

## Scottish Parliament Region: West of Scotland

### Case 200500246: Inverclyde Council

#### Introduction

1. On 25 April 2005 the Ombudsman received a complaint from Mr C about the Inverclyde Council's (the Council) proposals to reorganise secondary education in the Inverclyde area. In July and August 2005, a further 130 people also made representations about the proposals and, of these, three went on to make formal complaints to this office. These have been the subject of separate reports to the Scottish Parliament. As the complaints covered the same issue, the decision was reached to investigate the matters raised, together.

2. The complaints which I have investigated concerned:

- (a) failure to follow 'best practice' guidelines in determining the proposed school mergers;
- (b) failure to conduct a proper options appraisal including aspects of site appraisal;
- (c) alleged poor quality of the consultation process;
- (d) alleged poor quality of evidence used in predicting school roll figures and assessing school capacity;
- (e) alleged bias in relation to school catchment areas and number and timing of decants; and
- (f) failure to take other relevant factors into account, for example, educational achievements, impact on travel arrangements and provision of facilities.

3. Following the investigation of all aspects of this complaint, I came to the following conclusions:

- (a) not upheld, see paragraph 8;
- (b) not upheld, see paragraphs 11 and 12;
- (c) not upheld, see paragraph 16;
- (d) not upheld, see paragraph 18;
- (e) not upheld, see paragraph 21; and
- (f) not upheld, see paragraph 23.

#### **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 others, and the Council. Other documentation included a Report to the Education and Lifelong Learning Committee (ELLC) held on 19 January 2005 on the consultation process on Secondary Education (the Report), together with a minute of that meeting and of the special meeting of the Council held on 20 January 2005; the Council's School Estate Management Plan dated February 2005 (the Estate Management Plan); the Outline Business Case, a confidential report dated June 2005 submitted to the Scottish Executive; appropriate sections of the Education (Publications and Consultation Etc)(Scotland) Regulations 1981 and amendments and Scottish Executive guidance to local authorities. Written enquiries were also made of the Council on 29 August 2005 and 21 February 2006 and their replies were received on 15 September and 15 November 2005 and 7 March 2006. I have set out below my findings and conclusions for each head of complaint 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.

#### **Background**

5. Circular No2/2004 issued by the Scottish Executive Education Department on 30 September 2004 (the Circular) contains 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. Under the Regulations (as amended), there is a requirement to refer a proposal to the Scottish Ministers if it involves the closure of a school whose roll exceeds 80% of its capacity. One of the schools involved in this case was more than 80% full and so the proposal was referred to the Scottish Ministers, who have since given consent for its closure. '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.

**(a) Failure to follow 'best practice' guidelines in determining the proposed school mergers**

6. On 20 January 2005, a special meeting of the Council approved a minute of a decision to, amongst other things, build a new denominational secondary school on the site of existing Secondary School 1 to replace Secondary School 2 and Secondary School 1. Mr C was unhappy with this decision and believed that it was reached without the Council following recommended guidelines.

7. The Circular issued to all local authorities on 30 September 2004 (which in fact post-dated the recommendation of the Cross Party Review Group) made reference to the Scottish Executive's recent Options Appraisal guidance and stated that a particular sequence should be used to formulate and consider proposals for change. This sequence was: to develop and assess options weighting, balancing and analysing; decide on the proposal(s); engage in open and genuine consultation and reach, explain and implement the final decision. The Circular went on to say that identifying and considering all relevant factors was a matter for the authority's judgement and discretion, always having regard to the importance of the views, focus and sensitivities of parents. The Circular listed six steps which the process of school estate management should follow. Step 1 required the authority to define authority-wide objectives which, in this case, were held to be that all establishments should be fit for purpose, that educational provisions should be appropriate to the needs of the discrete areas within Inverclyde and that

educational provision should support the social and economic regeneration of Inverclyde. Step 2 required an assessment of the current position. I am aware that the Council had various reports by Her Majesty's Inspectors of Education and the Accounts Commission to help formulate their view and, in the autumn of 2003, they also engaged a firm of independent chartered surveyors to provide an opinion on the existing schools estate. On the basis of this and other information, the Council went on to assess the condition of existing schools and to review needs and priorities (Step 3). Steps 4, 5 and 6 related to the development of the plan, implementation and monitoring.

8. From the extensive information available to me as set out in this report, I am satisfied that the Council were aware of and followed Scottish Executive guidelines, in particular with regard to Steps 1, 2 and 3 which are relevant to this aspect of the complaint. The fact that they used their judgement and discretion in how they treated the information before them and in reaching decisions did not in any way reflect a failure on the Council's part. I do not uphold this aspect of the complaint.

