

North York Moors National Park Authority Finance, Risk, Audit and Standards Committee

24 May 2018

Proposed Changes to Grievance Procedure and Whistleblowing Policy

1. Purpose of the Report

- 1.1 To seek Members' approval for a revised Grievance Procedure and Whistleblowing Policy.

2. Background

- 2.1 Drafts of a revised Grievance Procedure and Whistleblowing Policy were presented as part of a private paper at the November 2017 meeting of this Committee. Members had already had input into the drafts and made several other comments. These have now been incorporated into the documents.
- 2.2 UNISON have been consulted, regarding the changes and have made a number of helpful clarifying comments which Officers have incorporated.

3. Proposed Changes to Grievance Procedure

- 3.1 Following discussions with Members last year, it was concluded that the Procedure should;
- recognise that the Authority has a 'duty of care' to all parties involved in a grievance,
 - give greater emphasis on early mediation and amicable resolution,
 - ensure support is available for all parties, including Members and Officers involved in dealing with a grievance,
 - provide for careful and proportionate handling of internal appeals,
 - be clear as to the circumstances in which the Authority can bring a grievance to an end.
- 3.2 The proposed new Grievance Procedure is attached at **Appendix 1** to this Report.
- 3.3 When the Procedure is approved, Directors and Members likely to be involved in dealing with appeals will be provided with appropriate training.

4. Proposed Refinements to Whistleblowing Policy

- 4.1 At present anyone who wants to raise a serious concern as a whistleblowing matter must do so with the Monitoring Officer who is employed by Scarborough Council. It is felt that this may be too remote and whilst there are certainly benefits in have a point of contact outside the Authority, it may also have the effect of making staff or members more reluctant to raise matters of serious concern.

4.2 In view of the comments made in the above paragraph, the revised policy also provides for an alternative first point of contact within the Authority. The Head of Corporate Services is therefore listed as the appropriate contact Officer, but with a clear alternative of reporting matters directly to the Monitoring Officer.

4.3 When the Policy is approved, Officers will ensure that all staff are made aware of its contents.

5. **Financial and Staffing Implications**

5.1 There are no financial implications to the contents of this report. The revised policies will come into operation with immediate effect.

6. **Legal Implications**

6.1 All changes to Authority policies and procedures must accord with prevailing employment law and practice and should accord with ACAS Guidance.

6.2 The stated remit of the Authority's Personnel Appeals Panel may need to be amended depending upon the resolution of the Committee in relation to this Report.

7. **Recommendation**

7.1 Members are requested to,

- approve the revised Grievance Procedure and Whistleblowing Policy (**Appendix 2**) and ask Officers to organise training and dissemination of the policies as indicated in the report.

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Background papers to this Report

FRASC Private Report – November 2017

Grievance Policy

Introduction

- 1.1 This policy applies to all staff of the North York Moors National Park Authority (the "Authority") and should be used for the resolution of all issues at work except collective disputes. In resolving grievance issues, the Authority must reasonably consider its duty of care to all parties involved in the matter. This includes the party raising the grievance and the party or parties that are the subject of the grievance.
- 1.2 It is not unusual for problems to arise in workplace situations. The Authority understands that problems can arise in many different circumstances and for many different reasons and both Members and Directors will always seek to help staff to deal with any work related problems that do arise. The Authority believes that clear, open and fair procedures for the resolution of problems help in its success, and in fair treatment for everybody.
- 1.3 This procedure can only be used by the Authority's as its purpose is to provide a resolution which enables normal working relationships to be resumed. Therefore a grievance that is submitted following your resignation cannot be dealt with under this policy. If you resign whilst a grievance is ongoing the Authority will conclude the grievance on the day you resign and without further action. However where it raises issues of importance to the Authority as an employer it may decide to continue to investigate the issues raised as a complaint and to take any necessary action that results from the findings, such as revising policies or instigating other procedures including disciplinary action where appropriate.

