

ERC accused of trying to punish Community Councils

Posted by Newsline - 22 Mar 2014 10:51

East Renfrewshire Council has been accused of a “totalitarian motivated ploy” to control East Renfrewshire's Community Councils after setting out plans for disciplining at least three of the East Ren CC's for not signing up to the ERC dictated constitution.

The move has prompted fresh claims that ERC is attempting to operate like a North Korea.

The first thing totalitarian states do to consolidate absolute power is seize control of the newspapers.

Many feel that has already happened – by stealth, and now under a so called council democracy they are attempting to silence Community Councillors who are intent on acting on behalf of their residents and holding the council to account, and will not cosy up to the council.

There is a paper to be discussed next Wednesday 26th March 2014 at the full council in Eastwood Park.

In summary ERC are requesting the authority to remove administration funding, remove council support and assistance, and remove any recognition of them by the council, remove the right to be statutory consultees and remove the use of council facilities.(namely the use of council halls for meetings)

The three CC's affected so far are Clarkston, Thornliebank and Newton Mearns.

However the elected members are also being asked to approve these measures to be undertaken should any other CC's fail in the future to comply with ERC's directives. [Link to the Council Paper](#)

A decision will be made on Wednesday

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Re: ERC accused of trying to punish Community Councils

Posted by Gerry - 08 May 2014 14:39

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Re: ERC accused of trying to punish Community Councils

Posted by Newsline - 09 May 2014 12:11

An Open Letter from the East Renfrewshire Joint Community Councils Forum
to the Twenty Elected Members of East Renfrewshire Council

Friday 9th May 2014

Dear Councillor,

We ask that you read this carefully as it may lead to charges of maladministration.

We believe you have been wilfully misled by the Head of Democratic Services, Jim Sneddon and the Deputy Chief Executive, Caroline Innes, in their report to Council on the 26th March 2014 Agenda Item No.12. There is one crucial question that ERC officials refuse to answer. Where does ERC derive the power to implement the sanctions against CCs that were approved by Elected Members at the Council meeting on the 26th March 2014?

There has been a complete breakdown between the ERJCCF, certain CCs and ERC officers. We believe this breakdown has been deliberately engineered by the Deputy Chief Executive with the support and the approval of the Chief Executive in order to cover those ultra vires powers they asked you to approve on the 26th March 2014. The steps you authorised are illegal. This is not just our opinion, as this has been confirmed by a solicitor and by Counsel (Court of Session variety).

There is nothing in Agenda Item 12 of the 26th March 2014 meeting which is supported by any legal advice presented to us and it is with this knowledge and great reluctance that we are forced to make this serious allegation.

We ask how we can have a positive working relationship when the Council's most senior officers have written stating they will no longer respond to the ERJCCF or certain CCs regarding crucial outstanding matters?

As the Chief Executive and Deputy Chief Executive refuse to engage with us, we have been left with no choice but to write to you, as an Elected Member of ERC, to highlight our concerns and to inform you fully of the facts to date.

The Deputy Chief Executive, in her report to Council on the 26th March 2014 stated;

26. The actions taken by 3 community councils in modifying their constitutions are not permissible and are a violation of Section 53 of the Local Government (Scotland) Act 1973 to which East Renfrewshire's scheme adheres. Having provided the community councils with the opportunity to rescind modifications two have confirmed their refusal to do so. Organisations which do not adopt the approved Constitution can no longer be held to be community councils in the statutory sense.

The Deputy Chief Executive then sought your authority to take the following steps:

27 i. request that the Deputy Chief Executive writes to the community councils concerned emphasising the Council's commitment to working in partnership with community councils but explaining to them the gravity of the situation and requesting that they revert to the approved Community Council Constitution.

ii. approve that community councils which refuse to be bound by the constitution contained in the Scheme for establishment by a deadline of 25 April 2014 are no longer considered to be operating as statutory community councils and that the Council reflects such a change in status by taking the undernoted steps:

- No further engagement and support by the Council.
- No further statutory consultation on planning, licensing and education.
- The cessation of any and all free lets of Council premises.
- No award of the administration grant.

