

Rt Hon John Swinney MSP  
First Minister of Scotland

 Scottish Government  
Riaghaltas na h-Alba

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Florence Garabedian  
Interim CEO Friends of the Earth Scotland

21 August 2024

*Dear Florence,*

I received correspondence from yourself and your colleagues at Friends of the Earth Scotland on 19 July 2024 that alleges that a number of current and former Ministers have acted in such a way as to prejudice the energy consents process and in doing so to have breached the Scottish Ministerial Code ("the Code").

The specific issue that you are referring to in your correspondence relates to the planning application from SSE and Equinor who are seeking consent under section 36 of the Electricity Act 1989 for the construction and operation of a Combined Cycle Gas Turbine generating station in the vicinity of the Peterhead Power Station in Aberdeenshire.

You raised two propriety points, that I am happy to respond to as below, in relation to actions of current and former Ministers that you state have caused prejudice; and to improper record keeping.

I hope that you will be assured throughout my response of my consistent commitment to propriety and transparency. I have been clear during my time throughout Government and most certainly during my time as First Minister that I intend to lead a Government that is willing to listen to all views and to respect and work with all partners in order to determine what is in the best interests of the people of Scotland. Those relationships, founded on mutual respect and trust, can only work if we all continue to uphold the Principles of Public life, ensuring integrity, accountability and honesty at every level of leadership.

I have therefore considered your correspondence and the allegations within it very carefully, against the terms of the Scottish Ministerial Code, and most particularly those that your complaint refers to: the relevant parts of Section 8 that focuses on planning decisions, and the relevant parts of Section 4 that focus on contacts with external individuals and organisations. Due regard has also been given to due paragraphs 9.27 to 9.32 which provide guidance on contacts with commercial companies.



I can firstly confirm that the application under consideration in your correspondence was received on 18 February 2022 and this application has yet to be determined.

Turning to the allegations that Ministers have acted in breach of Section 4.23 and 4.24 of the Code by meeting with SSE and Equinor without keeping proper records of those meetings. Of the sixteen entries on the Lobbying register as set out in your correspondence, twelve of these engagements are clearly stated to have taken place in either a party political or constituency capacity. This includes the event cited in your correspondence referring to an engagement between Mr Gray in his capacity as then Cabinet Secretary for Wellbeing Economy, Fair Work and Energy and Ben Walker of SSE and dinner event held at the Royal Botanic gardens on 7 September 2023. This event was the Holyrood garden party and political awards and was attended by Mr Gray in a political / personal capacity. Section 4.26 of the Code is clear that the requirement to register any relevant lobbying activity lies with those who lobby, and not with Ministers. There is no consequent incumbent action required of Ministers to have recorded these meetings on the published list of Ministerial engagements, travel and gifts, or on the Government record, unless the discussion turned to official business. As there is no evidence of this having happened during any of these meetings it is clear to me that the Code is not engaged and that none of the alleged breaches are substantiated.

The remaining four meetings listed relate to engagements that were undertaken in a Ministerial capacity by Mr Gray in his capacity as then Cabinet Secretary for Wellbeing Economy, Fair Work and Energy; by Mr McKee in his capacity as then Minister for Business, Trade, Tourism and Enterprise; and by Mr Lochhead in his capacity as then Minister for Just Transition, Employment and Fair Work. For each of these occasions, and contrary to the allegations in your correspondence, a reference is provided in published list of Ministerial engagements, travel and gifts<sup>1</sup>. I am also assured that there is a Government record of the meetings in the Ministerial diary, and in the form of Ministerial briefing. Minutes for these engagements are also stored on the government record, with the exception of Mr Gray's attendance at the DeCarb Scotland conference, but there is no expectation or requirement to minute general conference attendance, unless specific meetings were held in the margins of that. As that was not the case here, there is no requirement for either Ministers or officials to have added anything to the record. Obligations in respect of transparency and recording of meetings have therefore very clearly been met and none of these instances breach the Code.

With regard to the allegation that Ministers have breached the Code 'by showing a general pattern of favour towards the developers, meeting with them repeatedly during the planning period whilst neglecting objectors' you do not provide any evidence to suggest that any of the discussions between Scottish Ministers and the developers over the period the application has been live have been to discuss the application.