Dealing with Problems at Work

- 1.4 This policy provides for formal processes to handle grievances and the Authority recognises the right of staff to raise formal grievances. However experience suggests that most concerns can be resolved most effectively by informal means, especially when they are raised early. The Authority will always seek to resolve matters quickly and amicably, and believes that this is best achieved where concerns are raised/identified and addressed informally, with formal procedures only being used as a last resort. Accordingly the objective of the grievance policy is to settle all issues in the shortest time with the least possible formality and appropriate levels of confidentiality. In particular the policy is intended to assist staff to be able to resume normal working relationships.
- 1.5 Some issues likely to be dealt with through this policy include;
 - Relationships at work (with colleague/manager)
 - Equalities matters
 - Harassment and bullying
 - Health and safety
 - Terms and conditions of employment
- 1.6 Where an issue arises at work you should make all reasonable efforts to resolve it informally in the first instance. It is important that you raise your concern(s) promptly with the relevant person. This will normally be your line manager which will often lead to a quick resolution of the problem.

1.7 Where you do not feel this is appropriate you should speak to their line manager in order to resolve the situation. In a case where the subject of the grievance is your line manager, you should speak to your manager's manager. They will seek to help you and the other party or parties find ways of handling and resolving your concerns. However if this is not successful then you may wish to lodge a formal grievance, as described below. A grievance will not normally be progressed to this formal stage unless you have made all reasonable efforts to resolve the matter informally.

1.8 Should the subject of a grievance also involve any element of "whistleblowing" it would be beneficial to identify that at the earliest possible stage as the Authority's Whistleblowing Policy and whistleblowing legal requirements may apply.

2. **Formal Stage**

2.1 Once the informal route has been exhausted and it has not been possible to resolve the grievance in this way you should raise the grievance formally and in accordance with this section of the Policy.

2.2 To make a formal grievance, set out your complaint in writing in a letter. Your letter should say that you are making a formal grievance. Try to make your letter fairly detailed and specific - it helps to be clear about your complaint and what the issue is including:

- who is involved;
- what has been done to try and resolve the issue informally;
- why this has not worked;
- what you see as a potential solution to the situation.

2.3 You should normally give your letter to the Authority's Head of Corporate Services, but if the problem is with that person or you foresee that it will cause difficulties to raise it with them, you may raise your concerns, in writing, with the Authority's Chief Executive. If your grievance relates to the Chief Executive, you may raise your concerns, in writing, with the Chair of the Authority.

2.4 Following receipt of the written grievance the person dealing with it will initially arrange a mediation phase with the objective that the grievance can be resolved through that mediation. Only if/when the mediation phase has been exhausted and, in the view of the person dealing with the grievance, has no reasonable prospect of success will they arrange formal meetings to be held with the parties involved in the grievance.

2.5 You are entitled and encouraged to be accompanied at any mediation discussion and at any formal meeting. The person accompanying you can be either a work colleague or a recognised Trade Union representative. You should note that even if you have a work colleague companion with you, you will be expected to speak for yourself and answer questions put to you.

2.6 You should take all reasonable steps to attend any such meetings. Please note, even if you are off work ill, this does not automatically mean that you cannot attend a meeting. A normal 'fit for work' note excuses you from doing a full day's work - if you are too unwell to come to a meeting, you should get your Doctor to confirm this. If you need special assistance or special facilities to attend a meeting, let us know when we schedule/arrange the meeting. Tell us what you need and why.

