



## Decision notice

### Complaint about The Highland Council - 202002615

Date: 14 February 2023

**The Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn (upheld).**

#### Summary for publication

*This summary (subject to change) will be laid before parliament and published online. Please note that it is a high-level summary which does not include the full detail of our investigation. To protect your personal information, we have anonymised it and removed both gender-specific pronouns and titles.*

C complained about the Council's decision-making in relation to the allocation of Scottish Government Town Centre funding. In terms of the relevant governance arrangements, Local Area Committees were expected to identify and rank eligible projects for the funding. C complained that their local Area Committee had failed to publicise the scheme, failed to invite applications and apparently failed to discuss the funding in meetings. C complained there was a lack of transparency in the Council's decision-making process.

With regard to the complaint about lack of community engagement, the Council said they were not operating a challenge fund. The Council's position was that the grant was allocated to projects in accordance with the governance arrangements agreed by the Environment, Development and Infrastructure Committee.

We found that the Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn. Specifically, we found that the Council failed to evidence how in Nairn they followed the agreed process that Area Committees become involved in identifying and recommending projects. There was no public record as to how the decision to recommend the CAB project was reached. There was no evidence as to how this project was assessed as meeting the eligibility criteria. Taking all of the above into consideration, we upheld the complaint.

*You will find all of my recommendations for action by The Highland Council at the end of this letter.*

## **Comments**

We sought comments on a draft of this decision from both parties. We received comments from The Highland Council which led to some changes to our final decision. We added an item to the chronology, dated 31 May 2019, we inserted a new paragraph 25, and made changes to paragraphs 26 and 27 (numbered 25 and 26 in the provisional decision). We also revised the wording of recommendation 1 to more accurately reflect our findings.

1. C complained about the Council's decision-making in relation to the allocation of Scottish Government Town Centre funding. They complained that the local community were denied the right to engage and participate in the decision-making, and that in allocating funding to a project in Nairn the Council had failed to follow due process.
2. The complaint agreed with C was that:

**The Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn (upheld).**

3. With regard to the outcomes they were seeking to achieve through our investigation of their complaint, C wanted the SPSO to ask the Council:
  - i. To take action to ensure their decisions are carried out locally;
  - ii. To ensure community empowerment is meaningfully carried out in Nairn;
  - iii. To ensure their policy of openness and transparency extends to local elected councillors.
  - iv. To ensure that local Ward Business Meetings are open to the public and that agendas, papers and proper minutes are available;
  - v. To clarify the role of the community in helping to deliver local services; and
  - vi. To provide the community with explanations for the actions/decisions taken particularly with regard to Nairn Common Good Assets.

## Investigation

4. In investigating C's complaint, I have carefully reviewed the documentation provided by C in support of their complaints and by the Council in response to enquiries I made of them.
5. This letter includes the information that is required for me to explain the reasons for my decision on C's case. While I have carefully reviewed all of the evidence provided during the course of my investigation, this report does not include every detail of the information I have considered.
6. We can consider complaints of maladministration or service failure. These are broad terms which are difficult to conclusively define. However, in simpler, more general terms, we investigate complaints where someone alleges fault or failure on the part of the organisation they are complaining about which has negatively impacted them. Public bodies have discretion to make a wide range of decisions, and generally we cannot comment on the merits of those decisions unless we find evidence of maladministration or service failure.

## Complaint

**The Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding (TCF) in Nairn.**

### *C's complaint to the Council*

7. I do not intend to repeat the content of all of C's complaint, as all parties are aware of the content. Some of the complaints concerned Councillors' conduct, and are beyond the locus of the Council and the SPSO to consider and investigate, such matters falling within the remit of the Commissioner for Ethical Standards in Public Life. The main points of complaint within the Council's and SPSO's remit were that:
  - i. The Council and the then Ward Manager failed to inform relevant local community representatives or groups of the establishment of the TCF and local allocation of funds. This meant they did not effectively fulfil their responsibility to engage with the local community and mobilise local input and involvement.
  - ii. The local Nairnshire Committee (NC) failed to consult or engage with relevant local groups or organisations, failed to publicise the scheme, failed to invite applications and apparently failed to discuss the subject in the meetings. The TCF Information Sheet attached an invitation for project

