

Scottish Parliament Region: West of Scotland

Case 200500060 & 200600224: West Dunbartonshire Council

Summary of Investigation

Category

Local government: Education; Secondary

Overview

Mr C complained of receiving misleading information from, and obstruction of information by, West Dunbartonshire Council (the Council) during a consultation process on the future of denominational secondary education in his area.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) provision of misleading information (*partially upheld*);
- (b) obstruction of information requested by the complainant (*not upheld*);
- (c) maladministration of school rolls (*not upheld*);
- (d) maladministration in a report to the Children's Services Committee (*not upheld*);
- (e) maladministration of the complaints procedure (*not upheld*);
- (f) false and incompetent research (*not upheld*);
- (g) misrepresentation in correspondence to elected politicians (*not upheld*); and
- (h) categorisation and characterisation of parents to third parties (*not upheld*).

Redress and Recommendations

Although I consider that the complainant was provided with some confusing information in the early stage of this matter, I do not propose to make any recommendations in regard to this. I do not consider that, overall, it seriously prevented the complainant from making representations on the Council's proposals. Throughout the remainder of the consultation, information was provided to the complainant and he had and took opportunities to make his views known.

Nevertheless, closures or mergers of schools are contentious issues which generate great strength of feeling. Authorities should remain aware of the need to

provide as much information and detail as early as possible in the process. I have noted that, in this case, the Council carried out an early, informal consultation in addition to the statutory consultation required by regulations.

Main Investigation Report

Introduction

1. In a complaint form of 6 April 2005 and a letter of 14 April 2005, the Ombudsman received a complaint (Complaint 1) from a man (referred to in this report as Mr C). He alleged that, during an informal consultation with parents on the future of denominational secondary education provision in Clydebank, West Dunbartonshire Council (the Council) provided misleading information to parents and obstructed attempts to gain important information. Mr C made a second complaint on 15 March 2006 (Complaint 2) in which he made further complaints about the formal stage of the consultation process after it commenced in February 2005. In view of the stage reached with Complaint 1 and the overlap of complaints, I decided to accept this second complaint directly from the complainant. He alleged that there was maladministration in a number of the Council's actions.

2. The complaints which I have investigated from Mr C are:
- (a) provision of misleading information;
 - (b) obstruction of information requested by the complainant;
 - (c) maladministration of school rolls;
 - (d) maladministration in a report to the Children's Services Committee;
 - (e) maladministration of the complaints procedure;
 - (f) false and incompetent research;
 - (g) misrepresentation in correspondence to elected politicians; and
 - (h) categorisation and characterisation of parents to third parties

Jurisdiction

3. The Ombudsman notified the Council of Complaint 1 on 23 May 2005 and the Council's Chief Executive raised a question of jurisdiction. Mr C had signed his letter of 14 April 2005 as Chair of St Andrew's School Board. School Boards were established pursuant to The School Boards (Scotland) Act 1988 and the Chief Executive stated that it was an established legal tenet that statutory entities can only act within the boundaries of their statutory authority. A School Board acts as an agent of the local education authority, and such agent is not able to raise any form of action against its principal while acting in that capacity. The Chief Executive questioned the School Board's locus to pursue a complaint against the

authority. He also said that, in a separate document submitted to the Children's Services Committee in June 2005, Mr C had raised the question of seeking judicial review of the Council's consultation procedure after receiving the Ombudsman's decision. The Chief Executive asked the Ombudsman to consider whether a complaint by an agent of the Council against itself was competent, and whether the stated intention to seek judicial review fell within the restrictions listed in section 7 and schedule 4 of the Scottish Public Services Ombudsman Act 2002.

4. Consideration was given to these issues. Confirmation was received from Mr C that he had made his complaint to the Ombudsman as a member of the public and this was accepted. The availability of judicial review was not seen as a bar to the Ombudsman's jurisdiction unless there was information that there was a definite intention to exercise such remedy. There was no information that this was the case. It was decided to proceed with investigation of the complaint.

