

Suspension of Barr Community Council by South Ayrshire Council on 9th April 2024

Report by R S Allan, Chair Dundonald Community Council. 20th April 2024

1.0 Purpose

1.1 The purpose of this report is to provide an overview of the procedure and circumstances surrounding the suspension of Barr Community Council on the 9th April 2024. The report will consequently provide independent advice to the members of the Community in consideration of an Appeal.

2.0 Experience

2.1 I am the current Chair of Dundonald Community Council. I have many years of experience at senior management level within local authorities. Since 2009, I have been a Chief Officer, in my most recent post I was Corporate Director/Acting Chief Executive for a Scottish Local Authority. My remit included Legal Services which in turn managed corporate governance of Community Councils, the application of Standards in respect of Elected Members and officer compliance with Council Standing Orders, Code of Conduct, etc

3.0 Background to complaints in respect of CC meetings on the 13th Oct 2022 and 10th Nov 2022 time period 13th Oct 2022 to 11th Jan 2023.

3.1 Barr Community Council has been subject to two complaints processes in this time frame.

3.2 The first is associated with two meetings in late 2022 (13th Oct and 10th Nov) and concerned alleged misuse of the agenda, inappropriate behavior by some Community Councillors toward others, inaccurate minute taking, allegations that a specific member posted inflammatory messages on their personal social media site, and that generally the Community Council was not conducting business in line with SAC Guidance.

3.3 South Ayrshire Council states in submissions that there is dispute in the village between a SCIO seeking to complete a Community Transfer of a Community Hall (which South Ayrshire Council supports) and the Community Council which is not wholly supportive. Meeting minutes confirm that this has been ongoing for many years. There have been significant tensions due to this, there is an element of polarisation within the Community Council due to at least two Community Councillors being associated with the SCIO.

3.4 The process of formal complaint in respect of both meetings was not followed by the complainants or South Ayrshire Council. Instead of complaints being submitted to the Community Council in line with the General Complaints Procedure, complaints were instead submitted to South Ayrshire Council. South Ayrshire Council on receipt of the complaints advised Barr Community Council in a letter dated 26th Oct 2022, that the Council would be carrying out an

investigation. Barr Community Council were not provided with the content of complaints until the 31st October.

3.5 Following the meeting of the 10th November 2022, further complaints were apparently submitted to South Ayrshire Council, the content of this was not provided to the Community Council until the 4th Jan 2023.

3.6 On the 11th November however, the Service Lead for thriving Communities wrote to Barr community Council advising that the Community Council was suspended. The reason for this was apparently due to the seriousness of complaints raised following the Community Council meeting on the 13th Oct and 10th Nov, albeit that the Community Council was not aware of the content of the complaints in respect of the meeting of the 10th Nov at that time.

3.7 Barr Community Council appealed the suspension and it was lifted on the 20th December as evidenced in correspondence from the Council's Chief Legal Officer. The Chief Legal Officer used the term that the suspension was 'premature'.

3.8 Correspondence from South Ayrshire Council to Barr Community Council dated 4th Jan 2023, identified in detail the complaints it had received following the meeting in Nov 2022. It is not known when the complaints were received by South Ayrshire Council in respect of the meeting of the 10th Nov 2022, but it transpired that the complainer was the SCIO, not an individual. A further complaint was submitted to South Ayrshire Council on the 11th Jan 2023 concerning the link officer being asked to sit with the audience at the Nov 2022 meeting, the content of minutes and attitude of the Chair. In this instance, South Ayrshire Council correctly followed the protocol by passing the complaint directly to the Community Council to deal with.

Comment on process between 13th Oct 2022 and 11th Jan 2023.

3.9 I have a number of concerns over the manner South Ayrshire Council dealt with the initial stages of the complaints. The General Complaints Procedure requires that complaints are made in the first instance to the Chair of the Community Council. Paragraph 9.4.2 of the General Complaints Procedure for Community Councils requires that a Community Council respond to a Stage 1 complaint within two weeks. A move to Stage 2 should only follow if matters cannot be resolved at Stage 1, essentially Stage 1 is an informal 'healing' of an incident to the satisfaction of all parties.

3.10 South Ayrshire Council precluded the possibility of a Stage 1 resolution by advising the Community Council in writing that South Ayrshire Council would be carrying out the investigation. This action was in breach of the Council's own procedure, did not follow any written procedure in respect of Community Councils and prevented an attempt at a Stage 1 resolution. The only option available in view of the Council's approach to the complaints was to instigate a Stage 2 formal complaints process with associated detailed investigations.

3.11 Of particular concern is that the Community Council was suspended on the 11th Nov 2022 in advance of any proper investigation into the complaints or progression of the formal complaints process. Within the Barr community, South Ayrshire Council have a policy in support of an asset transfer of a Community Hall to the SCIO. It may be perceived therefore that the Council could be biased

in a matter involving a dispute between the Community Council and the SCIO. The actions of the Council therefore require to be neutral and importantly, seen as independent and unbiased. Breaches by South Ayrshire Council of its own policies in respect of the complaints process are deeply concerning.