**(b) Failure to conduct a proper options appraisal including aspects of site appraisal**

9. There exists clear advice about options appraisal from the Scottish Executive to local authorities. The Guidance describes the recommended process. From the information available to me I understand that the Council agreed the recommendations of a Cross Party Review Group on Secondary Education that eight secondary schools be reduced to five, comprising three new-build schools and two refurbished schools. These recommendations were the culmination of a series of meetings where the various options were discussed. The consultation on the re-organisation of secondary education was carried out following the Council's decision to proceed on the basis of the Group's recommendations. The options appraisal that was included in the revised Outline Business Case in June 2005 was based on the delivery of the decisions taken by the Council in January 2004 in relation to primary education and in January 2005 in relation to secondary education. The Council said that the aim of this options appraisal was to demonstrate to the Scottish Executive that a wide range of delivery options had been considered and that their preferred choice maximised the level of revenue support for the PPP component of the School Estate Strategy. In order to provide

a basis for comparison, the Council said that each option was costed, and a programme was drawn up and assessed against a set of evaluation criteria. The criteria concerned were education, technical (including sites), the Council's PPP programme and financial considerations. A scoring matrix was then compiled and, as a consequence of this analysis, the Council decided on the option that they considered best met the needs of their area. In their view, the preferred option ensured that all the educational establishments would be fit for purpose, be appropriate to the needs of discrete areas covering all Inverclyde and support economic and social regeneration.

10. In so far as site appraisal was concerned, I am satisfied that as part of the options appraisal the Council looked at potential sites. Of 16 potential sites, it was considered that there were three that were most suitable for secondary schools. Two of these were existing schools and the third was in Council ownership. Local groups questioned the inclusion of this third site, as they considered that it had environmental problems. As a consequence, site investigations were undertaken and a report produced, however, the report indicated that it was unlikely that any contamination would prohibit the site being used for a secondary school.

11. Mr C did not consider that a proper options appraisal took place, particularly as it did not include the status quo as an option. However, I am aware that consideration was given to this. In the Report referred to in paragraph 6, the Director of Education Services makes specific reference to the status quo and the possibility of upgrading existing buildings as far as possible within existing funding. For a number of reasons, not least the declining pupil population in two of the area's denominational secondary schools and the effects this would have on the provision of education and education choices, the Council found this option unacceptable. Accordingly, they pressed ahead with their favoured option. While this was not acceptable to many parents, including Mr C, it is not indicative of a failure of the Council's part with regard to this aspect of the complaint and I do not uphold it.

12. Finally, in connection with options appraisal, concern was expressed whether, once the options were identified, they were subject to sensitivity analysis. The Guidance stated that sensitivity analysis should be fundamental to options appraisal and should be used to test the vulnerability of options to future risks that

might be unavoidable. The Council have confirmed that a sensitivity analysis was carried out on the preferred options, as required by the Scottish Executive guidance. They provided me with details of the analysis. In this case, I am satisfied from our specific enquiries that the Council followed the required procedures and, in the circumstances, I have seen no evidence to suggest that the Council failed in its responsibilities in this regard.

**(c) Alleged poor quality of the consultation process**

13. The Circular stated that consultation was the key to the whole process, with emphasis on both the quality and quantity of consultation. In relation to this, on 3 June 2004 the ELLC remitted to the Director of Education the responsibility of preparing statutory consultation documents. Amongst other things, these proposed that a new school was to be built on the site of Secondary School 1 to replace existing Secondary Schools 1 and 2.

14. On 30 September 2004, the Council gave approval to issue the consultation document on the provision of denominational secondary education across Inverclyde. The appropriate Regulations set minimum requirements for the consultation process and in his Report to Committee the Director of Education Services stated that, 'In accordance with the statutory requirements, parents of the affected schools and school boards were consulted. Copies of the consultation document were also made available to parents, schools' staff, members of the ELLC, teachers' unions, MPs, MSPs and other Council Services'. The Business Case subsequently presented to the Scottish Executive also showed that the Council had undertaken a survey of residents and school board chairs, consulted with staff, trade unions and pupils.

15. The Report also listed the issues raised by objectors and the Council's responses but, nevertheless, concluded that delay in reaching decisions would result in pupils continuing their education in existing, and often inadequate, buildings over a longer period of time and could jeopardise access to PPP Revenue Support Funding.

16. There was no doubt that the Council and Committee were aware of the opposition and strength of feeling in the area. However, given the comprehensive detail which was provided to me by the Council about the way in which they

undertook the consultation process, I cannot conclude that this was in any way faulty. Accordingly, I do not uphold the complaint. Although Mr C and others felt that the Council's ultimate decision was an incorrect one, I have seen the extent of information put to the relevant Committee (including the Director's report and representations) when they considered the matter on 19 January 2005. While a minority of members did not support the recommendations and asked for the matter to be considered by the full Council, a special Council meeting held on 20 January 2005 agreed by a majority to approve the proposals.