- proposals from social enterprise and community organisations. It would be normal, and good practice, to engage with local community groups to assemble and evaluate a range of potential bid proposals.
- iii. There was a lack of transparency in respect of project planning. On 19 November 2019 a local newspaper featured a front page article announcing plans for a new Citizens Advice Bureau (CAB) office with 12 flats in the town centre. This was the first public mention of the project. The decisions leading to the announcement of the project had all apparently been made behind closed doors.
  - iv. A conflict of interests existed insofar as the Council were principal landowners of the site in the town centre, as well as being the applicant and developer, the recipient/beneficiary of the TCF allocation and also the planning authority.
  - v. The Council failed to realise the significance and implications of part of the town centre site being Common Good land, raising questions about the professional diligence of officials and advisers. This matter would have been flagged up sooner had there been proper local consultation and public engagement in the early stages.
  - vi. A demolition warrant for the Old Social Work Building was sought ahead of submission of the planning application.
  - vii. It was a misapplication of resources and a waste of staff time and public money to be progressing a building warrant in respect of a proposal which had not yet been given consent.

### *C's complaint to the SPSO*

8. C complained that the Nairn community had been denied their rights to engagement and participation in decision making. C told us the Council had failed to ensure that:
  - i. The NC complied with the relevant Council decisions and Scheme of Delegation.
  - ii. All meetings of local Councillors, at which decisions are made which impact on the town/local area/Common Good and which concern public funding, are properly recorded and made available in the public domain without recourse to Freedom of Information requests.
  - iii. Administrative processes are open and transparent, and meetings are not held behind closed doors unless there is a specific requirement to do so.
  - iv. There was compliance with Scottish Government Planning Policy relating to the Town Centre First Principle, agreed Highland Council

Supplementary Planning guidance, National Transport guidelines/legislation and Scottish Government Town Centre funding criteria and timescales.

- v. The use of such public funds achieves best value for the public purse.
- vi. There was a fair and equitable opportunity for the Nairn Community to submit project proposals, as happened elsewhere in the Highlands.

*The focus of the SPSO's investigation has been the Council's decision-making process. C's complaints concerning planning and other site-related matters have been considered for context but are not the focus of this investigation.*

#### *The Highland Council's position*

- 9. I do not intend to repeat the content of The Highland Council's original response to C's complaint, as all parties are aware of the content. However, the main points of their response were that:
  - i. On 16 May 2019 members of the Environment, Development and Infrastructure (EDI) Committee approved the TCF indicative area allocations and proposed governance arrangements including the creation of a cross-party sub-group chaired by the Chair of the EDI Committee. Delegated authority was given to the cross-party sub-group to agree projects to benefit from TCF financial assistance. The approved decision making process is minuted and publicly available.
  - ii. Regarding the complaint that the local Nairn Area Committee failed to consult or engage with local groups, publicise the scheme, invite applications or discuss the subject at their meetings, the Council said they were not operating a challenge fund. Decisions on the use of the fund rested with the Council. A press release was issued after the meeting of the EDI Committee on 16 May 2019. The project was discussed at Ward Business Meetings and minuted accordingly. Members of the TCF cross-party working group met on 3 October 2019 to consider the recommendation that Nairn CAB be offered TCF grant of £198,976 for the redevelopment of the King Street site. The minute of this meeting was reported to the EDI Committee on 7 November 2019.
  - iii. The Council did not accept that there was any attempt not to engage with local community groups; rather, the CAB project was the project that commanded the most compelling case in the view of those responsible for coming to a decision.
  - iv. The application was being processed in accordance with the relevant planning procedures.

10. In response to my enquiries, the Council also said that:

- i. The Council was notified by the Scottish government in March 2019 that it would receive a Town Centre Fund capital grant which had to be spent during the financial year 2019/20 and which set the terms and conditions for spending the grant.
- ii. A report was taken to the Council's EDI Committee on 16 May 2019 informing Members of the grant and making recommendations for its allocation across all of the towns within the Highland area. Members agreed to the recommendations in this report. It was, therefore, this report which created the process for allocating the funding. Officers had recommended the allocation of funds to each Council Area Committee, the Area Committees were to choose and prioritise projects for their areas and the Town Centre Fund cross-party working group was to agree these projects and allocations. The process outlined in appendix 2 of the report recognises that the short timescales for the use of the capital grant meant that meetings would have to be held outwith the normal Committee timetable to deal with this matter.
- iii. Following the Committee meeting on 16 May 2019 a press release was published giving details of the funding and including an information sheet with greater detail and project proposal pro-forma for prospective project sponsors to complete.
- iv. Council Officers attended the Nairn WBM in March 2019 to discuss an ongoing project to demolish and replace a Council property in Nairn town centre in order to provide a new office for the Nairn Citizens' Advice Bureau. They also informed members about the newly announced Town Centre Fund.
- v. The Nairn Area Members met to discuss the potential options for using the Town Centre Fund allocation to Nairn and concluded that the most appropriate option was to use the grant to fund the King Street project with the Nairn Citizens' Advice Bureau. Given the funding required for this project and the fact that no other projects were thought to be ready to be progressed in the specified timeframe, this was the only project that the Nairn Area Members chose to put forward to the Town Centre Fund cross-party working group.
- vi. Documents provided to the SPSO contain the agenda, report and minutes for the Town Centre Fund cross-party working group and provide the

details of the projects which were put forward by the Area Committees and those which were approved.

