

## Scottish Parliament Region: South of Scotland

### Case 200500369: South Ayrshire Council

#### Introduction

1. On 2 September 2005 the Ombudsman received a complaint against South Ayrshire Council (the Council) from Mr C. Mr C complained that the Council failed to consult all interested parties in relation to a proposal, and ultimately a decision, to relocate and re-designate Tarbolton Nursery School.
2. I have investigated Mr C's complaint that the Council failed to consult all interested parties.
3. Following the investigation of all aspects of this complaint I concluded that the complaint should not be upheld, see paragraphs 6 to 17.

#### Investigation and findings of fact

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of documentation relating to a similar complaint against the same authority, together with internal reports relating to South Ayrshire Schools Estate Public Private Partnership (PPP) dated 4 September 2002; the Council's response to proposed housing developments in areas including Tarbolton, dated 15 December 2004; a report by the Director of Education, Culture and Lifelong Learning (ECLL), dated 16 March 2005, concerning a proposal to relocate and re-designate Tarbolton Nursery School; a subsequent consultation document relating to that proposal; advertisements concerning the proposal inviting representations and giving the date of public meetings and the Education (Publication and Consultation etc) (Scotland) Regulations 1981 and Amended Regulations 1987, 1988 and 1989. A written enquiry was made of the Council on 11 November 2005 and their response was received on 16 January 2006.
5. I have set out my findings and conclusions below and, although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

**Complaint: the Council failed to consult all interested parties**

6. At a special Council meeting on 12 December 2001, members agreed to submit an outline business case for a PPP to the Scottish Executive. The Council's proposals in connection with this included the proposal to relocate Tarbolton Nursery School into Tarbolton Primary School. This was subsequently advertised to the public with a meeting being held on 12 February 2003. On 6 March 2003, after consultation, the Council's Policy and Resources Sub Committee approved the outline business case.

7. In their response to me on the related case referred to in paragraph 4, the Council said that, in the course of developing their Capital PPP programme, it became clear that developers were reluctant to take on refurbishments and that this was being reflected in the costs quoted. The Council said that they, therefore, formed the view that refurbishing schools under PPP did not represent Best Value and that traditional procurement methods were more appropriate. The Policy and Resources Committee then dropped Tarbolton Nursery School from the PPP package on 11 February 2004.

8. Nevertheless, while the Council made changes to the procurement process, they did not amend their decision to rationalise educational accommodation and they continued to move this policy forward. In doing so, they required to undertake a statutory consultation exercise and a consultation document was drafted by ECLL. Political approval to consult was given on 16 March 2005.

9. Meanwhile, a Local Plan Inquiry had begun on 24 August 2004 to consider proposed housing developments in the area, including in Tarbolton. Mr C was directly involved in the Inquiry and, on 23 December 2004, received a copy of a report prepared by ECLL to inform the Inquiry Reporter. This made reference to the Council 'currently reviewing the accommodation at the school and it is likely that the capacity of the school will be reduced'.

10. Mr C holds strong views about Tarbolton Nursery School and, when he became aware of the consultation document (see paragraph 8), he wrote to the Director of ECLL on 20 March 2005. He said that consultation should be as wide as possible and asked whether a public meeting would be held. Before a reply

was sent to him, the Council, in terms of the Education (Publication and Consultation etc) (Scotland) Regulations 1981 and Amended Regulations 1987, 1988 and 1989, advertised their proposals to relocate and re-designate Tarbolton Nursery in the press, advising of a public meeting to take place on 12 April 2005. They invited written representations from interested parties by 20 April 2005.

11. On 7 April 2005, the Director of ECLL replied to Mr C's letter of 20 March 2005 and said that the procedure required formal consultation with stakeholders, who in terms of the legislation were parents and guardians. He said that, although he would have no objections to any member of the wider community attending the public meeting, his report to the ECLL Committee would be based on the views of key stakeholders as defined in the legislation. While Mr C said he was concerned at this, he was more concerned to learn that the proposed public meeting had been cancelled and he postulated the reasons for this in the press. However, I am aware that the Director of ECLL decided not to proceed with the consultation process on the timescales originally envisaged. He said that when more reflective conditions were created it would begin again. The consultation process was eventually extended to 7 October 2005.

12. Mr C continued to maintain his concerns about the consultation process and wrote on 26 April 2005 asking for clarification. This resulted in letters from the ECLL Department dated 26 and 28 April 2005 repeating information previously given; that the consultation process was being carried out in terms of the relevant legislation and that only the details of responses from individuals prescribed by the legislation would be passed to the Lifelong Learning Committee. This exchange of correspondence continued until September 2005 when Mr C made his complaint.

13. I accept that the Council's policy to relocate and re-designate Tarbolton Nursery School stemmed back at least to their initial business case for PPP. Although the Council subsequently changed the means of procurement to facilitate these proposals, the policy remained unchanged.

*The Council failed to consult all interested parties: Conclusion*

14. Mr C takes the view that the Council failed to consult all interested parties about their proposals but I am satisfied that the Council acted in terms of the appropriate legislation. There is no doubt that they were aware of local opinion

and I have had sight of a report to the Lifelong Learning Committee dated 7 December 2005, which noted that 63 responses were made by people other than those covered by the consultation regulations, together with a 726 signature petition. All these documents were available to members of the Committee.

15. The Council has a very broad duty to the public and this was spelled out to them in advice from the Scottish Executive sent to all local authorities on 30 September 2004. In particular, the advice stated that: 'Among other statutory duties, authorities have to make adequate and efficient provision of school education in their area. That requires them often to look at issues from a somewhat different perspective from that of parents and local communities. An authority's responsibilities cover the whole of its area, whereas the focus of parents or the local community is, quite understandably, on their local school at a particular point in time.' I am satisfied that in relation to Tarbolton School and Nursery the Council have acted in accordance with this advice.

16. Mr C considered the term 'interested parties' to have a wider application than the Council, but this difference of opinion does not amount to an allegation of maladministration or an example of service failure. There is no doubt that feelings were running high in the local community and, as a consequence, the authority did not meet its initial deadline for the consultation process but in fact timescales were extended. Arguably, more time was given to make representations and I do not criticise the Council for their action in relation to this particular matter.

17. Taking all this into account, I do not uphold Mr C's complaint.

27 June 2006

**Explanation of abbreviations used**

Mr C	The complainant
The Council	South Ayrshire Council
ECLL	Education, Culture and Lifelong Learning
PPP	Public Private Partnership