Background

5. Circulars 8/2001 and 2/2004 issued by the Scottish Executive Education Department (SEED) on 30 September 2004 contain guidance on local authority proposals for the school estate, including school closures. Where an authority proposes to change existing school provision in any of various ways, including closing, merging or changing the site or catchment area of a school, it is required by the Education (Publication and Consultation Etc) (Scotland) Regulations 1981 (the Regulations) to publicise its proposal, consult parents and School Boards affected and allow them and other interested parties a minimum 28 day period to make their views known to the authority. 'Building Our Future: Scotland's School Estate' (the Guidance) describes the process for preparing a school estate management plan and provides a systematic practical approach to option appraisal for all capital investment projects.

6. The investigation of Complaints 1 and 2 involved obtaining and reading relevant documentation relating to proposals for the regeneration of the school estate in West Dunbartonshire. This included Council documents, committee reports, minutes of meetings, emails and other correspondence between the Council and elected representatives, and the Outline Business Case (OBC) which was presented by the Council to the Scottish Executive. Reference is made in the complaint to the calculation of school rolls. I have been advised that no national

standard method of predicting future school rolls exists and that some local authorities, including West Dunbartonshire Council, use a method devised by a former Strathclyde Regional Council/Inverclyde Council officer. The method works by calculating future rolls based on current school rolls, the number of children born and expected to be born in the future within the authority, the denominational split, the ratios of children going from each primary to each secondary school, levels of migration into or out of the authority and new housing likely to be built within the authority. The method makes certain assumptions about variables; for example, over the projection period, factors such as the distribution of each new Primary 1 intake across the authority will be the same as in the current P1, placing requests will stay the same, migration levels will not change, primary to secondary transfer rates will not change and staying on rates will remain the same. However, the future number of births and exact location of these children remains unknown; nor is it known if the current level of migration of school pupils out of the authority will continue or reverse, or if more secondary pupils will choose to stay on to S5 and S6. As a result, school roll projection is not seen as an exact science.

7. I have not included in this report every detail investigated, nor commented on every point raised by the complainant, 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.

Investigation

8. The Council first began to consider the regeneration of the school estate prior to 2003. Preparation of an OBC was commenced, but the project was not proceeded with at that time. In June 2003, a report by Her Majesty's Inspectorate of Education stated that the Council should take action as a matter of urgency to address over-capacity in schools and improve the quality of the building stock. On 25 June 2003, the Council instructed the Chief Executive to bring forward proposals for the regeneration of the school estate. A report entitled 'Costed Options for consideration of an Outline Business Case' was presented to a meeting of officers and members of the Council on 18 December 2003. The report set out 15 options for the regeneration of the school estate, based on providing Community Learning Centres. Among these were five options for the future of denominational secondary and primary schools. They included various proposals for retaining two separate, denominational, secondary schools in Clydebank,

St Andrew's High School and St Columba's High School, with rolls of 750 and 700 pupils respectively. The report also included an option for a Community Learning Centre combining St Andrew's and St Columba's secondary schools and St Eunan's Primary, Early Education and Childcare Centre.

9. In early 2004, other briefing papers were prepared for members as part of the options appraisal process. Following this, the Chief Executive presented a report to the Council on 8 March 2004 which set out the case for regeneration under the Public Private Partnership (PPP) initiative. It included an OBC for submission to the Scottish Executive in terms of the criteria contained in SEED circular 8/2001 and provided information on an independent conditions survey of school buildings which had been carried out by the Chartered Institute of Public Finance and Accountancy (CIPFA). The OBC stated that information from the General Register Office of Scotland 2001 census showed a decline in population to 2016. The 5 -15 age group was predicted to fall by 24.7% with an obvious impact on school rolls; the population decline was reflected in growing over-capacity in primary and secondary schools, and within the Council's area there was substantial over-capacity which was likely to grow.

