

AM 700/25

NEW FOREST NATIONAL PARK AUTHORITY

AUTHORITY MEETING – 23 JANUARY 2025

UPDATE TO INDEMNIFICATION OF MEMBERS AND OFFICERS

Report by: Nigel Stone (Section 151 Officer) and Rosalind Alderman (Solicitor and Monitoring Officer)

Summary:

1. In 2006 the Authority resolved to indemnify its members and officers, and authorised the Chief Executive to maintain adequate insurance in that regard, in respect of potential liability for acts or omissions of members or officers. The existing Indemnity is attached as **Annex 2** to this report.
2. Given the passage of time, it is now appropriate for the Authority to review and update that Indemnity, and, in particular, to extend it to cover (i) the Independent Persons appointed by the Authority pursuant to the Localism Act 2011, and (ii) any co-opted members who may be appointed to one of the Authority's Committees in the future. A number of other amendments are also suggested, as summarised in this report.
3. The Standards Committee considered the draft amended Indemnity attached as **Annex 1** at its meeting on 14 January 2025, and resolved to recommend to the full Authority that it grant the revised Indemnity and authorise the Chief Executive to ensure the Authority's insurance covers the amended Indemnity.

It is recommended that the Authority:

- (i) grants an indemnity to members and employees of the Authority, and Independent Persons appointed by it pursuant to the Localism Act 2011, on the terms set out in Annex 1 to this report; and
- (ii) authorises the Chief Executive to ensure that the Authority's insurance arrangements make adequate provision to cover the Authority's liability under the Indemnity.

Background

4. As set out in the original report at the time of the grant of the existing Indemnity, in practice, it will be unusual for a member or officer to incur any personal liability in the course of their work on behalf of the Authority. The Authority is a body corporate, and any liability that may arise as a result of the acts or omissions of members and officers will normally be borne by the Authority, providing that they have acted reasonably and within the scope of their responsibilities. Nevertheless, some pieces of legislation do provide for certain situations where personal liability could arise, including under health and safety and data protection and access to information legislation, and in these cases, civil liability to pay damages could also arise, in addition to the expenses incurred in meeting legal costs. This is because the Authority's own legal advisors would not usually be able to advise and represent an individual in view of the probable conflict of interest.

5. The Authority has powers, summarised below, to offer an indemnity that goes beyond the statutory indemnity set out in section 265 of the Public Health Act 1875 ('PHA 1875'), and in particular an indemnity can be given to cover areas such as appointments to outside bodies, and decisions taken outside the Authority's or a particular individual's powers, which would not be covered under the PHA 1875 (note that the Indemnity will not apply where an individual can obtain reimbursement from another source, so for example the Authority's indemnity will not cover members and officers acting on outside bodies where that other body maintains adequate insurance).
6. As summarised above, members are asked to consider updating the existing Indemnity to members and officers, including extending it to cover (i) the Independent Persons appointed by the Authority pursuant to the Localism Act 2011, and (ii) any co-opted members who may be appointed to one of the Authority's Committees in future. In addition, there are a number of changes required by the passage of time, such as amendments to bring the Indemnity up to date with current law and to clarify that the rules on members' disclosable pecuniary interests ('DPIs') are covered by the indemnity, together with changes to bring the language of the Indemnity into line with the Authority's current house style, and, in the case of certain sections, more closely in line with the wording set out in the 2004 Order. New wording has also been included, for example, in order to avoid the potential for the duplication of insurance claims, and to expressly exclude the bringing of a claim in defamation in view of case law that states this would not be possible (the defence of defamation claims is, however, covered, as outlined in the draft).
7. One of the proposed amendments relates to the deletion of references to 'Part 3 proceedings' in the Authority's existing Indemnity, because the relevant provisions in Part 3 of the Local Government Act 2000 which related to member standards investigations and hearings in England have been repealed. The closest comparator under the current standards regime would be criminal proceedings brought under section 34 of the Localism Act 2011, i.e. offences relating to the registration and declaration of disclosable pecuniary interests (DPIs) and taking part in decision making despite having a DPI. As these are criminal proceedings, arguably they already fall within the scope of the provisions of the existing Indemnity, but it is considered sensible to clarify the scope of this indemnity.
8. In granting the Indemnity, the Authority is acting pursuant to the powers set out in the following legislation:
 - Under section 265 of the PHA 1875, when acting in the course of their duties and in good faith members and officers have statutory immunity and are not personally liable for the actions they take. This provision applies to the Authority by virtue of Schedule 7 Paragraph 15 of the Environment Act 1995;
 - The Local Authorities (Indemnities for Members and Officers) Order 2004 (the '2004 Order') gives a specific power to authorities to grant indemnities and/or take out insurance to cover the potential liability of members and officers in a wider range of circumstances than under the PHA 1875, and many local authorities have done so. For example, the 2004 Order allows the Authority to give an indemnity where individuals have acted outside the powers of the Authority but reasonably believed that the action was within the powers at the time they were taken, which seems appropriate given the complexity of local government law and the lack of time and resources that apply to many members and officers. The 2004 Order also allows an

