standing Orders be amended to remove this provision, so that there can be no potential for misunderstanding.

4 Investigations

- 4.1 After five consecutive years without receiving a complaint, the Standards Committee received one complaint in the 12 months June 2008 to June 2009. This complaint has passed through the local assessment process and is now in the hands of the Deputy Monitoring Officer. It clearly showed the benefit of the hard work which has gone into agreeing and setting up the necessary processes and proved that Members of the Committee were able to form an assessment sub-committee and carry out its duties in a timely fashion when required.
- 4.2 This complaint was just one of 2,863 received by local standards committees during the past year. Of that number just over 50% were referred for investigation and of these (to date) 29% have been investigated locally and 14% were referred to the Monitoring Officer for alternative measures (such as training or mediation).

5 Prejudicial Interests and Public Speaking

- 5.1 When the new model Code of Conduct was introduced in May 2008, it was noted that Members could now benefit from a new public speaking right in matters in which the Member has a prejudicial interest and would formerly have been required to withdraw.
- 5.2 However, Clause 12(2) of the Code does not provide a general right to speak. It states that the aim is to provide Members with the same rights as ordinary members of the public to speak on certain matters in meetings. The guidance goes on to state that *"these rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits"*.
- 5.3 It was noted that this caused a wholly unforeseen and most unfortunate interaction between Clause 12(2) and the Authority's rules on public participation. As an interim measure, it was recommended that a Member wishing to rely on clause 12(2) should be treated as if a public speaker in terms of the time allowed to speak in the meeting and the time at which they are invited to speak to the meeting before withdrawing from the room, but that they should not be required to give advance notice of an intention to speak or be included in any numerical limit on speakers.
- 5.4 Fortunately, this interim arrangement appears to have worked well and a number of Members have been enabled to speak in a debate in which they would otherwise have been excluded, without any detriment to any other parties. It is likely that this arrangement will be made permanent as part of the review of public participation currently being undertaken.

6 Joint Working

- 6.1 When the current arrangements for local assessment were approved by the Authority in June 2008, the request was also made to consider the opportunity for joint arrangements with Exmoor National Park Authority. It was agreed to monitor the complaints activity to determine whether there would be any benefit in such an arrangement.
- 6.2 In the event, there has been no identified need for any joint arrangement with Exmoor NPA or any other neighbouring local authority. The level of demand has remained very low and the activity of the Standards Committee is more effectively directed towards raising the awareness of ethical conduct than becoming involved in the complaints activity of other organisations.
- 6.3 The statutory instrument which allows for full joint working by the establishment of Joint Standards Committees came into force on 15 June 2009 under The Standards Committee (Further Provisions) (England) Regulations 2009. It is not proposed, at this time, that Dartmoor National Park Authority should enter into any such joint arrangement.

7 Future Work Programme

- 7.1 It is recommended that the work of the Standards Committee should continue to be directed towards promoting high standards of conduct – both for Members and

officers. In pursuance of this, two main areas of work are recommended for 2009/10:

(a) Review of Member/Officer protocol (adopted in 2005)

(b) Review of Complaints procedure and ongoing monitoring

In order to undertake (b) above an amendment to the Terms of Reference for the Standards Committee would be required. Proposed revised wording is presented in Appendix 1 to this report, with the changes/additions underlined and in italics.

7.2 In respect of raising the profile of ethical standards a continuing programme of observation of meetings by Independent Members is proposed with formal feedback on issues and observations and any recommendations for training.

7.3 The Standards Committee will continue to meet twice per year in July and November.

8 Implications for People from Under-represented Groups

8.1 A key role of the Standards Committee is to maintain high standards of conduct and ensure that Members, officers and the public are treated fairly, openly and with respect.

LORNA BROWN

Background Papers: NPA/08/034; NPA/08/041

Terms of Reference for Committees of the Authority

1. Standards Committee

Functions

(Section 54 Local Government Act 2000 as amended)

The general functions of the Standards Committee are:

- (a) to promote and maintain high standards of conduct by members and officers of the Authority;
- (b) to consider and determine complaints against members under the Authority's Code of Conduct; and
- (c) to assist members of the Authority to observe the Code of Conduct

Without prejudice to its general functions, the Standards Committee shall have the following specific duties:

- (a) to advise the Authority on the adoption and revision of a Code of Conduct;
- (b) to monitor the operation of the Code of Conduct;
- (c) to advise, train and arrange to train members of the Authority on matters relating to the Code of Conduct;
- (d) to promote high standards of conduct within the Authority, through advice, assistance and training;
- (e) to receive complaints alleging non-compliance with the Code of Conduct
- (f) to consider allegations of non-compliance with the Code of Conduct and determine (local assessment):
 - i. to refer for local investigation/other action; or
 - ii. to refer to the Standards Board for England; or
 - iii. that no action is necessary
- (g) to convene a hearing for determination of allegations of misconduct, following local investigation;
- (h) to hear any appeals by a person aggrieved by a determination that no action is necessary in respect of their complaint;
- (i) to report as required to the Standards Board for England;
- (j) to consider and advise on other matters relating to conduct, ethics and propriety as referred to it by the Authority's Monitoring Officer;
- (k) to consider and determine requests from members of the Authority to receive dispensation to speak on and participate in a matter in which they have a prejudicial interest;
- (l) to keep under review and monitor the effectiveness of the complaints process for the Authority, making recommendations to the Authority on issues arising.