

**Case 200800457: Dumfries and Galloway Council**

**Summary of Investigation**

**Category**

Local government: Primary School

**Overview**

The complaint was made by a Primary School Council (the School Council) on behalf of the aggrieved, Mrs A, who is a parent of two children who attend a primary school (School 1) which is due to be closed in 2010, on completion of a new school (School 2) which is being built in its place. Through the School Council, Mrs A complained that Dumfries and Galloway Council (the Council) disregarded the results of the public consultation undertaken in 2004 when they decided to amend the planned accommodation in School 2, without further consultation. She considered that the Council were at fault in failing to provide the public with a further opportunity to make their views known and to vote for or against the amendments. She was aggrieved because she believed that the amended accommodation schedule was inadequate and would result in more than one teacher per classroom. Mrs A complained also that the Council failed to reply to her formal complaint on the matter.

**Specific complaint and conclusions**

The complaints which have been investigated are that the Council:

- (a) failed to carry out further consultation following a change of specification for School 2 (*not upheld*); and
- (b) failed to reply to Mrs A's formal complaint in line with their procedures (*upheld*).

**Redress and recommendations**

The Ombudsman recommends that the Council ensure that their complaints handling systems which are being reviewed make provision for each stage of the process to be dealt with in the timescales which they have set themselves to respond and that an update will be sent to the customer in the event of a delay.

The Council have accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. In 2001, Dumfries and Galloway Council (the Council) embarked upon an overall review of school provision, with a view to determining a level of provision which would meet future needs, provide viable and sustainable schools and inform the developing Public Private Partnership (PPP) initiative for the refurbishing, if possible, of the entire school estate.

2. Council documents record that one of the principal reasons driving the need for a review of school provision was that there was a significant projected fall in pupil numbers with a predicted 26 percent fall in the zero to 19 age group in Dumfries and Galloway between 2001 and 2013.

3. At the meeting of the Schools/PPP Sub-Committee on 4 November 2002, a process for consultation with School Boards<sup>1</sup>, parent groups and local communities (and other public/school board meetings on request) was agreed. Specifically, a public meeting was held on 16 December 2002 in the local Town Hall to consult on suitable sites for the new (replacement) school. The result of this consultation was reported to the Schools/PPP Sub-Committee at its meeting on 6 February 2003.

4. In November 2003, following the community consultation process (see paragraph 3), the Education and Community Services Committee agreed that a primary school (School 1) should close at the end of session 2006/07 or a suitable date, dependent upon the completion of a new school (School 2). However, in 2004 the Council overruled the original decision and decided that no action would be taken on the schools involved in this particular proposal until the outcome from a full consultation on primary and secondary education in the area was known. Further consultation was undertaken with School Boards and the Community Council in 2004 and, subsequently, all interested parties were invited to an Open Meeting in March 2004, when a copy of a consultation paper and a response form were issued to the interested parties, including the parents of all pupils at the schools. The outcome was a majority vote in favour of the proposal to build School 2.

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<sup>1</sup> Under The Scottish Schools (Parental Involvement) Act 2006, School Boards were abolished and provisions were made for the establishment of Parent Councils to represent parents of children attending public schools.

5. A Primary School Council (the School Council) on behalf of the aggrieved, (Mrs A) stated that the school which was being built by the Council (School 2) was very different from the one which was voted for by the public in March 2004.

6. In support of her complaint, Mrs A stated that paragraph 3.4 of the consultation document which was issued with the response form, listed the accommodation in School 2 as 11 classrooms and at paragraph 3.8 it was stated that the final design, based on the accommodation schedule which was attached, would be the responsibility of the successful bidder. Mrs A stated that it was quite clear to the people who voted that School 2, if voted for, would contain the listed accommodation but the proposed layout could vary. However, she complained that, subsequently, the Council reduced the accommodation scheduled for School 2 and justified this amendment on the grounds that the accommodation schedule in 2004 (see Annex 2) was only indicative. Mrs A complained that there was no suggestion that this was the case in the information paper (the consultation document) on which the public were asked to cast their vote and that the Council failed to reply when asked to point to where this was stated.

7. The reason for Mrs A's grievance over the amendment to the schedule was because she believed that the accommodation which was subsequently proposed would be inadequate. She based this on a 10% increase on the Council's predicted school roll for 2006/07 in the catchment area for the two primary schools which were being amalgamated for School 2. She stated that, although school rolls appeared in previous years to be falling, the Council were aware that this trend had bottomed out (report to the Education and Community Services Committee on 25 September 2007). Additionally, 186 new houses were proposed for the area and the population had increased with an influx of temporary workers and their families. Mrs A complained that rather than revert to the original accommodation schedule, the Council proposed to adopt a team teaching approach with more than one teacher per class. Mrs A stated that she did not vote for a school with more than one teacher in a classroom and believed that if this had been proposed in 2004, the result of the vote would have been very different; and the Council were at fault in not carrying out further consultation to give the public an opportunity to vote on what was now proposed.