indemnity to cover circumstances where individuals are acting on outside bodies for the Authority. Each authority has the discretion to decide whether to use the powers and to decide the extent of the indemnities and insurance. There are restrictions in relation to the power, and the attached Indemnity at Annex 1 is drafted in line with these, or, where it exceeds what is permitted by the Order, it does so in reliance on the Authority's other powers and relevant case law. It should be noted that one case (*R (Anderson) v Liverpool City Council [2021] EWHC 2205 (Admin)*) has cast some doubt over the continued applicability of the 2004 Order to English authorities, but notwithstanding this it is considered likely that the Order does still apply to the Authority;

- Section 65(5) of the Environment Act 1995, which in effect provides an ancillary power to the NPA that may permit it to indemnify members and officers in relation to particular decisions or acts if to do so would facilitate, or is incidental, or conducive, to the accomplishment of its statutory purposes; and
- Section 65A(1) of the Environment Act 1995, which provides a wider functionally specific power to the Authority to do anything it considers appropriate for the purposes of the carrying out of any of its functions (its 'functional purposes'), or anything it considers appropriate for purposes incidental (whether directly or indirectly) to its functional purposes, or anything it considers to be connected with any of its functions. This power is in addition to the other powers of the Authority. For completeness, it should also be noted here that it has recently been announced by Government (on 16 December 2024) that National Park Authorities will be given enhanced powers, which are likely to take the form of a general power of competence such as is available to other types of authority, which would be wider than the current functionally specific power of competence.

Summary

9. Apart from the amendments set out above and the other changes as set out in the draft text, which have mainly been made to clarify the scope of the Indemnity, it is considered that the terms of the existing Indemnity remain fit for purpose. Members are therefore requested to consider and if thought appropriate to grant the Indemnity in the updated and revised form as attached to this report at Annex 1.

It is recommended that the Authority:

- grants an indemnity to members and employees of the Authority, and Independent Persons appointed by it pursuant to the Localism Act 2011, on the terms set out in Annex 1 to this report; and**
- authorises the Chief Executive to ensure that the Authority's insurance arrangements make adequate provision to cover the Authority's liability under the Indemnity.**

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Papers: **AM 700/25 – Cover paper**
Annex 1 – Form of Indemnity

**Background papers: 95/06 (15 June 2006)
SC 57/25 (14 January 2025)**

Resources

The proposed indemnification provides protection for members and employees, and ensures that they are not deterred from playing a full role in the Authority's business.

Equality Impact Assessment:

There are no equality or diversity implications arising directly from this report.

Annex 1

INDEMNITY GRANTED BY THE NEW FOREST NATIONAL PARK AUTHORITY TO MEMBERS, OFFICERS AND APPOINTEES

TERMS OF INDEMNITY

1.1 Subject to the exceptions set out in paragraphs 1.2.1–1.2.6 and the other conditions and provisions set out in this Indemnity, the New Forest National Park Authority (the ‘Authority’) hereby indemnifies each of:

- (i) its members, including co-opted members appointed to one of the Authority’s Committees (together, ‘Members’), and
- (ii) its officers, including all employees and any volunteers undertaking authorised tasks (together, ‘Officers’), and
- (iii) the Independent Person(s) appointed by the Authority pursuant to the Localism Act 2011 (each an ‘IP’),

against all actions, proceedings, damages, loss, costs, liabilities, and legal expenses, including sums that that person has been ordered to pay or has reasonably incurred, by or in respect of an action, or failure to act, in their capacity as a Member, Officer, or IP (as applicable).

