



## **For Discussion**

**Title:** Governance and Code of Conduct Update

**Prepared by:** David Cameron, Deputy Chief Executive and Director of Corporate Services

### **Purpose of Paper**

This paper presents an update to the Committee on matters relating to governance and operation of the Code of Conduct within the Park Authority. The paper supports consideration by the Committee of any forward actions which may be taken within the Park Authority.

### **Code of Conduct and Changes to Guidance**

1. The Governance Committee considered a number of matters relating to the evolution of the Park Authority's Code of Conduct, together with revisions to guidance on the Code produced by the Standards Commission for Scotland, at its meeting on 17 May 2024. It is appropriate for the Audit and Risk Committee to also consider these matters within its remit for oversight of systems of internal control and risk management.

### **Content of Code of Conduct**

2. The board approved the Park Authority's Code of Conduct at its meeting in March 2022, with the Code approved by the Standards Commission and Ministers in May 2022. The Code of Conduct was adopted by the Park Authority at that point, in May 2022. The Park Authority's Code of Conduct adopts in full and without addition the Model Code of Conduct developed by the Standards Commission for Scotland.
3. The Deputy Chief Executive reviewed the provisions of the Park Authority's Code following the board's discussion on the development of consultation on potential byelaws to help manage the risk of wildfire. This review has identified that the Model Code, and therefore the Park Authority's Code, does not contain provision to manage handling of quasi-judicial or regulatory business. Provision for these



matters had been incorporated into the Park Authority's previous Code of Conduct. Those provisions have now been lost with the adoption of the provisions of the new Model Code, with the requirement for Non Departmental Public Bodies (NDPBs) to cover such business not picked up by the Commission in the development of the new Model Code. The Standards Commission have been contacted about this matter and agree that addition to the Park Authority's Code of Conduct to make provision for handling quasi-judicial and regulatory business is required.

4. The Standards Commission suggest that provision as close as possible to the element of the Councillors Code of Conduct is incorporated in the Park Authority's Code. This allows for standards guidance already developed and approved for local authority councillors to also be applied to the Park Authority's Code. The Governance Committee is therefore invited to review the material in question and provide any comments or feedback on the adequacy of these provisions to the Deputy Chief Executive in taking this matter forward. The relevant provisions are set out at Annex One to this paper.
5. Initial consideration by the Deputy Chief Executive is that this serves reasonably well for National Park Authority (NPA) purposes if it was tidied up to make required references to NDPB boards rather than council / committees. There are a couple of areas picked up as needing a bit more attention.
  - a) 7.3 may need tidied up a bit and made a little more generic to fit our purposes and remove some areas of licencing activity that we will not be involved in. Perhaps a list along the following lines:
    - i. Planning
    - ii. Licensing
    - iii. Byelaws and other regulatory activities
    - iv. Statutory enforcement procedures
    - v. Staffing and employment issues within the board's remit
    - vi. Statutory appeals and consents
  - b) 7.6 to 7.8 regarding policy and strategy seems a little confused for NPA purposes, where many policies and strategies work their way into National Park Partnership Plans (NPPP) and / or Local Development Strategy (LDS). This could be made to work for NPA purposes if it was made clear in the guidance to the section that



once a formal process around policy or strategy development has started then a quasi-judicial or regulatory process covered by these provisions should be assumed to be underway in terms of expected compliance with the other provisions of section seven.

- c) Input from the Corporate Performance Manager at Loch Lomond and the Trossachs National Park Authority (LLTNPA) has also identified that sections 7.11 and 7.12 are likely to be incompatible with the wider governance arrangements of NPAs and as such may need to be removed prior to incorporation into a Park Authority Code of Conduct. These sections have been greyed out in Annex One for ease of reference.

- 6. The Governance Committee identified that existing provisions of the Code of Conduct covering lobbying should be tested to ensure they are adequate before finalising any adaptations to the Code of Conduct. Section six of the current Code of Conduct does cover lobbying and access to board members in full and therefore no further adaptations to compensate for the removal of sections 7.11 and 7.12 are expected to be required.
- 7. For information, the Deputy Chief Executive is also coordinating this work for Loch Lomond and the Trossachs National Park Authority.

### **Update of Guidance Supporting Code of Conduct**

- 8. The Standards Commission have made revisions to their guidance supporting the operation of the Code of Conduct. A number of revisions have particular relevance to the Park Authority and are drawn out here for information.
  - a) Highlighted that all members of the board are required to comply with the Code, regardless of how they have become a member (i.e. by election, appointment or nomination).
  - b) New paragraph setting out the following: "... public body boards can comprise of individuals who are appointed, elected or nominated to the board in different ways. Members should recognise that the reason such bodies are comprised of individuals with different backgrounds, knowledge and experiences is to ensure diversity of thought and to ensure that input from, and the perspectives of, all key stakeholders are considered in any decision making. Members should ensure, therefore, that they understand, respect and take account of differences in each



other's backgrounds, knowledge and experiences, so these do not become a barrier to progress and to the effectiveness of the board itself."

