

Scottish Parliament Region: South of Scotland

Case 200501457: South Ayrshire Council

Introduction

1. On 31 August 2005 the Ombudsman received a complaint from a member of the public (Mr C) about South Ayrshire Council (the Council).

2. Mr C complained about the closure of public toilets in Ayr by the Council and, in particular, the recent closure of a public toilet at X Road. Mr C was concerned that the closure of such facilities was not in the interests of public health and that the Council had not considered the needs of the community, including the disabled, when reaching its decision.

3. The complaints from Mr C which I have investigated concerned:

(a) whether the Council were entitled to close public toilets in Ayr in 2005 and, in particular, the toilet in X Road;

(b) whether the Council, in reaching the decision to close the public toilets, considered the needs of the community, including the disabled, and any potential health risks for the public.

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

(a) not upheld, see paragraph 21;

(b) not upheld, see paragraphs 22 and 23.

5. In summary, I do not uphold these complaints as I did not find evidence of maladministration in the way the Council reached their decision to close public toilets in Ayr in 2005, or that the closures have resulted in a service failure by the Council.

Investigation and findings of fact

6. The investigation of this complaint involved examination of the correspondence provided by Mr C, making enquiries of the Council and assessing the responses and documentary evidence provided by the Council.

7. In order to avoid duplication, I have outlined the investigation and findings of fact under a joint heading of both complaints. The conclusions are listed separately. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Both the Council and Mr C have been given an opportunity to comment on a draft of this report.

(a) Whether the Council were entitled to close public toilets in Ayr in 2005 and in particular, the toilet in X Road; and

(b) Whether the Council, in reaching the decision to close the public toilets, considered the needs of the community, including the disabled and any potential health risks for the public

8. On 14 June 2005, Mr C wrote a letter of complaint to the Council about the closure of public toilets in Ayr. He explained that he had recently been 'caught short' when he found that the X Road toilet had been closed. He stated that he could not 'conceive that the closure of essential toilet facilities is in the interests of human health' and asked why the toilets in Ayr were being closed.

9. On 20 June 2005, the Council responded to Mr C's letter. The Council stated 'these measures were taken following approval by the appropriate Council Committee and have been subject to the normal decision making process within the Council'. The Council also explained that they were 'not aware of any health risk to the public as a whole arising from the decision taken to close certain public conveniences'.

10. Mr C was dissatisfied with this response and on 28 August 2005 wrote a letter of complaint to this office. In this letter, he explained 'at least one of the closed facilities contained disabled accommodation for the handicapped, of which I am one'. On 5 September 2005, I advised Mr C that he should complete the Council's complaints procedure before this office would consider his complaint and that he should, therefore, write to the Chief Executive of the Council.

11. Mr C wrote to the Chief Executive of the Council on 7 September 2005. On 18 October 2005, the Chief Executive of the Council responded to Mr C's letter. He explained that the Council had had to make savings in the revenue budget for 2005/2006 and that the Councillors had, therefore, 'approved an overall reduction in the revenue budget of £150,000 for the provision of public conveniences'. He said that the situation was regrettable but that 'faced with the legal requirement to set a balanced budget Councillors have no alternative than to make some very difficult prioritisation decisions'.

12. On 25 October 2005, Mr C advised me that he had completed the Council complaints procedure and on 14 November 2005 Mr C sent copies of all correspondence on his complaint to this office.

13. On 15 December 2005, I made enquiries of the Council regarding Mr C's complaint. When responding, the Council included a copy of the Report by the Director of Environment and Infrastructure on the 'Revenue Budget Savings 2005-2006 – Public Conveniences' to the Council Commercial and Business Services Committee. A summary of the decision by the Committee to approve the recommendations contained in the report was also included. The report showed that three public conveniences in Ayr had been put forward for closure, one being the X Road facility.

14. The report submitted to Committee, detailing the proposed revenue budget savings, stated that there was no public consultation in relation to the closure of the public toilets. The Council advised that there was no requirement for them to carry out a public consultation in such circumstances. They stated that, when looking at potential closures of public facilities, a view would be taken by the Council on the amount of involvement and interest by the community in the area under review and a decision on public consultation would be made on that basis. They also confirmed that the closures were made as part of a budgetary process and that that process was not subject to public consultation.