10. The Chief Executive's report described proposals to create four new denominational and non-denominational Community Learning Centres incorporating secondary and primary schools, special needs education, community education and other facilities on each of the sites. In regard to denominational secondary schools, the report included a proposal to amalgamate St Andrew's High School and St Columba's High School stating that, during the options appraisal process, the retention of these schools as stand-alone, new build schools had been considered, but assessed not to be viable. It was considered that a single, amalgamated school presented a much better educational alternative and would have specific advantages including flexibility of class sizes, co-operative teaching, a wide range of course options and good arrangements in terms of management and pastoral support. Appendix 1 of the Chief Executive's report showed that the pupil capacity of St Andrew's was 1257 and St Columba's was 1235, current rolls were 860 and 838 respectively, and the schools were at 68% of capacity. In March 2004, the Council applied for Scottish Executive funding for a PPP project to redevelop the Council's school estate. Funding for the project was announced by the Scottish Executive in June 2004.

11. In the course of the investigation, the Director of Education and Cultural Services confirmed that school roll projections are carried out by officers each year as a matter of routine. He said that they are a tool used by officers, but the proposals contained in the OBC, and the option of an amalgamated denominational school for Clydebank, were not based on specific roll projections but on a range of considerations. These included HMIE (Her Majesty's Inspectorate of Education) concerns about over-capacity in the secondary sector, general population trends as shown in census returns, and the wider educational advantages provided by the amalgamated school.

Complaint 1

12. The Council decided to hold an initial, informal consultation on the OBC prior to and in addition to the statutory consultation which would be required under the Regulations. The informal consultation commenced in March 2004. On receiving the report and the OBC, Mr C requested information from the Council on school rolls, placing requests from primary schools and other data relating to St Andrew's and St Columba's. Relevant information was provided including print-outs of sheets showing school rolls for St Andrew's and St Columba's.

13. In early April 2004, Mr C asked for further information, including copies of pupil rolls printed from the attendance system. The tables he received showed a migration factor of -7.9% for pupils from primary schools and he asked to be informed (1) how this had been calculated and (2) how to interpret print-outs showing how placing requests were operated. He received a response on 6 April 2006 from a Council Education Officer (Officer A) who advised that, for roll projection purposes, the Council used the census roll; and the figure for migration was calculated on the basis of actual migration from primary schools over the previous year. Officer A did not elaborate on the -7.9% figure which was included in the information previously given to the complainant, but he said a figure of -1% for the current year's calculation erred on the side of being conservative. Information on placing requests was also provided.

14. Mr C replied saying he found the information incomplete and not in the format requested. He again requested copies of the pupils on the roll printed from the attendance system for all Catholic primary schools associated with St Andrew's

and St Columba's High Schools. After receiving further information, the complainant emailed Officer A and again asked for clarification about the migration figure of -7.9% used in the spreadsheet which had been supplied, how this figure reflected migration in as well as out, and how migration within the local authority was reflected.

15. On 29 April 2004 Officer A sent a response saying that a draft OBC had been prepared two years previously and all figures had had to be revisited. He said that the OBC which had recently been submitted to the Scottish Executive did not refer to actual roll projections, but only to over-capacity and population decline as predicted by the General Register Office of Scotland (GROS). The consistent trend in the actual number of births in the Council area had, in fact, been 8% less than predicted by GROS. He said it was inevitable that over the years when no new schools were planned, the roll projections exercise was subject to a lot less scrutiny than now, and that the questions which had been posed by Councillors and Mr C had been helpful in making the figures more accurate. Officer A provided the previous year's migration figure for each individual primary and secondary school and explained how primary and secondary migration figures were calculated.

16. On 7 May 2004, Mr C wrote to the Council asking to be provided with denominational roll projections and the work undertaken by officers on regeneration factors in roll projections. The Leader of the Council (Councillor 1) replied on 21 May 2004 saying that latest roll projections for St Andrew's and St Columba's took account of information from Planning and Housing, placing requests, information from primary schools and the birth rate. Based on the Head Teachers' returns for budgetary purposes, expected rolls for August 2004 predicted fewer pupils than the roll projections, and showed a steady decline in the denominational population of Clydebank.

17. Responses to the informal consultation were due in May 2004. Mr C did not personally submit a response to the informal consultation, other than as a member of St Andrew's School Board which body did submit a discussion paper and sought consultations with the Council on it.

