

## Scottish Parliament Region: West of Scotland

### Case 200501913: Loch Lomond and The Trossachs National Park Authority

#### Summary of Investigation

##### **Category**

Local government: National Park Authorities; Complaints handling

##### **Overview**

The complainant (Mr C) raised a number of concerns regarding the way Loch Lomond and The Trossachs National Park Authority (the Authority) investigated his complaint about the tendering process for the distribution of the Authority's publicity material.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Authority failed to carry out a proper investigation into Mr C's complaint (*not upheld*);
- (b) the Authority's investigation into Mr C's complaint took an unacceptable time to complete (*upheld*);
- (c) the Authority's response to the complaint was inaccurate (*not upheld*); and
- (d) the Authority failed to respond to Mr C's letter of 26 August 2005 in a timeous fashion (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Authority:

- (i) ensure compliance with their complaints procedure, in particular they ensure that information about a complainant's rights to bring their complaint to the Ombudsman's office is always provided; and
- (ii) ensure that complainants are kept informed of the progress of their complaints.

The Authority have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. On 28 November 2005 the Scottish Public Services Ombudsman Office received a complaint from a Mr C, Chief Executive of Company 1 in connection with the investigation of a complaint he had raised against the Loch Lomond and the Trossachs National Park Authority (the Authority). Mr C alleged that the Authority failed to properly investigate his complaint, he was concerned about the time taken to investigate the complaint, the inaccurate content of their response to his complaint and their failure to respond to his letter of 26 August 2005 in a timeous fashion.

2. On 16 March 2005 the Company was invited to submit a tender by the Authority in respect of the distribution of their marketing literature. A bid was prepared and submitted by Company 1 on 23 March 2005. On 31 March 2005 Mr C was advised that his company's bid had been unsuccessful.

3. As a result of the failure to be awarded the bid, Mr C, along with Mr D, the Managing Director of Company 2, the joint bidders with Company 1, wrote to the Authority on 25 April 2005 and complained about the bidding process.

4. The complaint raised by Mr C related to the way the Authority had carried out a tender process in respect of the production and distribution of publicity information regarding the National Park.

5. The Scottish Public Services Ombudsman Act 2002 states in Schedule 4:  
'Matters which the Ombudsman must not investigate:  
7 (1) Action taken in matters relating to a contractual or other commercial transactions of a listed authority.'

Additionally, in Section 8(3) of the Act it states:

'Nothing in section 7 or schedule 4 prevents the Ombudsman conducting an investigation in respect of action taken by a listed authority in operating a procedure established to examine complaints or review decisions.'

Taken together these sections of the Act mean that while I have investigated the Authority's complaints handling I could not investigate the tendering process itself.

6. The complaints from Mr C which I have investigated are that:
- (a) the Authority failed to carry out a proper investigation into Mr C's complaint;
  - (b) the Authority's investigation into Mr C's complaint took an unacceptable time to complete;
  - (c) the Authority's response to the complaint was inaccurate; and
  - (d) the Authority failed to respond to Mr C's letter of 26 August 2005 in a timeous fashion.

### **Investigation**

7. I examined the correspondence forwarded by Mr C, reviewed relevant policies and made enquiries of the Authority. 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 Authority were given an opportunity to comment on a draft of this report.

#### **(a) The Authority failed to carry out a proper investigation into Mr C's complaint**

8. Mr C initially raised his concerns with the Authority in a letter dated 25 April 2005. This questioned their consideration of the tendering process. In particular, Mr C questioned whether the winning bidder had sufficient experience and regional coverage to satisfy the terms of the tender.

9. This letter was passed to the Authority's solicitors who replied on 15 June 2005 with an apology for the delay. The Authority's solicitors said that they considered that they had provided sufficient scrutiny to decide on which tender to pursue. They also said that they would not discuss details of the winning tender. In response to the Authority's letter, Mr C then wrote to the Chief Executive advising that he was not happy with the detail of the previous response. The Chief Executive advised that he was satisfied with the tendering process and that sufficiently detailed consideration had been given to both tenders.

10. The Chief Executive detailed that the contractor who had been successful in securing the tender would be expected to provide the service to which they had been contracted and that if during the process of monitoring the services provided, it was established that they were not providing an appropriate service, these matters would be pursued through the normal processes which could lead to termination of the contract.

11. Mr C had also raised concerns in his letter about the winning bid for the tender. The Chief Executive reported that his staff had investigated aspects of the proposed service to satisfy him that they had the capacity and capability to fulfil the contract.