Together, Members, Officers, and IPs will, where appropriate, be referred to in this Indemnity as ‘Indemnified Persons’.

1.2 This Indemnity will not extend to actions, proceedings, damages, loss, costs, liabilities, and legal expenses directly or indirectly caused by or arising from:

- 1.2.1 any criminal offence on the part of the Member, Officer, or IP (as applicable);
- 1.2.2 any fraud or other deliberate wrongdoing or recklessness on the part of the Member, Officer, or IP (as applicable);
- 1.2.3 any act or failure to act by the Member, Officer, or IP that occurs otherwise than in their capacity as a Member, Officer, or IP (as applicable);
- 1.2.4 a failure by a Member to comply with the Authority’s Code of Conduct for Members;
- 1.2.5 any motor vehicle claim in which a Member, Officer, or IP (as applicable), using their own private vehicle on the Authority’s business, has been involved in an accident;
- 1.2.6 any act or omission by the Member, Officer or IP (as applicable) otherwise than in good faith.

2.1 Notwithstanding paragraphs 1.2.1 and 1.2.4 above, and subject to paragraphs 2.1.1–2.1.7 inclusive below, the Authority indemnifies each of the Indemnified Persons against the reasonable costs that the Indemnified Person may incur in securing

appropriate legal advice and representation in respect of any civil or criminal actions or proceedings to which they are subject, and against all damages, loss, costs, and liabilities that person has been ordered to pay or has reasonably incurred by or in respect of those proceedings, including as arising from any civil proceedings consequent upon any alleged action or failure to act that also constitutes a criminal offence.

- 2.1.1 The term 'criminal proceedings' includes any interview or investigation by the police, and any proceedings before a criminal court, in the United Kingdom, including any prosecution or proceedings under section 34 of the Localism Act 2011.
- 2.1.2 The Indemnity is subject to the Indemnified Person promptly notifying the Chief Executive in writing of any claim being made or intimated against them (or, where the Indemnified Person is the Chief Executive, promptly notifying in writing the Chief Finance Officer and the Solicitor and Monitoring Officer), and keeping them apprised of all details of the claim and circumstances giving rise to it from time to time in the possession of the Indemnified Person.
- 2.1.3 The Indemnity only covers legal expenses and losses damages and costs to the extent that they are actually incurred by the Indemnified Person, and to the extent that they are reasonable in the view of the Chief Executive, acting in consultation with the Head of Resources and the Solicitor and Monitoring Officer (or, where the Indemnified Person is one of those officers, subject to the decision of the Authority's Standards Committee, acting with appropriate financial and legal advice). In some civil proceedings, however, the Authority and the Indemnified Person may agree in writing that the Authority will act on the Indemnified Person's behalf to any extent that is required in respect of any matter or circumstance arising under this Indemnity, with any such action to be at the Authority's cost, provided that the Authority keeps the Indemnified Person informed of the conduct of the matter where it is practicable to do so and provided also that the Authority will have regard to any representations from the Indemnified Person relating to the matter. Where it is agreed that the Authority will take conduct of a matter in accordance with this paragraph, the Indemnified Person will not be able to claim under this Indemnity in respect of their own legal expenses.
- 2.1.4 Where there is a claim or threatened claim in defamation against or by an Indemnified Person, subject to the agreement as applicable of:
 - (i) the Chief Executive, acting in consultation with the Solicitor and Monitoring Officer, or
 - (ii) where the claim or threatened claim relates to the Chief Executive or the Solicitor and Monitoring Officer, the Authority's Standards Committee, acting with appropriate legal advice,this Indemnity will extend to any advice or representation in respect of defending or bringing that claim or threatened claim in defamation, subject to any conditions that the decision maker set out in (i) or (ii) above may impose.