8. The complaints from the School Council<sup>2</sup> which I have investigated are that the Council:

- (a) failed to carry out further consultation following a change of specification for School 2; and
- (b) failed to reply to Mrs A's formal representations in line with their procedures.

#### *Legislative Background*

9. The roles and responsibilities of education authorities are set out in legislation. The legislation which is directly relevant to proposals to change the status of schools, for example changing the site or providing a new school or discontinuing/closing a school, is the Education (Scotland) Act 1980 (the 1980 Act) as amended by the Education (Scotland) Act 1981; and the Education (Publication and Consultation Etc) (Scotland) Regulations 1981 (the Regulations) plus the various Amendment Regulations made in 1987, 1988, 1989 and 2007.

10. Where an education authority proposes to change existing school provision in any of various ways, including rationalisation (closure), merging or changing the site or catchment area of a school, it is required by the Regulations to publicise its proposal, consult parents and school councils affected and allow them and other interested parties a minimum 28 day period to make their views known to the education authority. In reaching their decision, the education authority must then have regard to comments received. Once the decision is made, the Regulations do not prescribe the time period before it can be implemented. In all cases, the final decision rests with the education authority.

11. Under section 28 of the 1980 Act, education authorities, in exercising their powers and duties, are required to have regard to the wishes of parents so far as is compatible with the provision of suitable education and the avoidance of unreasonable public expenditure. Additional guidance was issued by the former Scottish Executive (now the Scottish Government) in September 2004 on local authority proposals for the school estate, including school closures, where, amongst other advice, it is stated that consultation is key to the whole process: experience and good practice both dictate that there should be real emphasis on both the quality and quantity of consultation.

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<sup>2</sup> on behalf of Mrs A

## **Investigation**

12. Mrs A's complaint was submitted to the Ombudsman in June 2008 and the Council were invited to provide their comments on 27 June 2008. A senior officer of the Council (Officer 1) copied to me a letter he wrote to Mrs A on 26 August 2008. I have discussed the complaint with the School Council and Officer 1. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. The School Council and the Council were given an opportunity to comment on a draft of this report.

### **(a) The Council failed to carry out further consultation following a change of specification for School 2**

13. In his response to Mrs A, Officer 1 provided background information and he explained the Council's actions in relation to the relevant events from 2004 to 2008.

14. Officer 1 stated that an open meeting was held on 18 March 2004 to provide all interested parties with the opportunity of discussing plans for School 2 and to complete a response form. Subsequently, a report was submitted to the Council's Education and Community Services Committee at its meeting on 27 April 2004. Officer 1 commented that the majority of the responses related to issues of traffic generation; the loss of sports facilities; the appropriateness of the PPP approach; the fear of the lack of accommodation, should the school population grow; and the quality of the building. Officer 1 enclosed a copy of the minute of the meeting with his letter to Mrs A and asked it to be noted that the Education and Community Services Committee agreed the proposal to close School 1 at a suitable date, dependent upon the completion of School 2. The Education and Community Services Committee also agreed to address the major concerns expressed during the consultation period and it was Officer 1's understanding that these were addressed at subsequent meetings between officers of the Council, Head Teachers and the then School Boards.

15. In his response to Mrs A's formal complaint, Officer 1 stated that it was accepted that in paragraph 3.4 (which she had referred to in her complaint – see paragraph 6) 'it was not explicitly stated that this accommodation schedule was indicative only'. However, he commented that the main aim of the consultation had been to ascertain the views of interested parties in relation to the closure of the existing two primary schools in the area and the provision of a

replacement school. The Council had agreed to proceed with this proposal based on the outcome of the consultation process and on the basis that the major concerns expressed during the consultation period (see paragraph 14) would be addressed. Through the School Council, Mrs A, in commenting on Officer 1's response, maintained that the response forms which were issued with the voting papers on 18 March 2004 had stated explicitly what the accommodation in School 2 would be.

16. Referring to events in 2005, Officer 1 commented that at their meeting on 12 May 2005, the Council were advised of the outcome of an evaluation of the negotiation processes in connection with the proposed PPP project and agreed not to proceed with that project but to seek the authority of the then Scottish Executive to undertake a re-scoped and reduced PPP project. This authority was granted and the Council recommenced the preparation of an Outline Business case (and the tendering processes for the revised project).