15. In response to my further enquiries, the Council stated that there was no specific procedure for the closure of public toilets which the Council are required to follow which details the steps which must be followed, or the factors which must be taken into consideration, when reaching a decision to make the closures.

16. They explained that, as the closures were put forward as part of the budgetary process, the procedure which was followed was that required for the Council's normal budgetary process. They provided a copy of a 'Fundamental Review and Revenue Budget Draft Timetable' which they claimed detailed the typical budgetary process which the Council is required to follow.

17. The draft timetable showed that the proposed budget savings should be considered by a Budget Working Group. The Council stated that a draft copy of the Report by the Director of Environment and Infrastructure on the 'Revenue Budget Savings 2005-2006 – Public Conveniences' was discussed at the Budget Working Group and that the needs of the community, including the disabled, were considered. I have been advised by the Council that this meeting was not minuted. The Council stated that the report was later finalised and put to committee for approval.

18. When responding to my enquiries, the Council further stated that 'in identifying the public conveniences affected by the need to make savings within the 2005/2006 budget, the process undertaken by the Department was to minimise the impact of the proposals on the wider community as a whole and to maintain, as far as is practicable, an acceptable level of service provision to the majority of users within the town centre environs, including the disabled'. They stated that the toilets which were retained were the ones in the areas that had the highest visitor numbers and those that were closed 'were in areas where it was felt that there was overprovision or where they weren't in use or were vandalised'.

19. The Council stated that many of the toilets which were retained met the requirements of the Disability Discrimination Act 1995. They produced a 'National Key Scheme guide on Accessible Toilets for Disabled People' which provided information on public toilets for disabled people in different parts of the country. The guide included the names of all but one of the public toilets in Ayr shown in the report to the Council Commercial and Business Services Committee. The Council also stated that, while the now closed X Road toilet generally met the DDA requirements, it was purely a seasonal toilet (May – September) which had very low usage and that there are toilets, with facilities for the disabled, accessible by members of the public at a nearby Heritage Centre.

20. Further, the Council stated that there is no legal requirement for them to provide, as a duty, public conveniences and provided a copy of an article in an Institute of Wastes Management publication entitled 'Public Conveniences – Policy Planning Provision', which supported this statement.

(a) Whether the Council were entitled to close public toilets in Ayr in 2005 and, in particular, the toilet in X Road: Conclusion

21. I am satisfied the Council was entitled to make the decision to close the three public toilets in Ayr in 2005. The Council have explained that the closures were made as part of the budgetary process and that they had to make some difficult prioritisation decisions when setting their budget. I recognise that it is a matter for the Council to determine its own budgetary priorities and that, in doing so, it can be difficult to satisfy the needs of the community as a whole. Accordingly, I have not found evidence of administrative or procedural error in this regard or that, by closing the public toilets, the Council have failed to provide a service which it has a statutory function to provide.

(b) Whether the Council, in reaching the decision to close the public toilets, considered the needs of the community, including the disabled, and any potential health risks for the public: Conclusion

22. The decision to close the three public conveniences in Ayr was made by a validly constituted meeting of the Council's Commercial and Business Services Committee. The Council have confirmed that, in making the report to the Committee on which the decision was based, the Department of Environment & Infrastructure and the Budget Working Group considered the needs of the wider community, including the disabled. While the Council have not been able to provide documentary evidence to support this, I have taken into account the Council's comments on the low usage and seasonal opening hours of the X Road toilet and the existence of alternative facilities nearby.

23. I have, therefore, not found evidence of maladministration in the Council's consideration of the proposed closures. However I believe that, as a matter of good administrative practice when considering the closure of a public facility, such as a public toilet, the Council should have a clear and well written procedure for staff to follow. In particular, they should ensure that the proposal has been

properly considered and that the decisions taken and the reasons for them are documented. I would draw this to the Council's attention.

27 June 2006

Explanation of abbreviations used

Mr C

The complainant

The Council

South Ayrshire Council