**(d) Alleged poor quality of evidence used in predicting school roll figures and assessing school capacity**

17. The Council stated that, as well as inviting written representations, a number of public meetings were held with school boards, trades unions and teaching groups. These meetings were referred to in the Report made to the ELLC meeting held on 19 January 2005. The Report also referred to the criticism that the analysis of roll projection was flawed but stated that a detailed explanation of how the roll projections were carried out was contained in an annex to the Report. The annex contained information on roll projection methodology, its assumptions and provided illustrations of how changes to the assumptions would affect the projections.

18. There were subsequent amendments to the projections and these caused Mr C concern. However, the Council said that, given the number of variables involved in determining roll projections, they were always subject to review. In January 2006, a report detailing the 2005 projections was submitted to the ELLC. The Council said that the 2005 projections confirmed the consistent downward trend in pupil population in Inverclyde. In fact, the 2005 projections showed that in 2015 the overall secondary pupil population would be less than that projected in 2004. This was notwithstanding the growth of population in areas like Wemyss Bay and Inverkip. In the circumstances, I am not persuaded by the complainants' arguments and I do not uphold the complaint.

**(e) Alleged bias in relation to school catchment areas and number and timing of decants**

19. It has been alleged that the Council are guilty of bias, in that the model used to predict school rolls was unique to Inverclyde. In connection with this, the

Council told me in their letter of 7 March 2006 that they adopted the model used by the former education authority, Strathclyde Regional Council. It was their view that this took account of factors including the Registrar General's population projections, actual birth figures, the number of pupils in each stage of primary and secondary education, patterns of migration, placing requests, denominational/non-denominational split of pupils, staying-on rates and new house building projections. I consider that this information is comprehensive and I do not take the view that by adopting this model the Council showed any bias towards any particular section of the community.

20. In his Report, the Director of Education refers to the need to decant children attending denominational schools. He said that this arose from three main factors – the lack of suitable sites, the aim to locate new schools as centrally as possible within their catchment areas and the desire to maximise investment by bringing in new schools as quickly as possible. It was evident to me that consideration was given to avoiding the decant of Secondary School 2, by delaying construction of the proposed new school on that site until the new denominational school had been built on the site of Secondary School 1. However the Council considered that this would delay construction, lead to increased costs and consequently less funding for reinvestment. Similarly, the decant of both Secondary School 1 and 2 was favoured against the option to decant Secondary School 1 to Secondary School 2 due to the combined roll numbers and the timeframe for planning such a move.

21. Although parents with children at these schools may disagree with the merits of this approach, I have seen no evidence to suggest that the Council failed to consider relevant factors or used faulty procedures in reaching these decisions. Accordingly, I do not uphold this complaint.

**(f) Failure to take other relevant factors into account, for example, educational achievements, impact on travel arrangements and provision of facilities**

22. The complainants believed that the Council's proposals had not taken account of the achievements of the schools which are to be amalgamated. It was their belief that they should remain separate, with their respective buildings being refurbished. However, the Council insisted that the new amalgamated school



would take the best that both schools offered and put it into a modern educational environment. They emphasised that it was their duty to consider education across the region and ensure that there was adequate and efficient provision for future generations. While that was the case, the Council remained aware of the implications of their proposals on children attending, or who would attend, the two secondary schools concerned (not least as far as travel and general disruption was concerned) but they balanced this against their duty and responsibility to the community as a whole. Undoubtedly there were tensions, but this did not necessarily imply that there had been maladministration or service failure.

23. I am satisfied from the Report that the Council were fully aware of the impact of their proposals, the consultation process illustrates this. I note that when the matter went to the full Council for a decision it was agreed to proceed with implementation of the proposals. Therefore, I cannot uphold the complaint on this score.

### **Conclusion**

24. The Council had a difficult situation to handle. Their responsibility in terms of the Guidance was to the wider community and current and future generations of parents and their children. At the same time, they had an obligation to manage the concerns of parents like Mr C, who were anxious about the implications of the proposals for their children. This was especially so given Mr C's commitment to, and confidence in, his children's school. Regrettably, in this case, it has not been possible to satisfy the interests of all those involved and Mr C is likely to be disappointed at the outcome of his complaint to this office. Nevertheless, after considering the extensive information available, I am satisfied that the Council acted in accordance with established guidelines and procedures and, when the proposals were to be considered, the full Council agreed by a majority to approve them. In all the circumstances, I do not uphold Mr C's complaints.

27 June 2006

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Inverclyde Council
The Report	A report to the Education and Lifelong Learning Committee held on 19 January 2005
The Circular	Circular No2/2004 issued by the Scottish Executive Education Department
The Regulations	The Education (Publication and Consultation Etc) (Scotland) Regulations 1981
The Guidance	'Building Our Future: Scotland's School Estate'
The ELLC	The Education and Lifelong Learning Committee
The Estate Management Plan	The Council's School Estate Management Plan dated February 2005