The Elected Members, with the exception of Cllrs. Miller and Swift, approved these sanctions, which

contrary to the Deputy Chief Executive's claims on Item No. 26 above, breach ERC's Scheme and the Local Government (Scotland) Act. We repeat we have legal opinion confirming this.

The Deputy Chief Executive also failed to inform you of the following material facts;

Contradictions and Inconsistencies

Clarkston CC discussed amending their constitution in the presence of ERC officer Alex Hewetson who advised them, that any amendments they approved would require to be ratified by ERC. Also present was the Provost and Cllrs. Lafferty and Miller. This is in line with the Government's Model Scheme and has been confirmed to one CC who took advice from a local solicitor and the Chair of another CC who went to the Court of Session and was advised by Counsel.

1. Caroline Innes emailed a CC on the 2nd May 2014 stating that "On the 26 March East Renfrewshire Council agreed that unless you reverted to the scheme constitution you will no longer be recognised as a community council."

This is not what is mentioned in the report to Council as it states "no longer considered to be operating as statutory community councils".

ERC accept they have no power to disestablish a CC and both versions of the above are a clear breach of the Act and the Scheme.

2. The Deputy Chief Executive contradicts herself further in the email of the 2nd May 2014 when she wrote "I have also included the signed constitution from 2 December 2013 which superseded it"

She further states "As the constitution can only be amended through a formal review of the scheme those conditions could not and have never come into effect."

How can a CC be told they have superseded the ERC Constitution when they are also told that amendments have never come into effect? These directly contradict one another and we request you seek an urgent explanation.

3. The report of 26th March 2014 to Council Agenda Item No.12 /20 states “Community councils exist only because of, and are limited in what they can do by, the provisions of the community council Scheme. They cannot make changes to the constitution unilaterally regardless of whether the purported changes have been approved by a majority, or indeed all members of the relevant community council. Changes that have been introduced in this way are invalid”

We agree these changes are invalid unless ERC approve them. Until ERC have approved changes, no change has taken place and therefore the CCs cannot have done anything wrong. The legal term for this is *pro non scripto*. You will also understand that the CCs need to formally approve their desired changes to the Constitution to enable them to submit them formally to ERC for their determination.

Item No.11 of the report stated “Clarkston Community Council has introduced clauses indicating that members of the community council cannot stand for a position of office until 1 year has elapsed since joining, it also proposes meetings can be held “in camera”, Thornliebank Community Council have similarly introduced clauses...and they have reduced the quorum to 5”.

Item No.11 with the exception of the nine words we have highlighted in red is untrue. This untrue statement was then reported on the front page of the Extra on the 27th March 2014 implying meetings had been held under the following circumstances; “Community councils are unable to modify a scheme independently from a review process, however the three community councils in question are alleged to have allowed private meetings, banned new members from office before they had served a year and accepted proxy votes”.

This is untrue and this information originated from within ERC to the Extra.

The CCs that have actually breached the Scheme are Giffnock and Barrhead who have held private meetings, excluded members of the public and removed an office bearer, all without repercussion from ERC, whereas Clarkston and Newton Mearns, who have not breached the Scheme, are reported in the Extra as having done so.

Caroline Innes in Item No.11 above accepts that the CCs approved changes to the Constitution were submitted to the Council as a proposal for ERC’s determination. This has always been the stated position of the CCs involved.

Breaches of the Scheme

These officers state in the report to Council on the 26th March 2014 that the Constitution and Code of Conduct are included in the ERC Scheme – see point 16.

Despite this, ERC officers refused and failed to act with regard to Giffnock CC who have deliberately breached the Scheme twice. The following extracts are contained in the report to Council on the 26th March 2014:

15. The ERC Community Council Scheme having been created under The 1973 Act puts community councils under a legal obligation to adhere to the provisions of the ERC Scheme.

