

Scottish Parliament Region: West of Scotland

Case 200503123: Loch Lomond and The Trossachs National Park Authority

Summary of Investigation

Category

Scottish Executive and Devolved Administration: Policy, Administration

Overview

The complainant (Mr C) was concerned about the process of consultation surrounding a byelaw review carried out by Loch Lomond and The Trossachs National Park Authority (the Park Authority). Mr C complained that public responses were not correctly recorded and the process by which consultants were appointed was unclear.

Specific complaint and conclusion

The complaint which has been investigated is that consultation relating to a recent byelaw review was inadequate and, in particular, public responses were not correctly recorded and the process by which consultants were appointed were unclear (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make

Main Investigation Report

Introduction

1. During 2005, Loch Lomond and The Trossachs National Park Authority (the Park Authority) undertook public consultations on both a review of byelaws relating to Loch Lomond and on their draft plan. On 22 October 2005 Mr C wrote to the Park Authority to say that he considered there was no meaningful consultation process and, specifically, that a meeting organised by the Park Authority in June 2005 was initially presented as a consultation but he was later told it was not, and at a meeting organised by the Loch Lomond and Trossachs National Park Community Partnership (the Community Partnership) he had attended on 27 September 2005 the draft byelaws had been set out but there was no consultation on options, technical supporting data or risk/benefit analysis provided. Mr C also said that he felt there was no compelling data to support the draft plan. After he received the minute of the meeting of 27 September 2005 he complained on 14 November 2005 that no mention was made of any of the submissions made by the public. The Park Authority responded in full in a letter dated 13 January 2006. On 13 February 2006, Mr C complained to the Ombudsman about the consultation and also said he was concerned there was no open method for the selection of technical or other consultants.

2. The complaint from Mr C which I have investigated is that consultation relating to a recent byelaw review was inadequate and, in particular, public responses were not correctly recorded and the process by which consultants were appointed was unclear.

Investigation

3. In investigating this complaint, I have seen copies of the correspondence between Mr C and the Park Authority, reviewed the substantial documentation relating to the review available on the Park Authority website and made specific enquiries to the Park Authority.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Park Authority were given an opportunity to comment on a draft of this report.

Complaint: Consultation relating to a recent byelaw review was inadequate and, in particular, public responses were not correctly recorded and the process by which consultants were appointed was unclear

5. The Park Authority inherited responsibility for the Loch Lomond Registration and Navigation Byelaws 1995 in July 2002. The Land Reform (Scotland) Act 2003 conferred additional powers. Under the Local Government (Scotland) Act 1973 s 202A the Park Authority must carry out a review of the byelaws every 10 years and under s 30 of the 2003 Land Reform Act they must carry out a review within two years of the Act coming into force and no later than the end of 2006.

6. On 14 January 2005 the Park Authority launched a public consultation as part of their review of the byelaws. The consultation had two main phases. The first part was designed to inform policy and ended on 8 April 2005. The second statutory consultation period on the proposed new or amended byelaws was held between 8 August and 28 October 2005.

7. In the first consultation period over 6,000 questionnaires were sent out and meetings held with more than 30 interested bodies and agencies. At a special meeting of the board of the Park Authority (the Board) on 4 July 2005 the Board agreed the changes to the revised byelaws. The Board members had received a report on this which included: details of Boat Count and Registration Data; summaries of an Economic Impact Assessment and a study into developing a noise model; summaries of the questionnaire responses and the main points from the pre-policy consultation meetings as well as a list of the meetings held.

8. The details of the second consultation period were set out in the formal report prepared by an external research company.¹ They created a formal consultation response form which was included in 8,000 survey self-completion packs. The packs contained the questionnaire, the details of the two new and two amended byelaws being proposed, a map and a reply-paid envelope. This was mailed to a database of 6,500 which contained the details of respondents to the previous consultation. The rest were placed in public locations, visitor

¹ This report and a substantial amount of documentation including the minutes of all Park Authority meetings, all research studies and the submission to the Scottish Executive were made available by the Park Authority on their website.

centres and libraries. The response form also contained a reference to the section of the website where there was an internet version of the survey and more background information. The Board also consulted again with agencies and interested bodies.

9. In November 2005, external consultants completed a Review of Ecological Impacts of Boating and Associated Activities on Loch Lomond and its Shores.

10. At a meeting in December 2005 the Board were given a 12 page report which detailed each recommendation made in the consultation document; the response from the consultation and made further recommendations. At the end of the report there was an annex with a summary of the response to the questionnaires and from the agencies and groups. The minutes of the meeting indicate there was discussion based on the responses and votes were taken to finalise the proposals.

11. In February 2006 the Park Authority submitted their proposals to the Scottish Executive in a substantial document which included the data relating to the public consultations and details of the research undertaken for their approval. Following this, the public had a further 12 week period in which to make any further objections direct to the Executive.