- vii. The Council is therefore of the opinion that the Town Centre Fund (TCF) grant provided by Scottish Ministers to the Council has been invested in accordance with the terms and conditions laid down by the Scottish Government. Furthermore, the Council is of the opinion that the grant has been subsequently allocated to projects in accordance with the governance arrangements agreed by the Environment, Development and Infrastructure Committee on 16 May 2019.
- viii. The complaints appear to stem from a belief that there should have been public consultation about how the Town Centre Fund was spent. There was no legal requirement for this, there was no requirement imposed by the Scottish Government's terms and conditions and there was insufficient time to consult if the monies were to be spent before the deadline. Councillors agreed to the proposed procedure which allocated funding to each area and allowed local Councillors to make proposals to the working group regarding which projects to spend the funding on in their area.

#### *Evidence provided by the Council*

- 11. Letter from Housing and Social Justice Directorate to Director of Finance dated 7 March 2019 setting out details of Town Centre Fund Capital Grant 2019-2020. This set out, among other matters, the purpose and conditions of the grant.
- 12. Highland Council Economy and Regeneration Report for Environment, Development and Infrastructure Committee dated 16 May 2019 recommending, among other matters, that Members note the purpose of the Town Centre Fund and approve the indicative area allocations and proposed governance arrangements set out in accompanying Appendix.
- 13. Town Centre Fund Information Sheet May 2019 – Press Release.
- 14. Town Centre Fund Information Sheet May 2019.
- 15. Letter to Members dated 26 September 2019 regarding meeting of Town Centre Fund Working Group taking place on 3 October 2019 at 2 pm.
- 16. Town Centre Fund Project Assessment and Approval Report dated 3 October 2019 for Town Centre Fund Cross Party Working Group, by Director of Development and Infrastructure.

17. Minutes of Meeting of the Town Centre Fund Working Group held on 3 October 2019.
18. Nairn Ward Business Meeting Action Note from Meeting held on 8 March 2019.
19. Nairn Ward Business Meeting Action Note from Meeting held on 2 May 2019.
20. Nairn Ward Business Meeting Action Note from Meeting held on 9 August 2019.
21. Nairn Ward Business Meeting Action Note from Meeting held on 11 October 2019.
22. Email from Regeneration Policy Officer, Scottish Government, dated 20 February 2020: Town Centre Fund - extensions to expenditure and completion deadlines.

### *Chronology*

- 1 March 2019 - Announcement of £2.965m in Town Centre Fund (TCF) grants for Highland Council made by Scottish Government.
- 8 March 2019 – WBM held. Record of meeting documents that Councillors ‘agreed’ that the preferred project for TCF allocation to Nairn should be a new build providing housing and office space for the CAB.
- 13 March 2019 – meeting of Nairnshire Area Committee (NC). No agenda item, discussion or minuting in respect of the TCF scheme.
- 5 April 2019 – WBM held with further discussion of project proposal.
- 2 May 2019 – WBM held with further discussion of project proposal.
- 16 May 2019 – The Council’s EDI Committee formally endorsed a report EDI/26/19 on Economy and Regeneration, including the TCF. Paragraph 7.4.3 of the Report states:

*‘The top priority for any project is to give people a reason to be in the town/city centre by re-purposing buildings for housing, retail, business, social and community enterprises, services, leisure and culture, tourism and heritage. The secondary priority, and ideally one that is undertaken in support of the re-purposing of buildings, is to improve town centre access and infrastructure.’*

Appendix 2 of the Report details Decision-Making as follows:

*Decisions on the use of the fund rest with the Council and can be used on Council or third party (public sector bodies, private sector bodies or individuals) capital expenditure. It can be anticipated that social enterprises or community*



*organisations will be eligible if they are companies limited by guarantee/shares. The Council is expected when making investment decisions, to do so:*

- in the context of the Scottish Government's policy steer for town centres, e.g. Town Centre First Principle*
- based on approaches that are collaborative and place based with a shared purpose, e.g. town centre strategies*
- after being informed by tools and support available, e.g. Town Centre Toolkit*

