

Case 200600586: Midlothian Council

Summary of Investigation

Category

Local government: Community services; community councils

Overview

The complainant (Mr C) raised concerns that Midlothian Council (the Council) had failed to consult with the relevant community council (the Community Council) about the closure of leisure centres in the area.

Specific complaint and conclusion

The complaint which has been investigated is that the Council did not consult adequately, and as required by the Council's Code of Conduct for the Exchange of Information, with the Community Council in relation to proposals to close two leisure centres (*upheld to the extent that the Council were unable to justify their position*).

Redress and recommendations

The Ombudsman recommends that the Council properly consider whether it is necessary to consult with community councils when taking decisions which could reasonably be viewed as matters of importance to a particular area.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. The complainant (Mr C) raised concerns that Midlothian Council (the Council) had failed to adequately consult with the relevant community council (the Community Council) prior to taking the decision to dispose of a number of local leisure centres (the Leisure Centres).

2. Towards the end of 2005, the Council instituted a review of their assets. The Community Council asked the Council to report back to local communities to allow discussion of the conclusions arising from the asset management review before any decisions were made.

3. On 18 April 2006, the Director of Community Services produced a report for the Cabinet of the Council (the Cabinet) which explained that the Leisure Centres were surplus to requirements. In his report, he stated that 'it was not felt relevant to undertake consultations for this report'.

4. On 1 August 2006, Mr C complained to the Council about their failure to consult with the Community Council prior to taking the decision that the Leisure Centres were surplus to requirements.

5. The Council responded on 30 August 2006 and acknowledged that they could have dealt with certain user groups better. They also stated that they did not consider that they were under any requirement to consult with the Community Council in this circumstance. The Council explained to me that they would enter into dialogue earlier and, should a similar circumstance arise in the future, that wider consultation would be undertaken.

6. The complaint from Mr C which I have investigated is that the Council did not consult adequately, and as required by the Council's Code of Conduct for the Exchange of Information, with the Community Council in relation to proposals to close the Leisure Centres.

Investigation

7. During this investigation, I considered the background documentation submitted by Mr C which included the complaints correspondence with the Council. I obtained copies of relevant minutes and reports and made specific enquiries of the Council. I also made enquiries of several local authorities to

obtain an overview of how they engaged with community councils. I examined the Council's Scheme for the Establishment of Community Councils and the Convention of Scottish Local Authorities report entitled 'Local Authorities and Community Councils: Enhancing the Relationship'.

8. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council did not consult adequately, and as required by the Council's Code of Conduct for the Exchange of Information, with the Community Council in relation to proposals to close the Leisure Centres

9. The Code of Conduct for the Exchange of Information states that 'the Council and each Committee shall defer consideration of matters of importance to a particular area, pending the receipt in a reasonable time of the views of the Community Council concerned'.

10. Mr C argued that, given the strength of local opposition to the closure of the Leisure Centres, it could reasonably be deemed to be a 'matter of importance to [the] particular area'.

11. In his report to the Cabinet, the Director of Community Services stated that 'it was not felt relevant to undertake consultations'. In response to Mr C's complaint, the Council stated that consulting with the Community Council in such a situation was discretionary and that there was no obligation upon the Council to do so.

12. I spoke to Community Council liaison officers from two other local authorities about how they engaged with community councils and, in particular, whether they would consider it standard practice to consult with community councils about the closure of facilities such as leisure centres. Both officers to whom I spoke concurred in the view that community councils would not routinely be consulted in these circumstances and that it would be up to a local authority to decide whether they considered that this was necessary in any particular circumstance.

Conclusion

13. The Code of Conduct for the Exchange of Information requires that before making decisions on matters of importance to a particular area, the Council

gives community councils an opportunity to provide their views. There is no definition of what may constitute a matter of importance to a particular area, nor, in my view, is it reasonable to expect that there should be one. Clearly the particular circumstances of individual cases need to be taken into account in reaching decisions on whether consultation with community councils is required.

14. In considering Mr C's complaint it is not for me to substitute my judgement for that of the Council. Rather I must decide whether there is evidence that there was maladministration in the process by which the decision not to consult was reached.

15. The Director of Community Services considered whether consultation was necessary and reached the decision that it was not. It must be inferred from that decision that he concluded the closure of the Leisure Centres was not a 'matter of importance' to the area. Mr C has argued that, given the strength of local opposition to the closure, it could reasonably be deemed to be a matter of importance to the area. While I do not consider that the strength of opposition alone is necessarily a conclusive determinant of importance in this context it is clearly a factor to be taken into account. In the absence of other, stronger, contra-indications, this might point towards a decision to consult. However, at no point in the correspondence with Mr C, or in the course of this investigation, have the Council provided any information about the basis on which the decision was reached. The evidence before me gives me no grounds to conclude that the decision was self-evidently wrong or perverse. Additionally, other local authorities have told me that they would not always consult with community councils in these circumstances. However, in the absence of evidence of the basis for the decision I cannot safely conclude that it was properly reached. In all the circumstance and on balance I, therefore, uphold this complaint.

Recommendation

16. The Ombudsman recommends that the Council properly consider whether it is necessary to consult with community councils when taking decisions which could reasonably be viewed as matters of importance to a particular area.

17. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Council	Midlothian Council
The Community Council	The community council in the area where the Leisure Centres were being closed
The Leisure Centres	The leisure centres which the Council decided were surplus to requirements
The Cabinet	The Cabinet of the Council