16. The Scheme of Establishment approved by East Renfrewshire Council and community councils in 2009 includes a constitution and code of conduct.

17. In order to uphold the intention of the 1973 Act and fulfil this duty, it is essential that the community councils act within the limitations and requirements of any approved ERC Scheme.

19. The relationship between ERC and local community councils is not contractual. Local community councils must by operation of statute have regard to the ERC Community Council Scheme regardless of whether they have signed up to the Scheme or unilaterally departed from its requirements.

A. Thornliebank CC did not sign the ERC Constitution at the inaugural meeting in September 2013. They were therefore, in effect, established without being bound by any constitution until the recently appointed new Chair* signed the ERC Constitution at their meeting in April 2014. Caroline Innes states in an email to a CC on the 2nd May 2014 "The position is that on establishment following elections Community Councils are required to adopt the scheme constitution in order to become a community council. "

ERC officials have therefore allowed a CC to be established and operate without a Constitution from September 2013 until April 2014 and there was no reference to this in the report to Council on the 26th March 2014.

*the previous TCC Chair of five years was removed without warning by ERC after the Chair of Giffnock CC mysteriously found a "mistake" with the CC boundaries going back to 1998.

B. The report states that these amendments are invalid so how can the CCs accede to ERC's "demands" to "rescind" modifications which were never approved by ERC?

TCC cannot revert to a constitution they have never signed nor been bound by.

How can ERC "demand" that Clarkston and Newton Mearns CCs "revert back" to the Constitutions to

which they were and always have been bound by?

How can ERC “demand” that Clarkston and Newton Mearns CCs “rescind” amendments that ERC officials state are “invalid” and “have never come into effect”?

ERC must recognise that the Constitution and Code of Conduct are included in the Scheme which means that any breach of either is a direct breach of the Scheme.

Eaglesham Community Council

Eaglesham CC minutes for March 2014 state “3. Provost Carmichael advised that a full Council meeting had been held and the main topic on the agenda was that 3 of the CC’s in the East Renfrewshire area have been threatened with disassociation. Apparently they have changed their constitution when they did not have authority to do so and have “jumped the gun”.

“Eaglesham CC put in a caveat that we reserve the right to change ours, we did not change anything but we were not threatened with disassociation.”

Note the Provosts use of the word “threatened”. Eaglesham CC also use the word “threatened”. This accurately reflects how several CClrs. feel and this has previously been highlighted to the Deputy Chief Executive and the Chief Executive.

Eaglesham CC by putting a caveat into their Constitution, have also amended it, but this was not included in the report to Council.

Barrhead Community Council

Barrhead Community Council minutes of 6th June 2013 state;

“15. AOCB

15.1. Member of the Public enquired about what is happening with Dalmeny Community Centre Barrhead. CClr McGuire advised he speak with Councillor Devlin.

At this point in the meeting the Members of Public were asked to leave and duly did so.

16. CONFIDENTIAL DISCUSSION FOR COMMUNITY COUNCILS

Discussion on a confidential matter for Community Councillors took place at this point in the meeting.”

This minuted ‘in camera’ section of the meeting is in breach of clause 28 of the Scheme. Why has this breach been ignored by ERC officers?

Giffnock Community Council

The then ‘Vice Chair’ of Giffnock CC had properly raised with GCC the question of failing to record in their minutes when their meeting became inquorate. This we understand led to the other office bearers excluding the public from their meeting whilst they removed the Vice Chair from office.

Giffnock Community Council minutes dated 17th February 2014

3 MATTERS ARISING

The Secretary advised that he wished the community council to consider an urgent matter in camera. This was put to the members, who agreed unanimously, and the room was cleared of visitors. The Secretary then proposed the motion that the Vice Chair should be removed from office. This was seconded by Treasurer. Chair ruled on a 2 minute period for each side to present on the motion. The subsequent secret ballot procedure involved submitting a YES for the motion and NO for those against it. Anyone wishing to abstain to complete the ballot paper accordingly. Cllrs. Jim Fletcher and Vincent Waters agreed to undertake the collection/ count of votes and announced the following result:

VOTES	YES 7	NO 1	ABSTAIN 2
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These are two major breaches of the Constitution viz clause 16 “All office bearers shall hold office until the next annual general meeting when they shall be eligible for re-election” and clause 28 “All meetings of the community council shall be open to the public.”

