

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council : 29 October 2008

Subject: Investigation regarding calling of the Special Council Meeting on 19 August 2008

1. Purpose

- 1.1** The purpose of this report is to update the Council on the findings of the report requested by the Council on 10 September 2008.

2. Background

- 2.1** On 10 September 2008 the Council agreed that the Head of Legal, Administrative and Regulatory Services, in consultation with the Leader of the Opposition, should appoint an external organisation to investigate the apparent conflicts between the differing claims concerning the decision to call the Special Council Meeting on 19 August 2008 and to bring forward a report with recommendations to the next Council Meeting. In bringing forward the report the external organisation was requested to consult with the Council's external auditors, KPMG and the Head of Legal Services and to comment on all risks to the Council concerning its implementation of the decision of Council on 19 August in light of its investigative findings.
- 2.2** Following consultation with the Leader of the Opposition, Brodies Solicitors were appointed to undertake the investigation. All relevant correspondence has been forwarded to the firm and on 15 September a solicitor in the firm's Public Sector Services Group interviewed Provost Agnew, Councillor Calvert, the Chief Executive, the Director of Social Work, the Senior Administrative Officer and Head of Legal, Administrative and Regulatory Services. A copy of the report is attached as Appendix 1.

3. Main Issues

- 3.1** The main findings from the Brodies report are:-
- The Provost's decision to call the Special Council Meeting on 20 August 2008 was both reasonable and sensible.
 - There is no reason to believe that the Provost acted other than in good faith in deciding to change the meeting to 19 August 2008.
 - The email of 8 August 2008 from the Executive Director of Social Work and Health was misleading albeit not intended to mislead, and caused misunderstanding.

- The meeting of 19 August was properly convened and the unavailability of certain elected members on that evening does not give rise to any concerns about the legality of the decision taken at that meeting, nor do the differing claims concerning the decision to call the meeting on that date. This conclusion accords with the views of KPMG and the Head of Legal, Administrative and Regulatory Services who were consulted by Brodies, in accordance with the council resolution.

3.2 In order to assist Members to consider the report, several further comments are worth making.

- Council practice in calling meetings – existing practice, as confirmed by Brodies, is that meeting dates are called “blind” without checking the availability of Elected Members. This is a good practice which should be commended. There is a danger that if Member availability is checked and meeting dates rearranged to suit the availability of some Members, perhaps of one party, that this would give rise to accusations of impartiality. For this reason the changing of meeting dates to suit Member availability is not a good practice if there is any chance of a politically contentious item being considered. The principal role of ensuring party member attendance should rely on the political groups and their Whips, not on the Provost or Officers. To do otherwise would introduce a culture of “meeting by ambush” and probably contravene the duty to ensure open and transparent governance.
- There appears to have been a misconception amongst outside parties that the present investigation provides an opportunity to reconsider the Council’s decision of 19 August 2008. It does not and a Motion to this effect will not directly arise from this item of business. However should the decision of 19 August 2008 be reconsidered, there are real risks to the Council through continued uncertainty, further unsettling staff, reputational damage and adverse criticism from Audit Scotland.
- In relation to the report findings regarding the Executive Director of Social Work and Health, the misunderstanding caused by his email is unfortunate. However, the situation was clarified by the Chief Executive to the Labour Group Whip by email on 27 August 2008. In other words, the misunderstanding had been cleared up prior to the Council resolution to call for the report. The Director has also been keen to apologise for the misunderstanding caused. However if Members wish to consider the matter further in public the following points should be borne in mind. Firstly, this should not be at the expense of good Member/Officer working relations. Secondly, Members should bear in mind that staffing matters are for the Chief Executive, not Members. Thirdly, Members should bear in mind the terms of the protocol for Member/Officer relations agreed by the Council in August 2007 which states that:-

- *“Constructive criticism – Members have the right to make reasonable and constructive criticism of the work of officers. Members should remember that officers cannot respond to personal criticisms of themselves or other officers in the same way that politicians can and should make their comments accordingly. In accordance with the Code of Conduct for Councillors, Councillors should not raise matters relating to the conduct or capability of employees in public.”*

4. Personnel Issues

- 4.1** There are no personnel issues arising from the report other than the points referred to in the last two paragraphs of Section 3.

5. Financial Implications

- 5.1** There are no financial implications arising from the report.

6. Conclusions

- 6.1** This report updates the Council on the findings of the investigation into the apparent conflicts between the differing claims concerning the decision to call the meeting on 19 August 2008

7. Recommendations

- 7.1** Council is asked to note the contents of this report.

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Appendices: Report from Brodies dated 24 September 2008

Background Papers:

Wards Affected: All