18. On 8 September 2004, in advance of a meeting to be held on 23 September 2004 between parents, members and officers, Mr C identified further information he wanted. The information included:

- the methods/model used for calculating pupils from new housing and its relation to models used by other local authorities;
- regeneration calculations for pupil numbers;
- new housing data for Clydebank built in the last five years, referenced to the local plan and Clydebank Rebuilt;
- rolls for all Catholic primary and secondary schools in Clydebank on spreadsheets;
- a clear statement of any migration factor used and the assumptions that supported its use (ie migration model and data for Catholic primary and secondary schools in Clydebank);
- an explanation of methods used to create this model, and its relation to models used by other local authorities; and
- placing request data going back as far as possible for each High School, and future projection.

19. Additional details were requested on other factors which might affect school rolls, for example, the movement of pupils between West Dunbartonshire and neighbouring authorities. Information was also requested on how the Council were planning for the best and worst case scenarios arising from regeneration of the area under the Clydebank Rebuilt project.

20. Council officers prepared a document dated 19 September 2004 setting out their responses to the headings in paragraph 18 and the additional factors. Mr C was present at the meeting with parents, Councillors and Council officers on 23 September 2004 when these and other issues were discussed. He produced minutes showing what follow-up action or information officers had been asked to provide.

21. On 6 October 2004 Mr C emailed the minutes to those who were in attendance, including Officer A and the Director of Education and Cultural Services (Officer B), and Councillor 1 and another member, Councillor 2. An outcome of the meeting was that Officer A arranged for a presentation to be given to parents on all aspects of roll projections including housing and migration. This was held on

26 October 2004 by an officer of Inverclyde Council whose methods had for some years been used by the Council in calculating school roll figures.

22. On 1 November 2004, Officer A emailed the complainant saying he had not received a copy of the minutes of the 23 September 2004 meeting, but from his own notes he was providing information about the following:

- the roll projection term of the programme;
- the number of placing requests in the roll projection programme;
- that every housing development notified by the Department of Development and Environmental Services (DD & ES) was included in the roll projection figures;
- a breakdown of 60 housing units on two sites and information on how the pupils per household figure was calculated;
- that the Council's document 'Housing Land Supply 2003' indicated these two sites were the largest developments built in Clydebank in the last eight years, and the larger the site, the more likely it was to be representative;
- that other authorities who had provided comments on the effects of new housing on school rolls believed that new housing would not necessitate additional space requirements in school, because it would relocate existing population, not attract new population;
- migration rates based on pupil censuses for 2002/3 and 2003/4 were provided and the Clydebank denominational secondaries' migration figure was given as -1.1%.

23. Mr C regarded this information as incomplete and the following day he emailed Officer B and Councillor 1. He again attached the minutes of the 23 September 2004 meeting and asked that the information requested at the meeting be provided urgently. Replies were not received and, on 22 December 2004, Mr C attended a meeting of the Council and raised this matter at the Open Forum part of the meeting. He referred to a paper with a list of points extracted from the minutes of the meeting and asked for assurance that the information requested (14 items) would be provided prior to the start of the formal consultation process.

24. The following day, Officer B wrote to Mr C saying he had been surprised to hear that Mr C was still awaiting information, given that information had been

provided at, and subsequent to, the meeting on 23 September 2004. Officer B referred again to the fact that a copy of the minutes had not been received from Mr C. Mr C replied on 30 December 2004 repeating that copies of the minutes of the meeting were sent by email to different parties on 2 and 4 November 2004. Officer B confirmed on 31 January 2005 that checks had been made and that neither he nor Officer A had received the minutes.

25. On 16 February 2005 Mr C sent a complaint to the Chief Executive complaining of deliberately being given misleading information and being obstructed in attempts to gain important information. The thrust of the first complaint was that the information initially provided during the informal consultation in March 2004 was misleading and could not have been the information on which the OBC was based. The documents Mr C said he was given had included a migration factor of -7.9% and contained information relating to pupils from new housing and an estimate of new housing which could not have been the information on which the OBC was based. Mr C contended that, in March 2004, officers had developed no model for calculating pupil numbers from new homes and had no historic data or clear model for calculating pupil migration. He said parents had accepted a migration figure of 7.9% at face value; it only emerged later that the information was misleading as evidenced by subsequent comments from Officer A in his email of 29 April 2004 in which he said that the OBC submitted to the Scottish Executive referred only to over-capacity and decline in population as predicted by GROS.