17. Moving on to comment on events in 2006, Officer 1 informed Mrs A that, as part of the process, the accommodation schedules for the revised project were reviewed. At a meeting on 28 April 2006, the Schools/PPP Sub-Committee adopted an accommodation schedule for School 2 which, based on a projected roll in 2010/11 of 199, made provision for eight classrooms with a design capacity of 220 (also shown in Annex 2).

18. One of the issues Mrs A raised in her letter of complaint to the Council in December 2007 was that the Council's changing projections for the school roll did not take account of the trend and she referred to committee reports in 2007, which acknowledged that there was a bottoming out in the falling school rolls. She complained that the Council were not taking this into account in their refusal to increase the size of School 2 to the one which was voted for (see paragraph 7).

19. Officer 1 clarified in his response to Mrs A that the reference in the report to the bottoming out of falling rolls was merely a view at that time and had not been borne out. He pointed to the statement made by the Scottish Government Cabinet Secretary in 2007 regarding smaller class sizes, as part of the Scottish Government's commitment to early intervention and the reports which were presented to the Education and Community Services Committee on 25 September 2007 (to which Mrs A had referred) and a further report which was presented to the Schools/PPP Sub-Committee on 11 October 2007, which

had been produced following the Scottish Government's statement. Officer 1 stated that the Council were required to consider their position, bearing in mind that they had recently committed to a major new-build project for primary schools across Dumfries and Galloway, and that one of the options contained in the risk assessment which was reported on was the possibility of adopting a team-teaching approach. However, the Council had not pursued this option. In comments to the Ombudsman on the complaint in June 2009, Officer 1 stated that figures obtained from the Council's records appeared to show that the rolls had 'bottomed out' (2006/07 248; 2007/08 248; 2008/09 247) but the Registrar General had predicted that there would be a further decline in birth rates in the area.

20. With reference to events in 2008, Officer 1 continued in his letter to Mrs A that on 18 April 2008 the Schools/PPP Sub-Committee agreed to provide an additional classroom (nine) at School 2 based on a projected school roll of 232 in 2010/11. Officer 1 stated that this decision had regard to representations which had been made to officers by the school councils. Officer 1 commented to Mrs A that it was accepted that, after it had revised its PPP Project, the Council did not undertake a similar exercise to that which had been undertaken in 2004 and this was because the initial consultation clearly related to the principle of providing a new primary school and closing the two existing schools plus another. While it was accepted by the Council that the then accommodation schedule made provision for 11 classrooms, Officer 1 pointed out that paragraph 3.3 of the consultation document in fact referred to ten classrooms based on a then projected roll of 250. (NB: this is the figure Mrs A referred to in June 2008 as the current school roll for both primary schools. The school roll at that time according to the Council's records was 247 – see paragraph 19.)

21. Officer 1 acknowledged, in his response to Mrs A, that the process surrounding the PPP Project had taken longer than the Council would have wished and, because of this, the Council had updated their projections to 2010/11 (within the time frame for completion of School 2).

22. The School Council stated that Officer 1's response failed to answer Mrs A's complaint about lack of consultation and the voting process. They said this was because, while Officer 1 had stated that the major concerns were addressed at meetings between the Council, School 1's Head Teacher and the School Boards, this was not the case. The meetings Mrs A attended as a

member of the PTA were not consultation meetings but were, rather, meetings to update School Boards/Parent Councils and parents on the status of the project. The School Council stated that there was no opportunity to change the proposals and the concerns which were expressed in 2004 remained unresolved. Mrs A's complaint was that the Council had changed the specification after they had obtained approval for their proposals and Officer 1's response did not explain satisfactorily why the Council had proceeded without giving Mrs A a further opportunity to express her wishes. Mrs A had advised the School Council that she considered the letter unsatisfactory and asked them to pursue her complaint further.

23. During my subsequent discussions with him on the complaint, Officer 1 stated that budgetary constraints meant that the Council had to proceed with a reduced PPP project. The reduction in the number of classrooms arose from the re-evaluation of the school roll and the Council had to assure themselves that they could justify that 'demand risk' had been accounted for; ie, that the Council could not build a school with a capacity greater than the anticipated school roll, in terms of value for money. Officer 1 now accepted that, at that point, the Council should have gone back to the parents to tell them of the change. However, he commented that there had been full consultation with individual Head Teachers, School Boards (and latterly school councils) in relation to the PPP Project and that this consultation had continued. This was evidenced by the Council's decision in 2008 to increase the classroom accommodation to nine (see paragraph 20) and that information was, therefore, being relayed both to the School Board and School 1.