This Indemnity does not cover the bringing of a claim in defamation by a Member, Officer or IP.

- 2.1.5 Where any Indemnified Person avails themselves of this indemnity in respect of defending themselves against any criminal proceedings, the Indemnity is provided subject to a condition that if, in respect of the matter in relation to which the Indemnified Person has made use of this Indemnity, the Indemnified Person is convicted of a criminal offence in consequence of those proceedings and that conviction is not overturned following any appeal, the Indemnified Person will reimburse the Authority for any sums expended by the Authority pursuant to the Indemnity, and those sums shall be recoverable by the Authority as a civil debt.
- 2.1.6 Where the Authority arranges insurance to cover its liability under this Indemnity, the requirement to reimburse in Paragraphs 2.1.5 will apply as if references to the Authority were references to the insurer.
- 2.1.7 This Indemnity and undertaking will not apply if an Indemnified Person admits liability or negotiates or attempts to negotiate a settlement of any claim that would otherwise fall within the scope of the Indemnity, without the express written permission of the Chief Executive (acting in consultation with the Solicitor and Monitoring Officer) (or, where the Indemnified Person is the Chief Executive, the express written permission of the Standards Committee, acting with appropriate legal advice) to do so.

3.1 For the purposes of this Indemnity, and with particular reference to paragraph 1.2.3, actions, proceedings, damages, loss, costs, liabilities and legal expenses will be deemed to have arisen to the Indemnified Person in their capacity as a Member, Officer, or IP (as applicable), in the circumstances set out in 3.1.1, 3.1.2 and 3.1.3 below.

- 3.1.1 The act or failure to act:
 - (a) was authorised by the Authority, or
 - (b) forms part of or arises from any powers conferred, or duties placed, upon that Indemnified Person, as a consequence of any function being exercised by that Indemnified Person (whether or not when exercising that function the Indemnified Person does so in their capacity as a Member or Officer or IP (as applicable)):
 - (i) at the request of, or with the approval of the Authority, or
 - (ii) for the purposes of the Authority.

This paragraph 3.1.1 covers a case where the act or failure to act occurs in a Member or Officer's capacity as a member, employee, director, partner, trustee, or other appointee to another organisation or body where the Member or Officer is or was, at the time of the action or failure to act, appointed to that organisation or body by the Authority. However, the indemnity in respect of Members and Officers acting on other organisations or bodies is limited to circumstances in which that Member or Officer acts in good faith, in accordance with any legal

advice that they have received, and where the act or omission in question was within the powers and rules of that other organisation and that their duty required or entitled them to do it.

3.1.2 Notwithstanding any limitation on the powers of the Authority, this Indemnity is provided to the extent that the Indemnified Person:

(a) believed that the action, or failure to act, in question was within the powers of the Authority, or

(b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Authority, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that Indemnified Person to hold that belief at the time when they acted or failed to act.

3.1.3 This Indemnity also covers an act or omission which is subsequently found to be beyond the powers of the Indemnified Person, but only to the extent that the Indemnified Person reasonably believed that the act or omission in question was within their powers at the time at which they acted.

4.1 The Authority undertakes not to sue (or join in action as co-defendant) an Indemnified Person in respect of any act or failure to act by that Indemnified Person in their capacity as a Member or Officer or IP (as applicable), subject to the following exceptions:

4.1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Member or Officer or IP (as applicable); and

4.1.2 any act or failure to act by the Member or Officer or IP (as applicable), otherwise than in their capacity as a Member or Officer or IP (as applicable).

5.1 This Indemnity and undertaking are without prejudice to the rights of the Authority to take disciplinary action against an employee in respect of any action or failure to act.

6.1 This Indemnity and undertaking will apply during a person's membership of or employment by or appointment to or by the Authority, as applicable, including to Members or Officers or IPs whether they were already employed by or appointed to or by the Authority at the date of this Indemnity or are so employed or appointed at any time thereafter. The Indemnity will continue to apply after the Member or Officer or IP ceases to be employed by or appointed to or by the Authority, in respect of acts or omissions during the appointment or employment. The Indemnity will also apply retrospectively to any action or failure to act which occurred before the date upon which this Indemnity is granted.