We are concerned that the Leader of ERC Cllr Fletcher and, Cllr Waters the former National President of the Association of Scottish Community Councils, would preside over, and participate in, two flagrant breaches of the ERC Scheme.

We highlighted these deliberate breaches by GCC to the Chief Executive, Lorraine McMillan, several weeks ago, prior to the Council meeting on the 26th March 2014, so she was fully aware of these breaches.

Visiting Cllrs, present at the meeting, were so concerned by the conduct of the officers of Giffnock CC that they wrote separately to the Chief Executive expressing their concerns over clear breaches of the code of conduct which they recognised as blatant bullying and victimisation. The Vice Chair of Giffnock CC represented a minority group and this raises further serious questions regarding Giffnock CCs responsibilities under the Equality Act 2010.

These clear breaches of the Scheme by these CCs actually happened yet have been deliberately ignored by ERC. This demonstrates clear bias and prejudicial behaviour and evidences the unfair, inconsistent treatment towards Clarkston, Newton Mearns and Thornliebank CCs by these ERC officers.

The ERJCCF also wrote to the Chief Executive, Lorraine McMillan, in February 2014 following receipt of a complaint alleging criminal behaviour by the Chair of Giffnock CC. To date this letter has been completely ignored. We fear that if this matter remains unaddressed it will tarnish and impact on the good reputation of all other East Renfrewshire Cllrs.

We believe we have clearly shown the report to Council by Caroline Innes is biased and demonstrates malice.

ERC's Breaches of the Scheme

ERC are bound and have a duty to adhere to, as well as to uphold the Scheme. The Scheme is not a blunt one way optional instrument with which to bash selected CCs.

If ERC impose the sanctions approved at the Council meeting of the 26th March they will have breached the following sections of the ERC Scheme;

Duties

6. East Renfrewshire Council shall identify a Liaison Officer to provide support for community councils. The Liaison Officer shall provide advice and assistance to community councils on the roles of members and office bearers, the functions of East Renfrewshire Council, and other relevant topics.

7. East Renfrewshire Council shall determine any additional support such as copying and distribution of minutes and facilities for meetings, to suit local requirements.

8. East Renfrewshire Council has a duty to consult with community councils on community planning matters and local planning and licensing matters. In order to fulfil this duty, East Renfrewshire Council shall ensure that all relevant information is made available to community councils and that sufficient time is allowed for community councils to respond.

9. Other matters for consultation may also be jointly agreed between East Renfrewshire Council and community councils.

10. East Renfrewshire Council shall provide an annual grant to each community council to assist with operating costs, subject to assist with operating costs, subject to the conditions of grant for voluntary and community organisations.

East Renfrewshire Council shall review the level of annual grant following each local government election.

All the legal advice received to date is consistent and clear that ERC has no power or authority whatsoever, regardless of the circumstances, that would permit it to withdraw from fulfilling the above duties.

The ERJCCF does not wish to engage in protracted battles with ERC officers but it cannot allow ERC to breach the ERC Scheme for CCs, to ignore ERCs obligations under the Local Government (Scotland) Act, or to ride roughshod over selected Community Councils by wilfully misinterpreting its duties and obligations.

Other Matters

We would take this opportunity to address you on the following in what we hope to be a constructive manner;

Report to Council on the 26th March 2014

8. In 2013, elections were held in East Renfrewshire for the community councils. Despite extensive advertising, interest levels were low and all nominees were elected unopposed. In all community councils, whilst the minimum number of representatives required were nominated, the community councils operate with low levels of representation.