24. In a supplementary enquiry, I asked Officer 1 if the Council had debated whether it was appropriate to go back out to public consultation, given the change to the accommodation schedule, and he stated that he was not aware of a debate taking place about further public consultation but information on the increase to the number of classrooms was made available to the School Board and the Head Teacher. He accepted, however, that these meetings were meetings giving information, not consultations.

25. School 2 is currently under construction. The current amalgamated school roll is 249. The capacity of School 2 is 250 and the current projected figure for the school roll for its due date of completion (2010) is 232.



*(a) Conclusion*

26. Mrs A took the opportunity to make her views known, when in 2003 she completed a response form issued by the Council to interested parties and gave her view on whether or not she was in favour of School 2, which would serve the catchment area. Having voted on the accommodation schedule contained in the consultation document, Mrs A was aggrieved that the Council failed to provide her with an opportunity to vote again when they subsequently changed the accommodation schedule, based on her view that there had been no suggestion in the consultation documents that the accommodation schedule was indicative only.

27. A decision to close a school through rationalisation, even though it is proposed also to build a new school in its place, will have implications in a community. Under the 1980 Act, when an education authority proposes this type of a change to the status of a school, it is required to publicise its proposal and consult with, amongst other interested parties, the parents of the school children. However, there is no requirement under the legislation or guidance issued by the Scottish Government for the Council to repeat this process and carry out further consultation. While the Scottish Government guidance suggests that consultation is the key to the whole process, it is within a Council's discretion how the consultation is undertaken.

28. The evidence is that, as well as a formal consultation exercise, the Council, through its engagement with School 1, the School Board and the Parent Council, provided information and updates about the changes to School 2 once the decision had been taken in principle. However, Mrs A's grievance related to not being given a say on whether or not School 1 should be closed (and a new school built in its place) given the change to the original specification. I can readily understand why Mrs A believed that what she was voting for was what would be built. Mrs A is also concerned that School 2 will not be fit for purpose because of the reduction in the accommodation in the building which is currently being built. Although the Council have accepted that they should have gone back to parents to advise them of the change, there is no requirement for the Council to carry out further consultation on a proposal of rationalisation of school premises. I am also satisfied that the Council continued to engage with School 1 over the proposed changes and I am unable to conclude that their actions in not consulting again were at fault. Therefore, I do not uphold this head of complaint.

**(b) The Council failed to reply to Mrs A's formal complaint in line with their procedures**

29. The Council's complaints procedure states that when they receive a written complaint, it will be acknowledged in writing within five working days; advice will be given of who will deal with it; and the Council will investigate and get back to the complainant as quickly as possible. The timescale to action is 20 working days from the date the complaint was received. The complaints procedure explains that if an answer cannot be given within this timescale, an explanation will be provided of the reasons and an indication of when the complainant can expect a full response. Furthermore, if the investigation establishes that the Council are at fault, they will apologise and try to put things right. It is explained that a complainant can request that their complaint is referred to a higher level within the relevant service and, subsequently, to that service's Group Manager. If the complainant remains dissatisfied, they are advised that they then have a right to complain to the Ombudsman.

30. Mrs A submitted a completed complaint form (with 51 signatories) to the Council's School Service Manager, Committee and Members' Services Department on 11 December 2007. The Department's Complaints Co-ordinator (Officer 2) acknowledged the complaint on 17 December 2007, with confirmation that it would be investigated and a response would be sent once this had been completed. No indication was given of the timescale for a response.

31. On 9 January 2008, Officer 2 wrote to Mrs A with advice that she was still trying to gather information in order to reply and a response would be sent as soon as the information was to hand.

32. On 1 February 2008, Officer 1 wrote to Mrs A explaining that the initial investigation of her complaint identified that a number of the signatories to the complaint had been in correspondence previously with officers in Education and Community Services on the same issue. Therefore, in order to ensure that the review of their concerns could be undertaken by an officer independent of any earlier responses, he had taken on the lead role to review and investigate the complaint. He indicated that he expected to be in a position to respond by 20 February 2008 but he would inform her if that date could not be met.