26. Mr C said that if Clydebank regeneration and migration calculations had been fully and properly carried out prior to the 'Building Our Future' report on 8 March 2004, they would have been available when requested during the informal consultation. Instead, parents were provided with information which purported to underpin the serious decision to close St Andrew's High School, only for it to be revealed later, in response to questioning by parents, that the information was out of date. In Mr C's view, this amounted to misleading parents.

27. In regard to the second complaint of paragraph 25, Mr C pointed to the lack of response to the request for information following the meeting of 23 September 2004, and to the emails and minutes which he had sent to Officers A and B and Councillors 1 and 2. Although he had received information from

Officer A in an email of 1 November 2004, he regarded the information as incomplete.

28. The Council replied to the complaint on 14 March 2005 with a report by the Council's Monitoring Officer. With regard to the complaint about parents being given misleading information, the Monitoring Officer said that the Department of Education and Cultural Services (DE & CS) provided information which demonstrated that arrangements had been in place for many years for the purposes of calculating pupils coming from new homes. The information had been reviewed and it was not considered to be misleading; it was wrong to assert that revision and updating of roll projection information rendered previous information misleading. With regard to the complaint that Mr C's attempts to gain information were obstructed, this was unjustified. The position was that, following the 23 September 2004 meeting, the request for information was contained in emails sent by Mr C on 6 October, 2 and 4 November 2004. Information Services Section had investigated and established that the emails were indeed sent by Mr C. However, the server from which they were received was set in such a manner that Mr C's emails were treated as incoming spam; the Council's spam filter blocked them and, as a result, the officers did not receive the emails. The Monitoring Officer did not find the complaint to be substantiated.

29. Mr C submitted his complaint form and letter to the Ombudsman on 6 and 14 April 2005 respectively. He said the main part of his complaint related to being given misleading information and he considered the substantive issues of that complaint were not addressed in the Council's response to him. Regarding the second aspect of the complaint, that the Council had obstructed supply of information, he said no reply had yet been given to requests for information as detailed in a paper which he put to the Council meeting on 22 December 2004. Mr C also said that doubt was cast on the Council's claim that they did not receive the emails which he sent. He pointed out that the Chief Executive had written to him on 7 October 2004 replying to one of the emails which the authority claimed had not been received.

30. The Chief Executive replied to the Ombudsman on Complaint 1 in a letter dated 14 October 2005. He set out the background to the proposed redevelopment of the Council's secondary and primary school estate and said that

the Council had entered into discussions with interested parties, separately from and beyond the statutory consultation process which the Council requires to undertake as part of any formal process to close or relocate a school. The statutory consultation process itself commenced in February 2005.

31. In regard to ground (1) (complaint (a) at paragraph 2) of the complaint that misleading information was given to Mr C, the Chief Executive considered that the Monitoring Officer's initial response did address the points raised in the complaint. Regarding ground (2) (complaint (b) at paragraph 2) of the complaint that the Council obstructed the provision of information, the Chief Executive identified points raised in the minute of the meeting of 23 September 2004, and replied as follows:

Council to Arrange a Workshop with the Inverclyde Officer

This meeting took place on 26 October 2004.

Further Meeting to discuss WDC data

A meeting of St Andrew's School Board took place on 16 January 2005.

Model Used for calculating pupils from new housing. An explanation of methods used to create this model. Its relation to models used by other local authorities

These issues were addressed in a variety of correspondence including Officer A's email of 1 November 2004.