12. In their response to Mr C dated 13 January 2006,² the Park Authority said that the meeting of 27 September 2005 (paragraph 1) had been organised by the Community Partnership. This was an independent body to which the Park Authority provided some administrative support. The Community Partnership regularly held local Area Network Meetings and, at two of these on 3 May and 27 September 2005, had decided the byelaw review should be on the agenda. At the second meeting the Park Authority had presented details of the review. This was not a formal consultation meeting and the minutes, which had been the responsibility of the Community Partnership, were in the normal style.

13. The Park Authority accepted that Mr C had raised a real issue about the need for groups organising meetings to clarify the status of those meetings and that this should be reflected in the minutes. They said they would pursue this. In response to my questions, the Park Authority said that they had made it clear to relevant groups that in organising such meetings care had to be taken to

² The Park Authority apologised for a delay in fully responding to Mr C's letter of October 2005.

ensure that they did not place on their agenda 'items which could be construed as being a formal consultation on a National Park Authority Policy'. In addition, their Community Support Manager was in the process of producing guidelines to aid the organisers of local Area Network Meetings and these would highlight the need to ensure a clear definition of the status of any meeting which could overlap with subjects relating to 'the Park Authority's delivery of its statutory functions'.

14. The Park Authority confirmed to Mr C that the meeting he had attended on 14 June 2005 was a consultation meeting but for the proposed Draft National Park Plan. This consultation took place between 16 May and 2 September 2005. At the time of this report, the Park Authority were in the process of preparing a report on this consultation and had also published an 'Environmental Report, assessing the environmental effects of the Draft National Park Plan 2005' on which there had been a further period of consultation which had ended in August 2006.

15. The Park Authority also provided the Ombudsman's office with details on the research undertaken 'to help support the byelaw proposals and to help clarify existing areas of doubt'. The Park Authority were operating within deadlines set by the Scottish Executive and identified three key studies that it would be possible to undertake in the time, the development of a noise model, initial economic assessment, assessment of current ecological information and research on the impact of recreation activity. These are the studies set out in paragraphs 7 and 9 above and which were available to the Board when deciding on the byelaw review in December 2005. The first two were available in July 2005 and included on the website to which members of the public were directed during the consultation period. At their meeting in December 2005 the Board were presented with proposals for a more extensive programme of research to inform the scheduled review of the new byelaws in 2009.

16. In describing how the consultants were chosen the Park Authority said:

- '1. The National Park Authority went through the Noise Consultants Association who contacted all its members and we received 12 expressions of interest of which 11 followed up with an application based on the brief sent out by the Park Authority. This was short-listed to three who were interviewed. [...] was selected.
2. The Park Authority sought advice from Scottish Enterprise and three consultants were suggested who had the local economic intelligence

required to assess the possible impact of the proposed byelaw proposals. Of these three, one decided not to submit an application and the remaining two combined to deliver the report within the required tight deadline, with [...] taking the lead.

3. The Park Authority sought appropriate consultants from Scottish Natural Heritage and asked five to tender for the work. Of the five, two were able to take on the project within the timescale [...] were selected after interview.'

17. The Park Authority also provided copies of their procurement and financial delegation procedures.

(a) Conclusion

18. During 2005 the Park Authority undertook two major consultation projects, relatively soon after their inception and working to external deadlines. They have already addressed the issue Mr C raises of confusion when an external committee was presented with information about a consultation but was not actively part of that consultation. They have sought to resolve this and to improve the practice of such committees by developing guidelines.

19. Looking at the public consultation process itself, this was thorough, in excess of the Park Authority's statutory obligations, conducted in part by independent researchers and the public responses to the consultation were extremely well documented. The evidence for this is readily and publicly available.

20. Mr C considers that the Park Authority did not have sufficient data to uphold their decisions and was concerned about their method of appointing consultants. However, the Park Authority have statutory obligations to review the byelaws and to propose new byelaws or amendments. In the context of the deadlines given, they prioritised what they felt was the most essential research. This research was made available to the public and two of the three documents were available during the consultation period. The third was available prior to the final Board meeting and was, therefore, available during the 12 week period when objections could be made to the Scottish Executive. They have already set out what research they require to assess the byelaws at the next review.

21. Turning to their choice of consultants, the method undertaken is set out in paragraph 16. This demonstrates that the Park Authority sought advice where

appropriate and balanced the need to ensure a fair process with the need to have research available in time. The tendering process was in line with their procurement policy.

22. As the Park Authority have dealt with the need to ensure the status of meetings is clarified and, on the evidence, the recording of the public response to the consultation was thorough and their method for appointing consultants appropriate to the circumstances, I do not uphold this complaint.

27 March 2007

Explanation of abbreviations used

Mr C	The complainant
The Park Authority	Loch Lomond and The Trossachs National Park Authority
The Community Partnership	Loch Lomond and Trossachs National Park Community Partnership
The Board	The Board of the Park Authority