33. The date elapsed without a response being given. Mrs A asked the School Council to take up her complaint with the Council but although they sent emails

to Officer 1, the expected reply was not received. She wrote to her MP about the delay in responding and he contacted the Chief Executive on 26 April 2008 on her behalf. On the same day, she asked the School Council to raise a complaint on her behalf with the Ombudsman. Although the complaint had not completed the Council's complaints procedure (no final response from the Council), we exercised our discretion to accept the complaint direct because part of the complaint against the Council was the failure to respond to it.

34. Officer 1's response to Mrs A was sent to her on 26 August 2008 (see paragraph 12). Officer 1 apologised and accepted full responsibility for the delay in responding to the complaint and asked Mrs A to accept that it was not out of any intentional discourtesy to her and her co-complainants. He explained that on receipt of the complaint he had decided, in addition to investigating the issues which had been raised, to ask for a review of the provision of accommodation in School 2. This resulted in the decision in April 2008 to provide an additional classroom at School 2 (see paragraph 20). Officer 1 stated that it was his understanding that the Head Teacher and the Parent Council had been kept fully apprised of these developments and they received regular updates on progress on the new build. In the circumstances, while there had been a delay in responding to her complaint, the Council had taken action to address the concerns she had raised.

35. The School Council commented that Mrs A was extremely unhappy that it had taken the Council over eight and a half months to respond to her complaint, pointing to the timescale in the Council's complaints procedure to provide a substantive response or reasons why this cannot be provided, within 28 days. In additional comments he made, Officer 1 stated that the complaints procedure shown on the Council's web site was not the same as the one under which Mrs A's complaint was considered. The complaint was largely based on documented decisions taken by the Council and the investigation Officer 1 conducted was based on reviewing files and committee decisions.

*(b) Conclusion*

36. In his formal response to Mrs A, Officer 1 accepted and apologised for the time he had taken to respond to her complaint. Some of the time taken can be explained by the reason which he gave for the delay (the review of the provision of accommodation in School 2). However, it is clear that there were long periods of time when there was no contact with Mrs A and, because no updates were given, she did not know if her complaint was being considered. Officer 1

has commented that Mrs A's complaint was not dealt with under the Council's complaints procedure. However, Mrs A's letter of 17 December 2007 was accepted as a complaint and should, therefore, have been dealt with on this basis. Even if it was not considered to be a complaint, the Council needed to reply to Mrs A's correspondence and, if this was likely to take some time, to inform her that the matter was under consideration. Officer 1 has accepted that there was fault and apologised. I, therefore, uphold this head of complaint. The Council are currently reviewing how their customers' comments and complaints are handled. The Ombudsman makes the following recommendation.

*(b) Recommendation*

37. The Ombudsman recommends that the Council ensure that their complaints handling systems which are being reviewed make provision for each stage of the process to be dealt with in the timescales which they have set themselves to respond and that an update will be sent to the customer in the event of a delay.

38. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify him when the recommendation has been implemented.

**Explanation of abbreviations used**

The School Council	A primary school council
Mrs A	The aggrieved
School 1	A primary school
School 2	The proposed new primary school
The Council	Dumfries and Galloway Council
PPP	Public Private Partnership
The 1980 Act	Education (Scotland) Act 1980
The Regulations	Education (Publication and Consultation Etc) (Scotland) Regulations 1981
Officer 1	A senior officer of the Council
Officer 2	The Complaints Co-ordinator

### Accommodation Schedule 2004

- 11 classrooms each with 11 Activity Areas
- Assembly Hall/Gym (approximately 4 times classroom size)
- Dining Area (meals cooked on premises)
- General Purpose Room (Classroom size)
- 2 Tutorial Rooms
- Library/Computing Room
- Learning/Behaviour Support Base
- Medical and Visiting Services Room
- 2 Pre-5 Rooms with separate toilets and outdoor play area
- 1 Childcare Room
- 1 Parents' Room

### Change in 2006

- A reduction in number of classrooms to 8
- A multipurpose hall, gym and dining area
- Meals cooked on site at the Academy
- A reduction of one tutorial room

### Current Accommodation Schedule

- An increase in number of classrooms to 9 with 9 Activity Areas

**List of legislation and policies considered**

Education (Scotland) Act 1980

Education (Scotland) Act 1981

Education (Publication and Consultation Etc) (Scotland) Regulations 1981 plus  
Amendment Regulations 1987, 1988, 1989 and 2007

## Annex 4

### **Current at 2006 and projected figures for catchment area of new school**

Session	2005/06	2006/07	2007/08	2008/09	2010/11
Roll	262	242	229	211	199

### **Actual figures for catchment area of new school up to 2008 and projected figures**

Session	2005/06	2006/07	2007/08	2008/09	2010/11
Roll	.....	248	248	247	232