- 2.7 The person dealing with the grievance will then fully investigate the issue as soon as possible, or arrange for it to be investigated by a third party. This may involve a number of meetings with different people (including witnesses) to establish the facts. At the initial formal meeting you will be asked to explain your grievance, to name anyone else who you think should be interviewed and how you think the matter should be resolved.
- 2.8 Following the investigation the person dealing with the grievance will decide on appropriate action to take to resolve it. In certain complex grievances it may take time to analyse all the issues and make a decision. It will not always be possible to give you a decision at the end of your final grievance meeting.
- 2.9 You will receive a letter giving the outcome of your grievance and where appropriate details of actions that the person dealing with grievance recommends should be taken to resolve the grievance.
- 2.10 A grievance may be upheld, partially upheld or dismissed. The primary purpose of any recommendations that follow from the outcome will be to provide a resolution which enables normal working relationships to be resumed.
- 2.11 If, as a result, of the investigation evidence emerges of any misconduct or performance issues these will be dealt with separately. Even though such action may result from the grievance you have brought you may not be entitled to know what action, if any, is taken in this respect as to do so could breach the confidentiality of those concerned.
- 2.12 The person that is dealing with your grievance should ensure that the process outlined in paragraphs 2.2 to 2.11 above is followed

3 Appeals

- 3.1 Where you feel that your grievance has not been satisfactorily resolved you have the right of appeal. If you want to appeal you should write to the Head of Corporate Services setting out the grounds of your appeal within 10 working days of the date of receipt of the outcome letter.
- 3.2 Appeals will be dealt with as soon as reasonably practicable and the time and place will be notified to you in advance. The appeal process will be reasonable and proportionate, taking into account all of the relevant circumstances. You can be (and are encouraged to be) accompanied by a work colleague or a recognised Trade Union representative at appeals.
- 3.3 The appeal will be dealt with impartially by someone who has not been previously involved in the case. A Director or the Chief Executive will normally deal with an appeal that relates to a more junior officer. A panel of Authority Members will normally deal with an appeal that relates to a Director or the Chief Executive.
- 3.4 The decision on appeal will be final. The outcome of the appeal will be communicated to you in a letter.
- 3.5 In any grievance appeal a panel of Authority Members can be asked to consider whether the grievance issue is vexatious, trivial or perverse and, if so, to decide that it will not be reasonable and proportionate for the appeal to proceed. Where you seek to refer the grievance issue to any party or body outside the Authority it will be reasonable and proportionate for the Authority to not proceed any further with the grievance, whatever stage it is at. This does not apply to the involvement of your Trade Union.

4. Overlapping Grievance and Disciplinary Cases

- 4.1 It is not the purpose of the grievance procedure to deal with disciplinary matters. Accordingly where conduct issues arise these will be dealt with through the Authority's normal disciplinary processes.
- 4.2 Where the employee raises a grievance during a disciplinary process the manager in their discretion may decide that the disciplinary process may be suspended temporarily in order to deal with the grievance. However if the disciplinary and grievance matters are related it may be appropriate to deal with both concurrently.
- 4.3 A grievance that is found to be vexatious may result in disciplinary action. A vexatious grievance is one which is fabricated for personal gain and/or the purpose is to harm the subject of the complaint or cause undue delay to a process.

5. Being a Work Colleague Companion

- 5.1 Normally, staff who are members of a Trade Union will be accompanied by an accredited Trade Union representative. However, if you are not a member of a Trade Union or choose not to involve them, you may wish to be accompanied by a companion.
- 5.2 If you are asked by a colleague to be their companion at a grievance meeting, don't be frightened to agree to this. You are helping the Authority make sure that matters are dealt with fairly, and the Authority will appreciate your help. But you are not obliged to agree to be someone's companion if you don't want to.
- 5.2 As a companion, you are present at the meeting to witness it. You are free to take notes, and the Authority encourages you to do so. You should also join in with the discussions where you have relevant input, and ask questions if you don't understand. You have the right as a companion to address the hearing to put your colleague's case; sum up your colleague's case; respond on your colleague's behalf to any view expressed at the hearing.
- 5.3 You also have the right to confer with your colleague during the hearing, and can call "time out" to discuss what is going on privately with them. However, as a companion you are not permitted to answer questions on behalf of your colleague; address the hearing if your colleague indicates that they do not want you to; or prevent anyone else in the hearing from making their contribution to it.
- 5.4 Discussions you witness and hearings that you attend as part of this procedure are confidential and should not be discussed except with the colleague you were helping or with the person who is hearing the appeal.