All Regeneration Calculations for Pupil Numbers and all new housing data for Clydebank (all areas identified clearly, new housing built in the last five years included, referenced to Local Plan and Clydebank Rebuilt)

Some of these were dealt with in Officer A's email of 1 November 2004, others through the Council forwarding land supply figures to another parent who was referred to in the minute, and through contacts with an officer of the Forward Planning section of DD & ES. The Chief Executive provided a note of a meeting which Mr C had with the Section Head Forward Planning & Regeneration (Officer C) on 24 May 2004. Mr C had advised Officer C that his intention was to demonstrate that St Andrew's High School should remain open given an increase in population. In his note of the meeting, Officer C said he had gone over sites in Schedules H1 and H2 of the 2003 Housing

Land Audit. He had focused on the Quays site and confirmed a capacity of around 800 units based on recent discussions with the site owner and other relevant information. Officer C had advised that, although there would be a loss of population, there would be an increase in households, but average household size would reduce. The Chief Executive said, with the information provided, it was difficult to ascertain how there could be doubt as to what sites were involved in the Council's calculations. The Chief Executive said that even the most optimistic estimates for housing would not have a material impact on pupil numbers.

Rolls for all Catholic Primary and Secondary Schools on Spreadsheets

Copies of the rolls for all denominational primaries had been forwarded in April 2004. The roll projections forwarded to Mr C had as their starting point the rolls of the schools referred to. This information was repeated in the formal consultation document issued to the School Board and parents.

Clear statement of migration factor used and the assumptions that support its use. Migration model and data for Catholic primary and secondary schools in the Clydebank area. An explanation of the methods used to create this model

The Chief Executive considered that Officer A's email of 1 November 2004 provided most of the information sought, in that it provided the assumptions and model data.

Placing request data going back as far as possible for each high school and future projections and factoring of pupils from Drumchapel

The documentation requested at the informal consultation stage provided the information. Whilst the tables referred to net placement figures, the briefing paper provided the 'Ins' information so the 'Outs' could be calculated. It also included placements from Glasgow City Council.

Delivery of e-mails

The Council did not dispute that Mr C sent the emails and the minutes of the 23 September 2004 meeting. A response had been sent following his initial Stage 1 complaint which explained why Mr C's emails were quarantined by the Council's mail server's security settings. Print-outs were provided

showing the relevant details of 18 blocked emails. Mr C had raised doubts about this explanation, citing the fact that the security filter apparently did not block an email which the Chief Executive had replied to. The Chief Executive said the Council were unable to explain why this occurred but were continuing to look into it.

32. The Chief Executive considered that the Council had at all times remained professional, courteous and responsive to Mr C's requests.

33. While Complaint 1 was under investigation, Mr C indicated in June 2005 that he intended to submit another complaint. The formal consultation document on the school estate regeneration proposals had been approved by the Children's Services Committee on 23 February 2005 and was issued for public consultation. Public meetings were held in St Columba's High School on 19 April 2005 and in St Andrew's High School on 20 April 2005. A document dated January 2005 entitled 'St Andrew's High School and the Regeneration of the School Estate, The Views of Parents' was submitted to the Council. A report containing the results of the public consultation was presented to the Children's Services Committee on 15 June 2005. All submissions from parents, staff, School Boards, the Archdiocese of Glasgow and individuals were included, together with the Council's responses to the points made by the consultees.

Complaint 2

34. Mr C's second complaint was received on 15 March 2006, with additional information being received from him in April and May 2006. It was a continuation of the same underlying issues and related to the statutory consultation process concerning the proposed amalgamation of the two denominational secondary schools in Clydebank. In view of this, I decided to accept it for consideration together with Complaint 1. The complainant alleged maladministration under the following headings.

(c) Deliberate Maladministration of School Rolls

35. The thrust of the complaint was that the Council sought to underestimate future denominational pupil numbers; that in the formal consultation document published in February 2005, the Council used information from the 2003 Housing Land Supply document instead of the 2004 document which was published in

December 2004. The result was that the Council failed to count or include in the formal consultation 1355 proposed new houses in the Clydebank area listed in the 2004 Land Supply document. Consequently they omitted approximately 100 to 200 pupils in the projected roll figures. Although in the report to the Children's Services Committee on 15 June 2005, the Council did consider the previously uncounted housing, they simultaneously transferred around 200 pupils from the denominational secondary sector to the non-denominational sector.