7.1 References to the Authority include references to any successor in function, and this Indemnity is intended to bind any successor body to the Authority as if this indemnity had been given by that successor body.

8.1 This Indemnity will not cover any sums in respect of which the relevant Member or Officer or IP can obtain reimbursement from any other source, including insurance

whether taken out by the Authority, the Member or Officer or IP (as applicable), or by any other person or body.

Adopted by New Forest National Park Authority

Date: 2025

ANNEX 2

EXISTING INDEMNITY

TERMS OF INDEMNITY

- 1 The Authority will, subject to the exceptions in paragraphs 1.1 – 1.3, indemnify each of its members and employees (which term shall include any volunteers undertaking authorised tasks) against any loss or damage suffered by the member or employee arising from his/her action or failure to act in his/her capacity as a member or employee of the Authority.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee;
- 1.2 any act or failure to act by the member or employee otherwise than in his/her capacity as a member or employee of the Authority; or
- 1.3 failure by the member to comply with the Authority's Code of Conduct for Members.

- 2 The Authority will, subject to paragraphs 2.1 – 2.6 indemnify each of its members and employees against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he/she is subject.

- 2.1 "Criminal proceedings" includes any interview or investigation by the police, and any proceedings before a criminal court, in the United Kingdom.
- 2.2 "Part 3 proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Authority's Code of Conduct for Members under Part 3 of the Local Government Act 2000.
- 2.3 This indemnity will not extend to Part 3 proceedings where the allegation has been referred to the Monitoring Officer for local investigation and/or determination by the Standards Committee.
- 2.4 Subject to the agreement of the Solicitor and Monitoring Officer in any case and to any conditions he or she may impose, this indemnity shall extend to any advice or representation in respect of any claim or threatened claim in defamation against the member or employee.
- 2.5 Where any member or employee avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Part 3 proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or employee has made use of this indemnity:
 - 2.5.1 the member or employee is convicted of a criminal offence in consequence of such proceedings, or

2.5.2 a Case Tribunal or Standards Committee determine that the member has failed to comply with the Code of Conduct for Members and the conviction or determination is not overturned on appeal,

the member or employee as the case may be, shall reimburse the Authority for any sums expended by the Authority pursuant to the indemnity.

2.6 Where the Authority arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.5 shall apply as if references to the Authority were references to the insurer.

3 For the purposes of these indemnities, a loss or damage shall be deemed to have arisen to the member or employee "in his/her capacity as a member or employee of the Authority" where:

3.1 The act or failure to act was outside the powers of the Authority, or outside the powers of the member or employee, but the member or employee reasonably believed that the act or failure to act was within the powers of the Authority or within the powers of the member or employee (as appropriate) at the time that he/she acted or failed to act, as the case may be; or

3.2 The act or failure to act occurred not in the discharge of the functions of the member or employee as a member or employee of the Authority but in their capacity as a member or employee or representative of another organisation, where the member or employee is, at the time of the action or failure to act, a member or employee or representative of that organisation in consequence of his/her appointment as such member or employee or representative of that organisation by the Authority.

4 The Authority undertakes not to sue (or join in action as co-defendant) a member or employee of the Authority in respect of any negligent act or failure to act by the member or employee in his/her capacity as a member or employee of the Authority, subject to the following exceptions:

4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee; or

4.2 Any act or failure to act by the member or employee otherwise than in his/her capacity as a member or employee of the Authority.

5 These indemnities and undertaking will not apply if a member or employee, without the express permission of the Solicitor and Monitoring Officer, admits liability or negotiates or attempts to negotiate a settlement of any claim, that would otherwise fall within the scope of the indemnities.

6 These indemnities and undertaking are without prejudice to the rights of the Authority to take disciplinary action against an employee in respect of any act or failure to act.

7 These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or employee has ceased to be a member or employee of the Authority as well as during his/her membership of or employment by the Authority.