OUTER HOUSE, COURT OF SESSION

[2026] CSOH 32

P762/25

EX TEMPORE OPINION OF LORD ARTHURSON

in Petition of

SAMANTHA KANE

Petitioner

against

LESLIE STEWART WAUGH AND KERRY HAWTHORNE,
former Chair and Secretary of the Ardgay and District Community Council

Respondents

Petitioner: Party
Respondents: Innes; Gillespie Macandrew LLP

26 March 2026

Introduction

[1] The petitioner and the respondents were formerly members of the Ardgay and District Community Council ("the Community Council"). The petitioner originally sought the remedies of reduction, declarator and damages in respect of the decision made in the course of a public meeting of the Community Council on 17 April 2025 to propose a resolution to dissolve the Community Council. The petitioner further sought the same remedies in respect of the vote of the community at a subsequent public meeting held on 22 May 2025, when the said dissolution resolution was put to a public vote and, ex facie, passed.

[2] At the outset of the petitioner's submissions she indicated that she was no longer seeking damages but was restricting the scope of the petition to the remaining remedies of reduction and declarator. Further, and significantly, at the outset of the submissions of counsel for the respondents the petitioner confirmed in open court that, in recognition that the community required to have a functioning community council, she would no longer be insisting upon her craved remedy of reduction, and would accordingly be further restricting the scope of the petition to that of declarator alone. I will return to this evolving restriction of the remedies sought by the petitioner in this action in due course.

[3] It is not in dispute that clause 17 of the constitution of the Community Council regulates matters pertaining to dissolution. In terms of that governing clause, a proposal for dissolution can be put forward if a two thirds majority of the community councillors "decides at any time that it is necessary or advisable to dissolve". There are further related provisions regarding the giving of notice for a public meeting in respect of a dissolution proposal, and, if the relevant resolution thereon is duly supported by a majority of those persons present and qualified to vote at that meeting, and that decision is subsequently approved by Highland Council, the Community Council is deemed to be dissolved.

[4] In the Note of Argument lodged on behalf of the respondents and spoken to by counsel in the course of his oral submissions, the following passages are of note. At paragraph 17 the Note states:

> "The nature of the decision was to propose a resolution to dissolve the Community Council. It was made in the moment, during the meeting of 17 April 2025, in response to the meeting falling into disorder as a result of disruption caused by the petitioner."

This position is elaborated upon at paragraph 25 as follows:

> "The decision to propose the dissolution resolution was made for a proper purpose. The meeting of 17 April 2025 descended into disorder. It was properly concluded by

> the members that it was necessary or advisable to dissolve. Further, the petitioner has a rich history of disrupting meetings, refusing to cooperate with the other members of the Community Council, acting in her own self-interest, and making unfounded allegations against others involved in the Community Council or its meetings, all contrary to the Code of Conduct."

Submissions for the petitioner

[5] The petitioner, appearing as a party, in the course of a somewhat discursive but principled submission, which I will now attempt to capture as best I can, contended primarily that the use of the power to dissolve had as its purpose the improper one of the petitioner's removal from the Community Council. In effect, it was argued, the power to dissolve had been used as a disciplinary vehicle, turning the Community Council into a tribunal which was in terms adjudicating upon the conduct of one of its members. The Community Council having no power to exclude one of its members, it followed that it was improper for the power to dissolve to be utilised in this manner and for such a purpose, all in the expectation on the part of the respondents that a replacement council would in due course be constituted, absent the petitioner.

[6] I should record that a subsidiary ground of challenge was relied upon by the petitioner in the course of her submissions, but this did not appear to me to be adhered to in the course of the petitioner's short reply to the submissions of counsel for the respondents. The petitioner submitted on this subsidiary point that certain fundamental principles of natural justice, in particular the right to be heard, had not been obtempered by the respondents in the course of the public meeting of 22 May 2025. A short clip of footage of a section of that meeting was played in court. The atmosphere was noisy but it appeared to me that the petitioner was able to make a short statement of her position, being properly permitted to do so by the chair of the meeting, prior to the dissolution proposal being put to

a public vote. For the record, the petitioner's position on this point in the course of her initial oral submission to the court was that the neutral observer would conclude from this material that the councillors were biased against her by way of predetermination.

Submissions for the respondents

[7] Counsel for the respondents invited the court to refuse the petition. It was not accepted on behalf of the respondents that their purpose in respect of the dissolution resolution was to remove the petitioner from the Community Council. The decision taken at the meeting of 17 April 2025 was taken in accordance with the constitutional requirements of the Community Council and the vote held on 22 May 2025 was similarly conducted. Of the eight members of the Community Council, seven were present at the meeting of 17 April 2025, and six of those, it was submitted, decided in the course of that meeting that it was necessary or advisable to dissolve. The required two thirds majority was thereby achieved. The resolution passed at the meeting of 22 May 2025 was approved by the representatives of Highland Council present at that meeting. Highland Council subsequently conducted a further election to re-form the Community Council. The petitioner was not elected to that body.