3.12 In this context, the immediate suspension of the Community Council was an extraordinary step, especially as it later emerged that the complaints relating to the meeting of the 10th November and the earlier complaints from the 13th October, were in fact from people related to the SCIO.

3.13 Suspension in these circumstances, in my experience, is unprecedented. The only circumstance where I could imagine a Community Council to be suspended without due process is in the case of financial mismanagement whereby the Community Council is essentially insolvent. This is clearly not the case here.

3.14 To compound matters, South Ayrshire Council quickly revoked the suspension. In other words the Council accepted that suspension was wrong. Revocation was caveated however in a letter from the Chief Legal Officer who used the word 'premature'. The inclusion of this word suggests that South Ayrshire Council intended to suspend Barr Community Council. The issue within the Council appeared to be just timing. Whatever process was carried out, suspension was the anticipated outcome. South Ayrshire Council demonstrates bias through these actions.

Background to continuation of complaints process in respect of the meetings of 13th Oct and 10th Nov 2022 between 4th Jan 2023 and 9th April 2024.

3.15 South Ayrshire Council facilitated a Hearing on the 12th December 2023 to consider the complaints. A panel was formed of three Community Councillors from unconnected Community Councils. The minute of the Hearing fails to record those attending (recognising that personal details of community Councillors would be redacted for public consumption). It is evident from the minute however that whilst the Complainers attended, the Community Councillors as defendants were denied this.

3.16 The minutes state that the panel considered that the Community Council's offer to attend as a group not be accepted. The panel required that the Community Councillors be interviewed individually. There is no guidance in respect of this issue in the Councils Procedures. Indeed the presentation from the training for Community Councillors, held in Sept 2023, advises that the 'party' will be invited to attend. As the complaints for the most part were made against the Community Council as a collective, the Community Council should have been accommodated when they offered to attend as a 'party'.

3.17 It is also the case however that all other procedures involving discipline within the Council allow representation. It is a fundamental element of natural justice. If comparison is made with the complaints procedure in respect of elected members through the Scottish Standards Commission, not only is representation allowed but Hearings are in public.

3.18 The Council Officer should have advised the Panel that the Community Council was within its rights to appear as a 'party'. It would have been a simple matter for the Chair to ask questions of each individual while the others were present. Denying attendance in this manner biased evidence in favour of the complainer and denied the opportunity for the defendants to set out their position, respond to questions and indeed ask questions of the complainants.

3.19 For comparison, the outcome of complaints against Elected Members which are considered by the Standards Commission are published online and South Ayrshire Council should look to this as a model on how to manage proceedings fairly and how to record meetings.

3.20 I will not go into detail on the actual complaints, but in summary there are three issues:-

1. An allegation that asking the link officer to move from the table into the audience was 'bullying',
2. Allegations that minute and agenda keeping were not to an acceptable standard,
3. Allegations of hostility, inappropriate language, rudeness, lying, from some or all of the Community Councillors (who are not party to the complaints).

3.21 Dealing with '1' first. In all my experience of attending Community Councils as an officer over many years, the first thing you ask the Chair is 'where do you want me to sit'. In most cases this is in the audience although it can vary depending on the size of meeting and issues being discussed. At Dundonald Community Councillor, the link officer usually sits in the audience, along with elected members, general public etc. I consider that the matter of the link officer being asked to sit in the audience is not appropriate grounds for a complaint. Indeed if the Link Officer had perceived a problem with this, the Link Officer would have raised the matter retrospectively with the Chair.

3.22 In respect of '2', issues of agenda and minute taking are not matters which should be the subject of a formal complaint. There are procedures in place for Community Councillors to challenge minutes or the agenda. It is standard practice at all Community Councils for minutes not to be made public until they are approved at the following meeting. In other words minutes are not distributed until they have been proposed and seconded. I am not at all clear why the Council would allow this matter to be considered as a formal complaint. Indeed if there was a problem within the Community Council over setting agendas (which under the Community Council Handbook is solely a matter for the chair) and minute taking, the link officer would have flagged this to the Community Council. It is the role of the link officer to ensure that the Community Council complies with the Handbook. There is no evidence of the link officer previously raising concerns over agenda setting and minute taking and no reference to this in the Panel Report. Significantly, there is no statement from the link officer, the proceedings of the panel relied on verbal evidence, which of course the respondents will not have heard.

3.23 In respect of '3', the complaints as submitted are general and generic. Whilst I have no doubt that both meetings essentially at times became a 'rammy', the exact details of the words said and by whom, need to be articulated

into the complaint. A panel needs to understand what exactly was said and why it was offensive in order to judge behaviours, in relation to the Code. Council officers as the first recipient of the complaints should have assisted the complainers articulate their complaints into specific details. Again, minutes of proceedings from the Standards Commission provide many examples of how evidence should be presented to a panel and thereafter how it is tested against the Code.