12. The Chief Executive also suggested that Mr C might wish to raise his concerns directly with the company involved, in particular, with staff at those sites where the problem seemed to be occurring.

*(a) Conclusion*

13. Having reviewed the evidence provided by both Mr C and the Authority, I do not believe that there is evidence that the Authority did not take Mr C's complaint seriously. Additionally I believe that they provided Mr C with appropriate responses to his complaint given the restrictions placed on them for reasons of commercial confidentiality. I do not uphold this aspect of the complaint.

*(a) Recommendations*

14. The Ombudsman makes no recommendations on this aspect of the complaint.

**(b) The Authority's investigation into Mr C's complaint took an unacceptable time to complete**

15. The Authority operates a three stage complaints procedure. In the first instance, complaints should be raised with a representative of the department being complained about. The second stage is to ask the Chief Executive to investigate the complaint and the final stage is a referral to the Scottish Public Services Ombudsman's Office. The complaints procedure states that the Chief Executive will respond normally to complaints within 14 days of receipt. However, if further information is required he will contact a complainant to explain that he cannot respond in time or to request further information.

16. The complaints procedure states that he will aim to respond to a complaint in full within 21 days of all relevant information being provided by the complainant.

17. A response to the six points of complaint raised by Mr C was issued to Mr C's legal representatives by the Authority's solicitor on 15 June 2005.

18. On 27 June a further letter was submitted by Mr C to the Authority objecting to a number of issues raised in the Authority's earlier response letter. The Authority's Chief Executive then responded on 21 July 2005 stating his satisfaction with the tendering process.

19. It was not clear whether this correspondence had been considered as a formal complaint. From the content of the letter of 27 June 2005, I believe this should have been the case.

20. After further correspondence a response to the complaint of 26 August 2005 was issued on 2 November 2005.

*(b) Conclusion*

21. From the information I have received, I consider that the Authority did respond to the issues raised by him. They provided direct responses to each point of complaint and where they were unable to discuss certain issues, such as details of the contract between the Authority and the winning bidder to the tender, or the performance of the winning bid, they explained this to Mr C.

22. However, the Chief Executive did not respond to the letter of 27 June 2005 which was received by the Authority on 28 June 2005 within the timescale detailed in their complaints procedure. As a result of this, I uphold the complaint.

*(b) Recommendations*

23. The Ombudsman recommends that the Authority ensure compliance with their complaints procedure. In particular they ensure that information about a complainant's right to bring their complaint to the Ombudsman's office is always provided.

24. I have also noted that the Authority did not inform the complainant of his right to bring the complaints to the Ombudsman's office. This is a statutory obligation on the Authority. The Ombudsman reminds the Authority of their obligation to ensure that this is done in every case.

**(c) The Authority's response to the complaint was inaccurate**

25. As I have stated previously I cannot review the substance of the complaint itself as it is outwith the Ombudsman's jurisdiction nor can I comment on the

tendering process. However, from my review of the available information I have seen no evidence to suggest that the response provided by the Authority was inaccurate.

*(c) Conclusion*

26. I consider that every point which the Chief Executive was able to respond to, given the commercial sensitivities, he responded to appropriately. I do not, therefore, uphold this aspect of the complaint.

*(c) Recommendation*

27. The Ombudsman makes no recommendation on this aspect of the complaint.

**(d) The Authority failed to respond to Mr C's letter of 26 August 2005 in a timeous fashion**

28. Mr C sent a letter on 26 August 2005 advising that he was unable to accept the Chief Executive's assurances that the tender process was dealt with appropriately. This letter was acknowledged on 30 August. After a further email from Mr C on 9 September, the Chief Executive advised him by email the same day that a meeting had been arranged to enable the Chief Executive to discuss the issues with other members of staff and that he hoped to revert to him shortly afterwards. A response from the Authority's solicitors was issued on 2 November 2005.

*(d) Conclusion*

29. The Authority clearly took some time to provide a response to Mr C's letter of 26 August 2005. Given the nature of his enquiries, and the need for further investigation of the points raised, I do not believe that the delay in itself was unreasonable. However, there is no evidence that the Authority updated Mr C on the progress of their enquiries. It is for this reason that I uphold this aspect of the complaint.

*(d) Recommendation*

30. The Ombudsman recommends that the Authority ensure that complainants are kept informed of the progress of their complaints.

31. The Authority have accepted the recommendations and will act on them accordingly.

23 May 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Authority	The Loch Lomond and the Trossachs National Park Authority
Company 1	The company Mr C was Chief Executive of
Mr D	The managing director of Company 2
Company 2	Joint bidders with Company 1