(d) Maladministration in a report to the Children's Services Committee on the Results of the Public consultation

36. Mr C said that the report which went to the Committee on 15 June 2005 did not contain mistakes. Rather, there was lack of professionalism in the writing of the report and the report aimed to mislead. In the committee report, the Council had set out the responses received from parents and others during the consultation. The Council replied to or expressed views on these responses, providing comments or clarification where relevant, in some cases disagreeing with points and giving reasons for this. Mr C disputed a number of the comments or observations which the Council made in reply to the responses, asserting that they were false or misleading.

(e) Maladministration of the Complaints Procedure

37. This aspect referred to a complaint sent to the Chief Executive on 1 May 2005 by parent members of St Andrew's School Board, including Mr C. In the complaint, it was alleged that the consultation document was misleading because (1) it used out of date information and did not use the latest land supply document in relation to future house building and (2) it made unsupportable claims that there was no relation between school size and ethos, and was based on incompetent and invalid research contained in a paper produced by Officer A in January 2005 entitled 'School Size Research'.

38. The Chief Executive did not reply to the complaint until 21 September 2005 and incorrectly stated that it had initially been received on 17 February 2005. The complainant informed the Chief Executive that he was confusing this second complaint with one previously submitted. On receiving that information, the Chief Executive acknowledged this and asked the complainant to restate the complaint. Mr C did so and the Chief Executive replied on 27 October 2005 stating that he

considered the impact of land supply figures had already been raised in the previous complaint.

39. The Chief Executive rejected the suggestion that the 2004 land supply figure alone should be applied in substitution for the 2003 land supply and said if the Council had done this, it would have created roll projections which were out of step with the Council's established methodology and would have been open to misinterpretation. The Chief Executive also commented on the research paper which Mr C considered incompetent, saying that it was derived from recent HMIE reports and he was happy that it was based on the attainment of Scottish pupils and the performance of Scottish schools.

(f) False and incompetent research

40. This allegation related to the paper on School Size Research already alluded to in the complaint to the Chief Executive. It was compiled by Officer B in January 2005, one of its stated aims being to review whether recent world-wide research proved a link between secondary school size and levels of pupil attainment. After reading the paper, parents sought advice from a Professor of Education, asking whether he thought paragraph 5.1 of the Council's formal Consultation document might be based on it. The Professor of Education considered the research inadequate and superficial. However, he said the conclusions in paragraph 5.1 of the Consultation document could not have been based on the research, and he stated that the contents of paragraph 5.1 of the Consultation document were fully consistent with the HMIE views expressed over many years.

(g) Misrepresentation and avoidance of openness and accountability in correspondence to elected politicians and categorisation; and

(h) Characterisation of parents to third parties

41. Mr C provided correspondence relating to approaches made to MPs and MSPs seeking assistance or information regarding the school regeneration proposals. Some of the correspondence related to enquiries which these elected representatives made on behalf of St Andrews' High School Board and, as such, is not appropriate for inclusion in terms of a complaint made by Mr C. Overall the correspondence indicates that the Council, in particular Officer B, provided extensive replies to enquiries by elected members. In regard to characterisation of

parents, Mr C cited, among other things, that in a letter to an MP, Officer B described parents of St Andrew's as aggressive. Officer B's reference was to the aggressiveness with which parents had pursued their case, but he said he fully respected their right to make the strongest possible representations. Mr C also interpreted comments by the Chief Executive in his letter to the Ombudsman of 14 October 2005 as seeking to marginalize or diminish parents. The Chief Executive had said that, inevitably, in matters of the magnitude and importance of school closures, feelings can run high and Mr C had chosen, as was his right, to challenge the Council at every opportunity. I did not interpret this, or other comments by the Chief Executive, as an attempt to diminish parents, but rather as a recognition of the difficulties experienced by everyone in such issues.

Conclusions

42. The complaints which I have investigated are set out in paragraph 2 of this report. Having considered all the evidence, I have reached the following conclusions.

(a) Conclusion

43. I have concluded that, in the early stages, when Mr C requested information during the informal consultation, there was some lack of clarity in the responses which he received. The tables with which he was provided appear to have been out of date, as was the migration figure contained in these. No clear explanation was given, and this had the adverse effect that Mr C spent time and effort trying to establish the position. I consider, however, that the Council subsequently made efforts to respond to the issues which Mr C was raising with them. In all the circumstances I partially uphold this aspect of the complaint.