- c) New paragraph setting out the following: "Members should be clear, nevertheless, that they are required to act in the best interests of the public body, as opposed to the interests of any individual constituency from which they have been appointed, nominated or elected. Such members need to be aware of their obligations to the board and reconcile these with their obligations to their constituency. While such members can raise matters from the perspective of their constituency, they should not promote the interests of, or lobby on behalf of, the constituency when sitting as a member of the public body."
- d) Significant expansion of guidance supporting when a member may be perceived as being a member of a public body in their actions. This includes the following. "Members of some public bodies, especially those elected to the board, those appointed via routes linked to a local or specific community (including Local Authority appointees), or those who have regular and direct engagement with service users and stakeholders, may have a high profile within that area or community. If this is the case, you may wish to consider whether members of the public might automatically assume you are commenting in your capacity as a member, either in person or in anything you post, publish or share, particularly if you are commenting on matters that relate to the work or remit of the public body."
- e) With regard to social media use, the requirement to consider very carefully whether "liking", reposting and sharing comments or posts, or publishing links to other sites could be reasonably regarded in the circumstances as endorsing the original opinion, comment or information, including information on other sites."

9. An advice note on these matters will be issued to members for their awareness, along with circulation of the Standards Commission for Scotland's most recent update handling these matters.

### **Standards Commission Hearing**

10. As previously advised to all board members, the Standards Commission held a hearing on a complaint brought by a former board member against another former board member on 27 May 2024.



11. The hearing found that the former member failed to declare an interest at a planning meeting of the Park Authority on 10 December 2021. The Panel considered that, having applied the objective test under the Code, the former member should have reached the view that their connections to the item of business would be reasonably regarded by members of the public with knowledge of the relevant facts as being so significant to the applications being considered at the meeting, that it would be regarded as being likely to prejudice their potential discussion and decision making. The Panel agreed, therefore, that the former member should have declared an interest and withdrawn from the meeting while the applications were being discussed.
  
12. The hearing also found the former member, on the face of it, to have breached the respect provisions in the Code in respect of a remark they made about a senior employee of the Park Authority at a board meeting on 25 November 2022. The Panel found that the former member's remark impliedly, and publicly, accused the employee of bullying and intimidating Members of the Park Authority in providing them with advice about when they may need to declare interests. The Panel agreed that the making of such an accusation about the conduct of the employee was serious and could have been damaging, not only to their reputation as an individual, but also to the Park Authority itself. The Panel noted that, in terms of the ethical standards framework, the employee in question was expected to provide members with advice about compliance with the Code. The Panel acknowledged they did so both to ensure that Members complied with its provisions, but also to ensure the propriety of decisions made by the public body and to mitigate the risk of these being challenged. The Panel was of the view, nevertheless, that while the Respondent's remark was emotive and unjustified, it did not consider that it was sufficiently offensive, personally abusive or shocking as to justify a restriction on her right to freedom of expression under Article 10 of the European Convention on Human Rights. The Panel concluded, therefore, that a formal finding of a breach of the Code could not be made.
  
13. It is appropriate to reflect on any lessons learned or actions needed to address matters relating to any standards or governance matters highlighted by such processes.



14. In this instance and recognising the number of new members now present on the Park Authority board and the recent completion of the board appointment process, regular training on the Code of Conduct is now being scheduled for later in the current calendar year. The Standards Officer can ensure this training continues to include its usual focus on the level of understanding of the operation of the objective test within the Code, and that a key consideration for all board members is to reflect on the perception of the public on assessing their actions as a board member of a public body, rather than their own intent or motivations.
15. A further action identified is to consider whether any control system improvements for operation of the board and its committees may be made, whereby the role of the Standards Officer in support of Convener or Chair of meetings to safeguard the propriety of decision making at the Park Authority's meetings can be made more explicit.

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## **Annex 1**

**Title:** Extract from Model Councillors Code of Conduct  
**Prepared By:** David Cameron, Deputy Chief Executive and Director of Corporate Services

### **SECTION 7: TAKING DECISIONS ON QUASI-JUDICIAL OR REGULATORY APPLICATIONS**

#### **Introduction**

- 7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision making process.
- 7.2 I will deal with many types of quasi-judicial or regulatory applications. Depending on the type of application that is made, there will often be a formal, statutory decision making process for its consideration and outcome. There may also be formal legal routes to challenge decisions made on these applications and for this reason, I must be aware that my own personal responsibility to ensure a proper and fair hearing has wider consequences for my council's reputation and financial liabilities in the event of any challenge.
- 7.3 Quasi-judicial or regulatory decisions typically involve:
- a) Planning or other applications in terms of planning legislation
  - b) Applications for alcohol licensing matters
  - c) Applications for betting and gaming premises
  - d) Applications for taxi licences and all other forms of civic licensing
  - e) Actions where my council is involved in any form of statutory enforcement procedure
  - f) Any actions where my council is an employer and is involved in any disciplinary issues that I may have a remit to deal with
  - g) Any procedures for statutory approval or consent involving my council and



where I have a remit to deal with the matter;

- h) Any appeal procedure where my council has a role and where I am expected to adjudicate on applications, for example an Education Appeals Committee for school placements or school exclusions.

