

The Owen McKee Hearing and the Standards Commission (2)

Description

The Standards Commission held its Hearing into Owen McKee, the former Convener of the Loch Lomond and Trossachs National Park's Planning Committee who had been trading in the shares of the Cononish goldmine, while I was away last week. They decided that, had he not resigned from the Park last August, they would have suspended him for a year ([Standards Commission decision Owen McKee](#)).

After the Hearing, the Convener of the panel, Kevin Dunion stated:

"The Panel emphasises to all Members of Devolved Public Bodies the importance of declaring all relevant interests, financial or non-financial. The declaration of interests (including interests in shares) is a fundamental requirement. The failure to declare such interests removes the opportunity for openness and transparency in a Board Member's role and denies any member of the public the opportunity to consider whether a Board Member's interests may or may not influence the decision making process". [Standards Commission press release](#).

I welcome the decision and Kevin Dunion's statement. What is wrong is that the LLTNP Board tried to cover up a matter that the Standards Commission believes is fundamental to sound decision-making and it only came to light as a result of Freedom of Information requests.

Unfortunately, while I reported the whole Board to the Commissioner for Ethical Standards in Public Life for breaching the principles that underpin the Code of Conduct, because there is no clause in the current code that requires Board Members to report possible breaches by their colleagues, the Commissioner was unable to take any action:

The allegations against the <other> respondent(s) are in relation to the key principles of integrity, openness, honesty accountability and stewardship, as set out in section 2 of the Code. Paragraph 2.1 of the Code and the Guidance issued by the Standards Commission for Scotland make it clear that section 2 provides a context for and underpins the Code. However contravention of any of the key principles does not in itself constitute a breach of the Code. In order to constitute a breach, there must be contravention of one or more of sections 3 to 7. As the complainant has not referred me to any of the substantive provisions of the Code I have concluded that the complaint does not amount to a breach of the Code by the <other> respondent(s). (See paras 5.27/29 [Commissioner's Report case 1781](#)).

The Executive Director of the Standards Commission, Lorna Johnston, has also confirmed this to me in writing: “You have indicated that you are concerned that there is no obligation on Board Members to report breaches of the Code of Conduct to the CESPL. I can confirm that, as you have noted, there is no obligation at present under the Code of Conduct for Board Members to do so”.

There are therefore serious limitations to the current Code of Conduct as, however serious the misconduct of a colleague, you are under no obligation to report this to the Commissioner for Ethical Standards. I believe this is a fundamental weakness in the Code because the people most likely to come across breaches of the Code are other Board Members, as was the case with Owen McKee. Indeed, many of the cases dealt with by the Commissioner are referred by other Board Members and Councillors, which is a further indication that the failure of any member of the LLTNP Board to do so was part of a deliberate cover-up.

The following extracts from the Commissioner's Report illustrate some of the ethical issues at stake:

- On Linda McKay, the Park Convener and senior adviser to the Government “The advice she received confirmed that there was no obligation on the Board to make public any alleged breach of the Code” (para 4.23).
- “The third respondent (Lindsay Morrison) denied any breach of the key principles of the Code. He advised that his reason for asking the members not to raise or discuss the conclusions of the investigation was to ensure that, at the meeting of 26 January 2015, they focussed on the matter before them. He was of the view that other matters would not be competent business for that meeting or material to the planning decision. In regard to the allegation that he denied members access to the full report, he advised that the report was available to all members upon request. Finally, it was his view that as the outcome of the investigation required no action to be taken, it did not require to be put to a Board meeting for a decision” (para 4.24).
- The remaining respondents, with the exception Councillor James Robb, the thirteenth respondent, submitted a collective response in which they all refuted the allegation of breach of the key principles of the Code. They accepted that there is a personal obligation to comply with the Code, but argued that their obligation did not extend to reporting suspected breaches. They denied that some members of the Board encouraged the first respondent to sell his shares in Scotgold. It was accepted that there was some discussion on the matter at the business meeting held on the morning of 8 December 2014, but this did not extend to selling shares (para 4.25)

One might ask, how does any of these answers fit with the key principles of integrity, openness, honesty accountability and stewardship that underpin the Code or with the facts that I obtained through

FOI and published two weeks ago <https://parkswatchscotland.co.uk/2016/04/05/owen-mckee-hearing-standards-commission/> ? I don't think they do but recognise that at present the Commissioner for Ethical Standards and Standards Commission are powerless to act in such circumstances. The new Scottish Government needs to change this by **making it a legal duty on Board Members and Councillors to report breaches of the Code of Conduct by their colleagues.**

Category

1. Loch Lomond and Trossachs

Tags

1. complaints
2. Freedom of Information
3. Governance
4. LLTNPA
5. Scottish Government
6. secrecy

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