Whistleblowing Policy

1. Introduction

- 1.1 The Authority is committed to the provision of the highest quality service. Whilst the Authority has in place rules, regulations, quality standards and procedures to ensure that the highest standards of conduct and commitment to service are adhered to, irregularities, wrong-doing or serious failures in standards may sometimes occur. The Authority wants to identify and remove such failings and has in place mechanisms designed to deal with specific issues (e.g. financial irregularities).
- 1.2 The greatest deterrent to malpractice is the probability that it will be reported, investigated vigorously, those responsible for it punished and the matter promptly remedied. This Policy is therefore intended to reinforce the opportunities for Members and staff (including volunteers, contractors and agency workers) to raise have concerns and have them properly investigated without prejudice and in a manner which safeguards their confidentiality.

2. Aims and Scope of the Policy

- 2.1 This policy aims to provide all Members and staff with:
- avenues to raise concerns and receive feedback on any actions taken;
 - reassurances that they will be protected from reprisals or victimisation for whistleblowing in good faith.
 - security from unfounded or malicious accusations.
- 2.2 The following list is intended to illustrate the sorts of issues which may be considered as malpractice or wrongdoing and raised under this Whistleblowing policy. The list isn't intended to be exhaustive:
- (a) Any unlawful act, whether criminal or a breach of civil law.
 - (b) Maladministration.
 - (c) Intentional and/or persistent breach of any statutory Code of Practice.
 - (d) Breach of, or failure to implement or comply with any policy determined by the Authority or any Committee or Sub-Committee.
 - (e) Misuse of assets, including stores, equipment, vehicles, buildings, computer hardware and software.
 - (f) Actions which are likely to cause physical danger to any person, or to give rise to a risk of significant damage to property.
 - (g) Failure to take reasonable steps to report and rectify any situation which is likely to give rise to a significant avoidable cost, or loss of income, to the Authority or would otherwise seriously prejudice the Authority.

- (h) Abuse of power, or the use of the Authority's powers and authority for any unauthorised or ulterior purpose.
- (i) Unfair discrimination in the Authority's employment or delivery of services.
- (j) Endangering the health and safety of any individual.
- (k) Wilfully causing damage to the environment.
- (l) Deliberately concealing information relating to any of the items on the list.

2.3 **This whistleblowing policy is intended to supplement, rather than to replace, existing procedures whereby staff may already raise complaints or matters of genuine concern.** It is, therefore, designed to provide an alternative channel for those instances where the person reporting their concerns feels, for any reason, they cannot make use of existing complaints procedures, or that these have, wrongly, failed to tackle the issues in question.

3. Staff Co-operation and Safeguards

- 3.1 In many cases it is staff who are likely to be in the best position to learn of any malpractice or wrongdoing within the Authority and identify something which falls below the standards which the Authority and the public are entitled to expect. The Authority expects the fullest co-operation of its entire staff in securing the highest standards of service. If they are aware of or suspect malpractice, it is expected that they report these suspicions in the best interests of the Authority and in the first instance this should be through the normal internal channels. Where staff, however, fail to report their suspicions, they themselves could become themselves implicated in the wrongdoing, and the Authority will treat failure to report such incidents as a serious matter.
- 3.2 The Authority and Monitoring Officer will respect the confidentiality of any whistleblowing complaint received where the complainant requests that confidentiality. However, it must be appreciated that it may be easier to follow up and to verify complaints if the complainant is prepared to give their name.
- 3.3 Any reporting system will be of little effect if those who should use it are afraid that, as the result of making their report, they may experience recriminations, victimisation or harassment. The Authority will therefore not tolerate any attempt by a Member or by staff to take reprisals against any person who has reported any serious and genuine concern that they may have regarding apparent malpractice. The Authority will treat any such recriminations, victimisation or harassment by Member or staff as a serious matter.
- 3.4 The Authority is proud of its reputation for having the highest standards of probity. It will, therefore, ensure that the necessary resources are put into investigating any complaints which it receives. As a consequence of this it will view very seriously any false or malicious allegations which it receives, and will regard the making of any deliberately malicious or vexatious allegations as a serious disciplinary offence.

