

Subverting law and democracy – the Cairngorms National Park Authority's leadership election

Description

On 30th June the Cairngorms National Park Authority (CNPA) issued a news release ([see here](#)) stating that Sandy Bremner and Eleanor Mackintosh had been elected as new Convener and vice-Convener of the Cairngorms National Park Authority on 28th June. The elections were to replace Xander McDade, who had announced earlier in the year that he would step down as Convener on 31st July, and Janet Hunter, who is retiring from the board. What the news release failed to say was that no Board Meeting was advertised for 28th June ([see here](#)) and the elections took place outwith any public meeting and in secret. This post argues this was not just morally wrong/anti-democratic but also probably unlawful and the Minister responsible for National Parks, Lorna Slater, needs to intervene.

What has gone wrong

CNPA staff presented a paper ([see here](#)) to the Board Meeting on 24th March 2023 about the arrangements for filling the soon to be vacant convener and vice convener posts and the chairs of various committees. Staff recommended that elections should take place at the Board Meeting scheduled for 23rd June, which did take place and was in public. The paper also referred to the Board's Standing Orders ([see here](#)): these set out how elections to these posts should take place at Board Meetings and all Board Meetings should take place in public unless there is a very good reason not to do.

Those Standing Orders in my view correctly reflect the law. The National Parks (Scotland) Act 2000 explicitly states (Schedule 2, paragraph 12) that meetings and documents of our National Park boards are covered by the provisions of Part III A of the Local Government (Scotland) Act 1973, which broadly stipulates that meetings should take place in public. Moreover, while not explicitly referenced by the National Parks (Scotland) Act, local government legislation requires elections to posts in local authorities to take place at meetings and therefore in public. By implication, this also applies to National Park Authorities and has been interpreted that way since Scotland's two National Parks were created.

The failure in democracy by the CNPA has been made possible because during the Covid pandemic all public authorities were allowed to suspend Standing Orders and put special arrangements in place (e.g. for meetings and elections to take place online). The CNPA Board had not revoked those special arrangements but in their paper to their March meeting staff explicitly recommended they should do so:

"The Board is asked to:

a) agree the full suspension of all business continuity adaptations to Standing Orders and an immediate return to adopted Standing Orders"

Had this been agreed it would have enabled elections to take place in public on 23rd June. The CNPA Board, however, chose to reject their staff's recommendation:

19. The Board responded to the Notice of Forthcoming Board Election of Convener, Deputy Convener and Committees in the following way:
- a) Agreed the full suspension of all business continuity adaptations to Standing Orders and an immediate return to adopted Standing Orders, with the exception of the continuing provision to hold elections by electronic or postal means and without the need for a face to face meeting.
 - b) Noted the Intention to bring forward proposed amendments to Standing Orders regarding provisions on quorum for meetings at the next board meeting.
 - c) Rejected arrangements for the election of the Board Convener and Board Deputy Convener at the next scheduled formal board meeting on 23 June, to be conducted in accordance with agreed Standing Orders and agreed that a further paper setting out revised options be brought forward.
 - d) Rejected proposed arrangements for elections of Committee Chairs as set out in this paper and agreed that a further paper setting out revised options be brought forward.

How board members voted on this is not recorded BUT the minutes suggest this was contrary to the views of outgoing convener, Xander McDade, who "recommended suspending business continuity [i.e Covid] measures".

On the 9th June the CNPA Board held a special meeting, which was advertised on their website ([see here](#)), to consider a paper (dated 24th May) setting out revised arrangements for the elections. The minutes of this meeting are not yet available but the paper made it clear that the proposals were being made "Under business continuity arrangements to allow for remote elections". In other words, long after the Covid emergency has ended, the CNPA Board has decided to continue to use the special powers they were given at that time.

Had the CNPA Board tried to change their Standing Orders permanently to allow all elections to take place outwith meetings they would have risked exposing themselves to legal challenge. The Board therefore appear to have exploited a loophole in the law, apparently so that they did not have to turn up to meetings to vote, but in doing so ignored the implications and the consequences.

A key element of democracy should be that when people stand for posts like Convener in local authorities and National Parks, those electing them should have a chance to hear what they are saying and to question them about how they would propose to use the position if elected. The public should also have a right to hear what those elected to serve them are saying and to witness how such elections are conducted. This provides important democratic safeguards.

The current legal framework governing National Parks supports such principles but instead of upholding them the CNPA Board agreed to hold the elections in secret and:

“agreed a number of principles on which the method of holding remote elections should be constructed.
a. All members should be afforded the opportunity to participate in each vote [wow!];
b. Members should have some advance awareness of those members nominated and seconded to stand for election prior to the voting period [scary that anyone could contemplate candidates only being revealed on the day!];
c. Election of Convener will take place as the first election, followed by election of Deputy Convener.
d. In the context of points a and b the overall timetable for elections taking place should be as compressed as possible to allow all elections to take place in a reasonable timeframe and for the identity of office holders to be confirmed without undue delay.”

The compressed timetable would have made it more than possible to hold the elections at the meeting scheduled for 23rd June, as originally recommended by officers, and for provisions to have been made to hold that as a hybrid meeting with those attending online also being allowed to vote. That would have allowed the various candidates to speak and in public.

The CNPA's news release did not state whether any of the elections had been contested or who had stood. I therefore asked the CNPA and am very grateful for their very helpful response which stated that 19 votes had been cast in each election and the result was as follows:

Convener:

Sandy Bremner: 12 votes

Bill Lobban: 7 votes

Deputy Convener:

Eleanor Mackintosh: 11 votes

Fiona McLean: 8 votes”

I have followed this up with an Information Request for any statements circulated internally by the candidates before the online ballot as in my view the public should have a right to know what the various candidates stood for.

What now?

What has happened is a sad end to Xander McDade's tenure as Convener. Since being elected, Mr McDade had made significant efforts to make the CNPA more democratic – for example trying to increase the number of people standing for local member elections and voter turnout ([see here](#)) – and has open to critical debate about what the National Park is doing. Under his convenership the CNPA Board has fairly regularly overturned or amended the recommendations of staff (something that almost never happens in the Loch Lomond and Trossachs National Park Authority). All this has been good for democracy.

It is ironic, therefore, that before Mr McDade stepped down the CNPA Board appear to have used that

freedom not to extend that democracy, but to restrict it and to have overturned the recommendation of staff, supported by Mr McDade, that the special measures adopted during Covid that allowed elections to take place outwith of meetings should be repealed.

It is too early too tell if this flawed decision marks a change in direction by the CNPA. A test of this will be whether the new Convener and vice-Convener of the CNPA are prepared to put their house back in order. Preferably this should involve holding another election at a public board meeting at the earliest opportunity.

Lorna Slater, as responsible Minister, should now be asked to clarify whether she believes the decision by the CNPA Board to hold the elections in secret was an abuse of their powers and to intervene if necessary.

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2. Loch Lomond and Trossachs

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