The ERJCCF is not surprised by the low interest levels. Until the culture of fear, intimidation, bullying, interference and heavy handedness being reported by increasing numbers of CCllrs. and residents due to the unacceptable behaviour of some ERC officers and certain Elected Members ceases, this situation will continue to deteriorate. We are aware of CCllrs. who have resigned as a consequence and that, unfortunately, can only be to the detriment of the East Renfrewshire communities and residents.

Community Councils, once democratically elected, are independent statutory bodies who exist for the benefit of our residents and to represent residents' views. We cannot be ignored by ERC officers, and carry out our statutory duties all whilst being bullied, intimidated and threatened.

These are very serious charges and in the interests of democracy and all residing in East Renfrewshire, we urgently request your full support and assistance to fully address these crucial matters.

Finally, we believe it is essential that you seek the answer to the question we raised at the start of this correspondence.

What power do ERC have to impose the sanctions against CCs that the Elected Members approved at the Council meeting on the 26th March 2014?

We ask this question on the advice of the lawyer and Counsel.

We trust you now understand and therefore fully share our concerns.

Yours sincerely,

East Renfrewshire Joint Community Councils Forum (ERJCCF)

This letter was signed by the following Community Councillors in a personal capacity;

J Scott Neilston CC

A McPherson Eaglesham & Waterfoot CC

B Duguid	Eaglesham & Waterfoot CC
B Considine	Netherlee & Stamperland CC
K Knox	Uplawmoor CC
V McClelland	Thornliebank CC
R Mullen	Thornliebank CC
H Shanks	Thornliebank CC
E Kellock	Clarkston CC
A Johnston	Clarkston CC
D Jesner	Newton Mearns CC
P McCall	Newton Mearns CC

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Re: ERC accused of trying to punish Community Councils

Posted by Gloria - 11 May 2014 10:49

That is an excellent letter, surely ERC cannot ignore this any more.

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Re: ERC accused of trying to punish Community Councils

Posted by Why? - 11 May 2014 11:08

Right on Gloria. Some heads shoood get ra chop savin us a fortune. Ye canna be tha stupit an collect aw tha dosh an no go when yir cot oot. Tha deputy shoood get her p45 an get hersel tae tha job centre

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Re: ERC accused of trying to punish Community Councils

Posted by Newsline - 12 May 2014 07:05

Many observers are of the opinion that one elected member may be starting to display a Machiavellian side to his character.

As Newsline has previously reported the ERC produced community councillors induction pack states that The Secretary is responsible for:

- Acting as first point of contact for the community council.
- Answering all correspondence.
- Writing any letters.
- Circulating information to Members.
- Liaison with officials of the local authority and other agencies.

Indeed one community council in January reminded their Cclrs of this very fact, Giffnock CC

SECRETARY REPORT

He advised councillors that any direct external mailings received in connection with GCC should be forwarded to the Secretary. Likewise internal group email circulation of councillors should be restricted to the Chair / Secretary.

Also Newsline reported that Vincent Waters was emailing directly all Thornliebank Cclrs and we are aware that at the last CC meeting he was advised to stop this practice and he agreed to do so.

However we have been made aware that he is at it again.....

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Re: ERC accused of trying to punish Community Councils

Posted by Newsline - 12 May 2014 07:07

On this occasion he has taken it upon himself to write regarding the Joint CC Forums open letter.

This is the content of his email.

See attached. This was not mentioned at the TCC meeting last Tuesday. It says that it is written by the people named as individuals, rather on behalf of their CCs.

Given the content, that makes considering the points made a bit difficult, as they read to me as being about each CC as a group I hope that makes sense. It would help me to know whether the contents are

(or will be agreed as) the official position of TCC I realise that will need to wait till the June meeting for you to discuss.

If the letter is not agreed as TCC's position, I hope you will understand if I cannot take forward a letter that is about TCC if the CC is not supporting it.

Happy to discuss further if anyone wishes.

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