3.24 What is also unusual in this instance is that the Council has accepted the complaints against all the serving Community Councillors as a 'party'. In my experience this is unprecedented. Whilst complaints following Community Council meetings are very rare, complaints following Local authority Council and Committee meeting are more common. In those instances, Elected Members (who receive both salary and training) are scrutinized by the Standards Commission. I am not aware of the Standards Commission ever having accepted a complaint against an entire Committee or Political Group. Instead, the Standards Committee researches the behaviors and actions of individuals and considers complaints on this basis. I have seen a great many examples of inappropriate behaviour by elected members at full Council and Council Committees, but I have never witnessed collective behaviour whereby the same breach of the Code could be considered to be perpetrated by every member present.

3.25 In this instance South Ayrshire Council should have assisted the articulation of the complaints into detail for the panel to consider and record this in the minute.

3.26 As a general comment, the timescale in this process is unacceptable. Complaints were apparently submitted to South Ayrshire Council in Oct/Nov 2022, yet the panel Hearing did not take place until Dec 2023. Community Councillors work in a wholly voluntary capacity, they are not paid or trained in the manner of Elected Members of the Council. Complex complaints procedures are stressful and impact on the daily lives of volunteers who have work and family. It is simply unacceptable that this process, with all the associated stress on the individuals involved, should take this length of time.

Appeal Against Censure by a former Barr Community Council following a meeting of the Community Council on the 9th Nov 2023.

3.27 A second panel was convened in respect of Barr Community Council earlier this year following an incident at the Community Council meeting on the 9th Nov 2023. The Panel Report fails to record who was present at the meeting or the date of the panel. The report describes however how a Community Councillor received a private e mail from an MSP which was addressed to an individual who is also a serving Community Councillor. The Community Councillor who received the e mail in error, circulated it at a public meeting. In consequence the Community Council meeting moved to private session and subsequently the Community Councillor was censored.

3.28 I find the circumstances in this case to be extraordinary. The e mail to a local MSP from a constituent was from a personal address. Correspondence with

MSP's are wholly protected, the contents cannot be shared without the agreement of the author. This is not for dispute unless there are matters of criminality. On every piece of correspondence from an MSP, there is a Notice which instructs a recipient what action to take if they have received the correspondence in error.

3.29 In this case, the MSP has referred the error of recipient to the Data Commissioner as a Data Breach and apologized to the intended recipient.

3.30 Under no circumstances should General Data Protection Regulations (GDPR) have been further compromised through circulation of this correspondence. The content of the correspondence is irrelevant, GDPR stands unless permission is given by the constituent for the correspondence to be shared.

3.31 South Ayrshire Council should not have allowed a Panel to debate whether or not the MSP actually intended that members of the Community Council should see the correspondence. Indeed if the correspondence was shared with the Panel, South Ayrshire Council will also have breached GDPR.

3.32 I find the actions of the Council in this instance incredulous. The Council is well experienced in both GDPR and the importance of maintaining confidentiality between Elected Members and constituents. South Ayrshire Council should never have allowed a discussion to take place within the panel on what was on the mind of an MSP.

3.33 The Panel instead should have accepted that a GDPR breach had taken place (recognising that the MSP had referred this as a breach to the Data Commissioner) and instead guided the Panel to consider if the penalty applied to the Community Councillor was appropriate in these circumstances. The management of the Panel in this instance was a serious failure of procedure.

4.0 Conclusion

4.1 In my view, South Ayrshire Council has not applied proper procedures in respect of two Panel Hearings relating to Barr Community Council. South Ayrshire Council has accepted complaints and dealt with them without following the General Complaints Procedure, it has accepted complaints which are not appropriate within the complaints process, it has allowed a process to run with clear bias against the defendants and in the case of the GDPR breach has actually compounded a notified GDPR breach involving an MSP.

4.2 The consequent suspension of the Community Council against this background is wholly inappropriate. Even if the processes had been carried out correctly, the penalty is in no way commensurate with the issues. Suspension of Community Councils are extremely rare, despite decades working in local government I am aware of only one suspension of a Community Council and it involved financial misappropriation.

4.3 There is an obvious concern here for Barr Community Council in that the Council led a process which appeared biased against Barr Community Council from the beginning and appeared to be with the intention of delivering

suspension. South Ayrshire Council is also insensitive to the fact that all of the complaints originated from people associated with the SCIO, who are in negotiations with the Council in respect of an Asset Transfer of a Community Hall. In circumstances like this it is imperative that a local authority act with absolute integrity and compliance with its own policies.

4.4 There is a wider concern here for all South Ayrshire Community Councils. As Chairs we need to feel supported by the local authority and as unpaid volunteers, guided through complex codes and rules. It is very difficult to get volunteers to serve on Community Councils and incidents as described in this report deeply impact our potential to sustain membership and operate effectively. On this latter point, I will be raising this with our new Association of Community Councils in South Ayrshire. This will be with a view to discussing with South Ayrshire Council how processes within the Council can be improved and relationships strengthened.

R S Allan

Chair Dundonald Community Council