*It is proposed that the decision-making process is as follows:*

- To deliver on the Council's localism commitment and to bring decision-making closer to communities, it is proposed that Area Committees become involved in identifying and recommending which projects are awarded Town Centre Funding. To aid this work, indicative area allocations have been identified – see below. Officers will assist members to identify, assess/score and rank eligible projects.*
- Allied to this and to provide contingency funding in case indicative area allocations are insufficient to enable a priority project to proceed, it is proposed to retain a strategic reserve fund which will 'top-up' grant awards. If an area is unable to utilise its allocation, the residual funds are returned to the strategic reverse fund.*
- A cross-party sub-group, Chaired by the Chair of Environment, Development and Infrastructure Committee, will then consider the ranked eligible projects and approve funding, utilising as appropriate the strategic reserve fund. Meetings outwith the Area Committee and EDI Committee timetable will be required and delegated authority given to the cross-party sub-Group.*

The Council also published a TCF information sheet online on 16 May 2019. This referred to and attached a project pro-forma for applications, for submission by 1 July 2019.

- 31 May 2019 – Members met to discuss TCF. (Whilst the Council evidenced that this meeting took place, they were unable to provide a record of what was discussed at the meeting, albeit an action point of the WBM on 7 June 2019 refers back to this.)*
- 7 June 2019 – WBM held with discussion of details of proposed project.*
- 12 June 2019 - meeting of NC. No agenda item, discussion or minuting in respect of the TCF scheme.*

- 1 July 2019 – deadline for submission of project proposals.
- 9 August 2019 – WBM held during which members ‘agreed to progress’ the project plan for a new housing block and CAB offices and to demolish the Old Police Station (‘King Street building’).
- 11 September 2019 - meeting of NC. No agenda item, discussion or minuting in respect of the TCF scheme.
- 13 September 2019 –WBM held. By this time, design plans were available for a new 3 storey housing block with office space for CAB.
- 3 October 2019 – meeting of TCFWG to consider shortlist of bids from each Area Committee, select those to be awarded funding and to approve the grants.
- 11 October 2019 – WBM held. Minutes state ‘members in agreement to progress with demolishing the [King Street] building and taking forward the building project’.
- 30 October 2019 – further meeting of TCFWG to consider shortlist of bids from each Area Committee, select those to be awarded funding and to approve the grants. Report TCF/01/19 included mention of a single project proposal for Nairn.
- 7 November 2019 – meeting of EDI committee, ratifying decisions of the TCFWG.
- 8 November 2019 – WBM held, during which there was discussion of occupancy of new building by CAB. Councillors are recorded to have asked for breakdown of project costs and funding sources.
- 19 November 2019 – article on front page of local newspaper announcing the proposed project.
- 27 November 2019 - meeting of NC. No agenda item, discussion or minuting in respect of the TCF scheme.
- 6 December 2019 – WBM held. Records of meeting show that decisions had been taken, and instructions given, to reconfigure the building design drawing to avoid including Common Good Land within the project site.
- 23 January 2020 – WBM held. Record indicates that members ‘agreed’ that a demolition warrant for the adjacent Old Police Station ‘should be submitted’.

*Some of the documentation in respect of the above-mentioned WBMs was not provided by the Council in the evidence submitted to the SPSO, but was provided by C.*

## **Decision**

23. I have carefully considered the decision-making process for allocating the Town Centre funding in Nairn. As set out above, the decision-making arrangements

were agreed at the meeting of the EDI Committee on 16 May 2019. It is not in dispute that the TCF cross-party working group had the delegated authority to make decisions on the allocation of Scottish Government Town Centre Funding, and that this part of the process was followed. It is the part of the process *preceding* this stage which has been under particular scrutiny in this investigation. It was agreed by the EDI Committee that Area Committees were to choose and prioritise projects for their areas, and the TCF cross-party working group was to consider the ranked eligible projects and approve funding.