As is set out in section 9.27 of the Code, 'regardless of their responsibilities, all Ministers will come into contact with private sector businesses from time to time. Invitations to events are commonplace and are part and parcel of Ministerial life.' It is no surprise, and should not need defending, that a number of Ministers, over a period of time, have engaged with colleagues from across the businesses within SSE group, given their existing workforce and investment profile in Scotland, and as key stakeholders in a critical industry. I would also

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<sup>1</sup> [Ministerial engagements, travel and gifts: July 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-engagements-travel-and-gifts-july-2023/pages/1-100.aspx) and [Ministerial engagements, travel and gifts: February 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-engagements-travel-and-gifts-february-2024/pages/1-100.aspx) and [Ministerial engagements, travel and gifts: May 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-engagements-travel-and-gifts-may-2022/pages/1-100.aspx) and [Ministerial engagements, travel and gifts: March 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-engagements-travel-and-gifts-march-2023/pages/1-100.aspx)



point out that a number of the MSP meetings listed in your correspondence were held with SSEN Transmission, an entirely separate business within the SSE group to that dealing with the planning application for Peterhead. The governance model for SSE group is available on their website and clearly shows a delineation between the accountability lines for SSEN and other aspects of the business.

With regard to the allegations that Ministers have acted in breach of the Code in meeting with SSE and Equinor without due regard to the provisions in Section 8 of the Code, you have alleged ten individual breaches.

Two of these are highlighted in your correspondence as examples of where you feel specific vocal support for the application is alleged to have occurred.

The first of these relates to Scottish Government and SSE media products around a visit to Peterhead by former First Minister Humza Yousaf. The tweet highlighted in your complaint refers to Carbon Capture Utilisation and Storage (CCUS) being vital to Scotland's transition to clean energy, and is in line with existing Scottish Government policy in that regard. The press release speaks more broadly to the opportunities of CCUS, as well as urging the UKG to conclude their process around the Acorn scheme. Whilst there are delivery interdependencies between the Acorn scheme and the s36 application for the Peterhead development, I refute your interpretation of the former First Minister's position. His quote is focussed on impressing urgency on the then UKG with regard to their climate-change commitments and decision making around any Scottish cluster. It is also the case that the briefing for this visit makes very clear that "there is a live s36 planning application in on SSE's new Peterhead CCS plant with the Energy Consents Unit which [you] cannot comment on". In light of these considerations I do not consider there has been any breach of Section 8 of the Code because there is no evidence of the former First Minister having offered public or private support for the Peterhead application, or having made any statement on the merits of that application.

Your correspondence also states that Mr Matheson, in providing a quote for the SSE press release on the publication of the 'Powering the Next generation' report, acted in breach of the Code by inferring a degree of support for the associated proposed development of the site.

I have considered this under para. 8.3(a) of the Ministerial Code, which notes that 'action that might be viewed as being prejudicial includes...expressing an opinion publicly on a particular case which is before, or may subsequently be referred to, the Ministers(s) for decision.'

Mr Matheson was not the Planning Minister at the time and would not have had the primary decision making role in respect of any recommendation on the application. His quote speaks to the established Scottish Government position of support for carbon capture technology and recognises the potential benefits of that technology as referred to in the report, and does not speak directly to the application.

Finally, the remaining eight of the allegations set out in your correspondence are based on a misunderstanding or misrepresentation of Ministerial obligations under the Code. One of these relates to Mr Gray having presented an award at event sponsored by Peterhead Power Station. There are no provisions in the Code that inhibit Ministers attending and presenting at award ceremonies, even those where developers for live applications may be

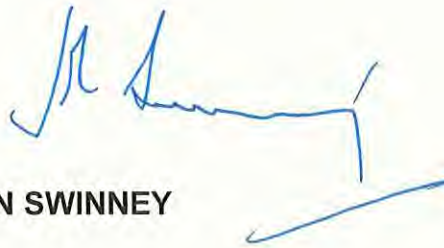


in attendance. This is particularly the case where the Minister in question has no locus in determining the outcome of the application that is under consideration.

A further seven allegations refer to briefings that former and current Ministers have received from officials ahead of meetings/engagement with SSE. As being in receipt of official briefing is a passive act on the part of Ministers, there is no provision within the Code that can be deemed to apply here; Ministers cannot act in breach of the Code if they themselves have not undertaken the action. Nonetheless, I sought and received assurance from senior officials on the advice provided in those briefings and am satisfied that there is no evidence of impropriety on behalf of officials in terms of material provided to Ministers in undertaking these meetings.

I conclude based on the considerations set out in detail in this letter that the actions to which you refer in your correspondence of 19 July do not represent any breach of the Scottish Ministerial Code. I hope that this response provides you with reassurance that obligations towards transparency and integrity are well met and that guidance on Ministerial conduct has been considered and followed, and will continue to be so in order to ensure that the Scottish Government maintains the highest standards of propriety.

*Your sincerely,*

A handwritten signature in blue ink, appearing to read 'John Swinney', with a long horizontal stroke extending to the right.

**JOHN SWINNEY**