[8] The decision to dissolve should not, counsel contended, be viewed as a disciplinary procedure to remove the petitioner. The context for the proposal to dissolve being put forward at the meeting of 17 April 2025 was a history of disruption on the part of the petitioner. Reference was made to the minutes of previous meetings and to certain affidavit material in this regard. While it was accepted by counsel that ultimately the decision to dissolve had the effect of removing the petitioner from the Community Council, it also had the effect of removing all of the members. The decision was made because the business of

the Community Council was not able to continue. The object of the proposal was to give the community the opportunity to determine dissolution for themselves, and was not to remove the petitioner. Councillors required to meet the standards desiderated in the relevant Code of Conduct.

[9] The test of "necessary or advisable" should be viewed against this background. The Community Council members had discretion in this matter. Reference was made to dicta on flexibility in the context of the phrase "necessary or desirable" in what was accepted by counsel to be a very different area in *Lloyds Pharmacy Ltd* v *National Appeal Panel* 2004 SC 703 at paragraph 11. Put short, the proper perspective here was of a Community Council which was not functioning, and hence the proposal to dissolve could rightly be characterised as "necessary or advisable". This was accordingly a well-founded decision made in the performance of a public duty, and even if the decision maker was acting in bad faith, which was vigorously denied, the decision was not one which was open to challenge. Reference was made to *Macfarlane* v *Mochrum School Board* (1875) 3R 88 at 101.

[10] On the subsidiary argument posited by the petitioner, procedural unfairness did not arise, it was submitted by counsel. The petitioner had made representations at the meeting of 22 May 2025, as was plain from the footage played. There had been an opportunity for the petitioner to speak and she had duly availed herself of it, and there was nothing improper in the meeting chair calling thereafter for a vote. For completeness, reference was further made to the minutes of the earlier meeting of 17 April 2025, at item 14.

Reply by the petitioner

[11] The petitioner, in a short reply, referred to tone and body language in video material which she said was available in other recordings. The Community Council was functioning

well. Opposition was helpful. It was an undemocratic and dangerous step to remove a councillor in this manner and in these circumstances.

Discussion and decision

[12] I have concluded in short that the decision taken on dissolution in this case proceeded upon an unlawful basis. As is stated on behalf of the respondents in their Note of Argument at paragraph 17, it was made "in the moment" during the meeting of 17 April 2025. Although at paragraph 25 the same Note goes on to state that, the meeting having descended into disorder, "It was properly concluded by the members that it was necessary or advisable to dissolve", that just cannot be right, in my considered view. If the critical challenged decision in this case was indeed taken in the moment, there can be no sense in which a collective properly concluded view can have been simultaneously and meaningfully taken by the members on the vital threshold test of whether dissolution was "necessary or advisable".

[13] Further, in my opinion the objective of the dissolution process from its inception on 17 April 2025 to its effective conclusion on 22 May 2025 was, in its essentials, to seek to exclude the petitioner from membership of the Community Council. Counsel did and could not draw the court's attention to any constitutional provision setting out or even alluding to any power to exclude a sitting member. That purpose, however, in my view lay behind the decisions taken at the meetings of 17 April 2025 and 22 May 2025. Whether this exercise can properly be characterised as the use of the power to dissolve contained in clause 17 as some form of disciplinary mechanism, in bad faith or otherwise, is an open question. What is clear, however, is that clause 17 was utilised here for the purpose of the removal, in effect, of the petitioner from the Community Council in circumstances in which those who initiated

and thereafter completed that process can at no point be said to have applied their minds in either form or substance to the threshold test contained in that clause. The decision to propose the resolution to dissolve was made, as has been stated on the respondents' behalf, "in the moment".

[14] For these reasons I accordingly reject the essentially ex post facto contentions of the respondents that (i) the threshold test expressed in clause 17 was somehow then engaged, let alone properly contemplated by the respondents, and (ii) the removal in this manner of the petitioner from the Community Council was in any event within the scope of that test. A history of dissent at meetings cannot in my view be a proper basis for establishing the threshold test. Dissent is surely a healthy marker of, and intrinsic to, public debate and, dare one say it, democratic institutions. To press the button marked "nuclear" in order to seek to suppress dissent, and in this case actually to remove the dissenter, cannot have been within the contemplation of the framers of clause 17 in respect of the intended use of the dissolution power which we are in this case considering.

[15] For completeness, I should add that quoad ultra in the conduct of the meetings themselves I do not detect the procedural unfairness founded on, at least initially in submission, by the petitioner, and accordingly do not propose to elaborate further on that subsidiary point.

[16] The petitioner having committed herself in the course of the debate in this case to a departure from her original position on remedies, in particular that of reduction, for the commendable reason expressed by her to the effect that the community requires to have a functioning council, this leaves the sole remedy of declarator extant. Parties and the public will well appreciate that courts do not exist to resolve theoretical arguments which have no practical consequences. Parties can, if they wish, seek the opinion of an academic for such a

limited purpose. Judges, however, are not here to write essays in a vacuum. In this case, had the original petition sought only declarator, I cannot imagine for a moment that I would have granted permission to proceed. In such circumstances, notwithstanding the view which I have reached concerning the exercise of the dissolution power in this case, I do not intend to pronounce a declarator "in the air", as it were, which has no practical effect.

Disposal

[17] For these reasons I accordingly propose simply to dismiss the petition, and make no finding in respect of expenses.