24. Although C complains about a lack of engagement with community groups, the press release following the EDI Committee meeting did place details of the funding in the public domain. However, the decision making-process set out by the EDI Committee was as follows: *“To deliver on the Council’s localism commitment and to bring decision-making closer to communities, it is proposed that Area Committees become involved in identifying and recommending which projects are awarded Town Centre Funding. To aid this work, indicative area allocations have been identified... Officers will assist members to identify, assess/score and rank eligible projects.”*
25. The Council have highlighted ambiguity in the phrase ‘become involved’, noting this is open to interpretation. They have explained that within the Council the interpretation was that the Councillors elected to represent an area should be involved in the project identification process rather than Council Officers on their own. The Council also pointed out the statement in Appendix 2 of the EDI Committee report that ‘meetings outwith the Area Committee and EDI Committee timetable will be required’. They referred to paragraph 6.2 of the report to the TCFWG of 3 October 2019, which also states that assessments were undertaken at informal briefings. The Council’s position is that this indicates there was no expectation among the Elected Members that the assessment and identification of projects should be made at a public meeting of the Area Committees.
26. Whilst discussions about which projects to recommend may legitimately have taken place at Ward Business Meetings, my understanding is that decisions about which projects to recommend to the TCF cross-party working group for funding should have been taken at Area Committee level. The Council have failed to provide a reasonable explanation as to how the process agreed by the EDI Committee was followed. Area Committee meetings were held on 12 June and 11 September 2019, yet at neither meeting was there any tabled discussion of which project(s) to recommend to the TCF working group for allocation of

funding. There is no public record as to how the decision to recommend the CAB project was reached. Whilst the Council have highlighted that discussion took place at a members' meeting held on 31 May 2019, they have been unable to provide a record of the meeting.

27. Even if it is accepted that the agreed process may have been open to interpretation as regards the involvement of Area Committees, importantly, the Council have provided no evidence as to why the CAB project was considered eligible. Had the Council been following their own process, as agreed by the EDI Committee in May 2019, a pro forma would have been completed setting out details of the project, how it met the eligibility criteria, and its anticipated costs.
28. The decision-making process lacks transparency. The Council have not provided any evidence that 'officers assisted members to identify, assess/score and rank eligible projects'. The Council have argued that there was only one suitable project, but even if that was the case there was a failure to demonstrate why it was considered to meet the eligibility criteria and the basis on which it was being recommended to the cross-party working group. There should have been a clearly documented record as to why this particular project was being recommended. The Council have not been able to evidence the basis on which this project was assessed as meeting the eligibility criteria.
29. Taking all of the above into account, the Council have not satisfied me that they followed the process set out by the EDI committee regarding the allocation of Scottish Government Town Centre Funding in Nairn. I consider this sufficient to amount to maladministration and therefore, on balance, I uphold this complaint.

Organisation: The Highland Council

SPSO ref: 202002615

## Recommendations

### Learning from complaints

The Ombudsman expects all organisations to learn from complaints, and the findings from this report should be shared throughout the organisation. The learning should be shared with those responsible for the operational delivery of the service as well as the relevant internal and external decision-makers who make up the governance arrangements for the organisation, for example elected members, audit or quality assurance committee or clinical governance team.



What we are asking The Highland Council to do **for the complainant**:

Rec. number	What we found	What the organisation should do	What we need to see
1.	<p>Under complaint 1 we found that the Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn.</p> <p>Specifically, we found that the Council failed to evidence how in Nairn they followed the agreed process that Area Committees become involved in identifying and recommending projects. There was no public record as to how the decision to recommend the CAB project was reached. There was no evidence as to how this project was assessed as meeting the eligibility criteria.</p>	<p>Apologise to C for failing to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn, by:</p> <ul style="list-style-type: none"><li>• failing to evidence how in Nairn they followed the agreed process that Area Committees become involved in identifying and recommending projects.</li><li>• failing to provide a public record as to how the decision to recommend the CAB project was reached; and</li><li>• failing to provide evidence as to how this project was assessed as meeting the eligibility criteria</li></ul> <p>The apology should meet the standards set out in the SPSO guidelines on apology available at <a href="http://www.spsso.org.uk/information-leaflets">www.spsso.org.uk/information-leaflets</a></p>	<p>A copy or record of the apology.</p> <p>By: 14 March 2023</p>



We are asking The Highland Council to **improve the way they do things**:

Rec. number	What we found	Outcome needed	What we need to see
2.	<p>Under complaint 1 we found that the Council failed to follow appropriate processes when making decisions regarding the allocation of Scottish Government Town Centre Funding in Nairn.</p> <p>Specifically, we found that the Council failed to evidence how in Nairn they followed the agreed process that Area Committees become involved in identifying and recommending projects. There was no public record as to how the decision to recommend the CAB project was reached. There was no evidence as to how this project was assessed as meeting the eligibility criteria.</p>	<p>Decision-making processes are followed, and the rationale for decision-making (including which projects to recommend for funding) is publicly available in the form of meeting agendas and minutes.</p>	<p>Evidence that the findings of my investigation have been fed back to the individuals involved, in a supportive manner, for reflection and learning.</p> <p>By: 14 March 2023</p>