4. How to Raise a Concern

- 4.1 It is better if concerns are raised in writing. This allows the opportunity to set out the background and history of the concern, giving names, dates and places where

possible, and the reason why the individual is particularly concerned about the situation.

- 4.2 There is an internal contact for Whistleblowing matters and they can be accessed by writing or email marked Strictly Private and Confidential addressed to:

Ian Nicholls
Head of Corporate Services
North York Moors National Park Authority
The Old Vicarage
Helmsley, YO62 5BP

i.nicholls@northyorkmoors.org.uk

The Head of Corporate Services will take the advice of the Whistleblowing Officer regarding how to respond.

- 4.3 If, for whatever reason, a whistleblower feels it is not appropriate to raise the issue with the internal contact they can write to the Whistleblowing Officer who is also the Authority's statutory Monitoring Officer. They must clearly state that it is a whistleblowing matter. The Whistleblowing Officer is,

Lisa Dixon
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

Lisa.Dixon@scarborough.gov.uk

- 4.4 Although whistleblowers are not expected to prove the truth of an allegation they will need to demonstrate that there are sufficient grounds for concern.

5. How the Whistleblowing Officer will Respond

- 5.1 In order to protect individuals and the Authority, the Whistleblowing Officer will make initial enquiries to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of specific procedures (for example discrimination issues) will normally be referred for consideration under those procedures.

- 5.2 Some concerns may be resolved by agreed action without the need for investigation.

- 5.3 Within ten working days of a concern being received the Whistleblowing Officer will write to the whistleblower:

- acknowledging that the concern has been received;
- indicating how the matter will be dealt with;
- giving an estimate of how long it will take to provide a final response;
- stating whether any initial enquiries have been made; and
- stating whether further investigations will take place, and if not, why not.

- 5.4 Guidance on the administrative procedures to be followed is available from the Whistleblowing Officer.
- 5.5 The length of period for investigation will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the whistleblower.
- 5.6 When any meeting is arranged, the whistleblower has the right, if they so wish, to be accompanied by a Union or professional association representative or a friend/colleague who is not involved in the area of work to which the concern relates.
- 5.7 The Authority will take steps to minimise any difficulties that the whistleblower may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings, the Authority will give advice about the procedure.
- 5.8 The Authority accepts the whistleblower needs to be assured that the matter has been properly addressed. Thus, subject to legal constraints, information about the outcome of any investigations will be given.

6. Investigation

- 6.1 The complaint will be investigated by the Whistleblowing Officer who, if they feel the investigation warrants substantive financial advice will use the services of the Chief Internal Auditor, NYCC but in such a way as to preserve the integrity of the Whistleblowing Procedure.
- 6.2 If it proves necessary and appropriate to pursue the investigation within the terms of a specific breach of one of the Authority's internal regulations or codes of conduct the Whistleblowing Officer will advise the Chief Executive and the Whistleblower. The Chief Executive will then undertake the remainder of the investigations in accordance with the terms of that particular breach.
- 6.3 The Whistleblowing Officer will retain the whistleblower's identity in strictest confidence at all times to ensure anonymity.
- 6.4 The Whistleblowing Officer will keep a confidential record of his investigation and findings.

7. Retention of Records

- 7.1 The following periods are to be adhered to for the retention of records:
- (i) All complaints which are not investigated or are of a minor nature – 1 year.
 - (ii) All other complaints – 6 years.

8. Malicious or Vexatious Allegations

- 8.1 If investigation reveals evidence that a complaint has been raised maliciously or vexatiously, this will be regarded as a serious disciplinary offence and the Whistleblowing Officer will advise the Chief Executive accordingly and he will decide upon the action to be taken against the complainant, on the basis of the current disciplinary procedures.