The above list is provided to me only for guidance and is not exhaustive. If I have any doubt as to whether or not my involvement involves a quasi-judicial or regulatory matter I will seek the advice of my council's Monitoring Officer.

## **Quasi-Judicial and Regulatory Matters**

### **7.4 In dealing with these applications,**

I will:

- a) Throughout my involvement with the entire application process act fairly and be seen to act fairly
- b) Declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined
- c) Deal fairly and impartially with all parties involved in the application
- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting
- e) Take into account professional advice given to me by council employees and
- f) Seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.

### **7.5 In dealing with such applications,**

I will not:

- a) Pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias
- b) Indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered
- c) In advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am





- prejudiced in my decision making;
- d) Lobby other councillors who may be dealing with the application;
  - e) Express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application
  - f) Formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered
  - g) Express any indicative or provisional views in the course of my involvement in any aspect of the application; or
  - h) Otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly.

## **Policy and Strategy**

- 7.6 My role in policy and strategic issues may have a very wide relevance to my council area. For example, I have a key role in establishing policies for the benefit of my council's area and I am fully entitled to express my genuinely held views or to advocate proposals for the adoption of key guidance. It is entirely appropriate that I can express my views on matters of such general importance to my council area.
- 7.7 When I am being asked to develop a policy and set a strategy that forms the framework under which individual applications may subsequently be decided, I understand that I can discuss or debate these items of policy or strategy. However, I will only take into account material considerations affecting the policy or strategic issue and will have regard to the requirement for the adoption of the policy or strategy to be based on facts and evidence.
- 7.8 For policy and strategic issues under which individual applications may subsequently be decided,  
I will:
- a) Be able to express my views
  - b) Be able to advocate proposals that I consider to be of benefit to my council area
  - c) Have regard to the evidence-base behind the formulation of the policy or strategy in question.



I will not:

- a) Do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in a policy or strategic issue
- b) Express any view that suggests I have a closed mind on the policy or strategic issue regardless of any material considerations affecting that issue.

## **Representation**

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application,

I will not:

- a) Organise support for or opposition to the application in any way
- b) Represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) Compromise myself or my Council by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of a Committee as a decision maker but have been involved in organising support for or opposition to an application,

I will:

- a) Declare an interest in the matter, and
- b) Withdraw from the meeting without participating in the consideration of the matter.

7.11 In circumstances where I am a member of a Committee as a decision maker but wish to represent individuals or groups who are seeking to make representations for or against an application,

I will:

- a) Follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so
- b) Declare an interest in the matter; and
- c) Only remain in the meeting, while that item is being discussed, for the purposes of acting as the representative of the individual or group throughout the duration of their participation.



I will not:

- a) Participate or attempt to participate as a decision-maker in that application
- b) Attempt to influence employees to adopt any particular position relative to the matter; or
- c) Lobby other councillors who may be involved in the decision-making process.

**7.12** In circumstances where I am not a member of any Committee which is making a decision on an application, but wish to represent individuals or groups who are seeking to make representations for or against it,

I will:

- a) Follow procedures agreed by my council which afford equal opportunity to any parties wishing to make representations to do so; and
- b) Only remain in the meeting for that item for the purposes of acting as the representative of the individual or group throughout the duration of their participation.

I will not:

- a) Participate or attempt to participate as a decision-maker in that application
- b) Attempt to influence employees to adopt any particular position relative to the matter; or
- c) Lobby other councillors who may be involved in the decision-making process.

## **Site Visits**

**7.13** In respect of any site visits that have been decided upon or agreed by the Committee as a stage in the consideration of the application,

I will:

- a) Follow my council's procedures for such visits as set out by my council and that with regard to any legislative requirements or notes of guidance or practice
- b) Remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by my council.



## **Enforcement**

7.14 In my role, I may become aware whether by complaint or by direct knowledge of the need for council intervention by way of appropriate enforcement action. In this event, I will refer the matter for investigation to the appropriate service of my council.

I will also:

- a) Advise all subsequent enquirers to deal directly with the relevant employee of the Council department
- b) Ne able to request factual information about the progress of the matter from the relevant employee.

I will not:

- a) Lobby for a particular outcome
- b) Get involved in the operational detail of any enforcement actions which are subsequently taken by my council