(b) Conclusion

44. I do not consider there was obstruction of information. In preparation for the meeting on 23 September 2004, information was provided at Mr C's request. Mr C was also party to information in a document prepared for parents on 19 September 2004, he participated in meetings with members and officers and in the workshop on roll projection models arranged by the Council and led by the Inverclyde Officer. He may not have been satisfied with the totality of the information, but I do not consider there was obstruction by officers. The situation in regard to the blocking of his emails by the spam filter on the Council's server was

investigated by the Council and fully explained. Although the Chief Executive's receipt of his email of 7 October 2004 could not be explained, I do not consider there is evidence that other emails were received and ignored. I, therefore, do not uphold this complaint.

(c) Conclusion

45. The question here is whether the Council took into account relevant information in assessing whether the future roles of the two denominational schools, currently operating at 68% capacity, would be likely to increase significantly. The authority's views were based on information from GROS, the school roll census and the likely number of pupils from projected new housing. Their position on the latter was explained to Mr C at a meeting with Officer C in May 2004. Mr C has questioned the use of the 2003 Land Supply figure. He made a case for using the 2004 document and the Chief Executive replied to this in his letter of 27 October 2005. While it is the case that Mr C's assessment of the latter differs from the Council's, it appears to me that the Council have taken relevant information into account. I do not uphold this complaint.

(d) Conclusion

46. The report which went to the Committee on 15 June 2005 contained the results of the consultation and comments received from consultees. It is normal practice for officers to respond to points made by consultees and, where relevant, to express views whether in agreement or disagreement with points made. The complainant considered that, in the Council's responses, there was lack of professionalism and that the report aimed to mislead. I do not consider that to be the case. Although the complainant clearly disagreed with the comments made by the Council on some responses, officers were following standard practice in setting out their position and I do not uphold this complaint.

(e) Conclusion

47. The Chief Executive confused a second complaint which he received from Mr C with one which had been previously submitted and was still current. This led to a delay by the Chief Executive in responding to the second complaint, which was unfortunate. Nevertheless, the Chief Executive acknowledged having confused the two complaints and thereafter he responded to Mr C within a relatively short period of time. I am satisfied the matter was, therefore, recognised

by the Chief Executive and put right and I do not consider that further comment is necessary.

(f) Conclusion

48. Officer B's paper gathered together information from HMIE reports. Although it was not an in-depth study, I do not consider Mr C had grounds to categorise it as false or incompetent; nor indeed were these terms used by the professor who was asked to comment on it. Mr C's criticism of and enquiry into Officer A's paper was directed at determining whether it was used as a basis for paragraph 5.1 of the consultation document, and the reply he received was negative. I do not uphold the complaint.

(g) and (h) Conclusion

49. I consider that Council officers took steps to provide elected representatives with substantial information in response to their enquiries on the serious issues raised in these complaints. I take the view that the correspondence was conducted in a professional manner, and I do not uphold the complaints.

Recommendations

50. Although I consider that the complainant was provided with some confusing information in the early stage of this matter, I do not propose to make any recommendations in regard to this. I do not consider that, overall, it seriously prevented the complainant from making representations on the Council's proposals. Throughout the remainder of the consultation, information was provided to the complainant and he had and took opportunities to make his views known.

27 February 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	West Dunbartonshire Council
Officer A	Head of Service, Education & Cultural Services, responsible for Schools' Estate
Officer B	Director of Education & Cultural Services
Officer C	Section Head, Forward Planning & Regeneration
Councillor 1	Leader of the Council
Councillor 2	Council Member
DE & CS	Department of Education & Cultural Services
DD & ES	Department of Development & Environmental Services
OBC	Outline Business Case
GROS	General Register Office of Scotland
HMIE	Her Majesty's Inspectorate of Education
SEED	Scottish Executive Education Department
The Regulations	The Education (Publication and Consultation etc) (Scotland) Regulations 1981
The Guidance	Scottish Executive Education Department Circulars 8/2001 and 2/2004

CIPFA Chartered Institute of Public Finance and Accountancy

PPP Public Private Partnership