

WEST DUNBARTONSHIRE COUNCIL

At a Requisitioned Meeting of West Dunbartonshire Council held in the Council Chambers, Clydebank Town Hall, Dumbarton Road, Clydebank, on Tuesday 13 January 2009 at 2.00 p.m.

Present: Provost Denis Agnew and Councillors George Black, James Bolland, Margaret Bootland, Jim Brown, Geoff Calvert, Gail Casey, Jim Finn, William Hendrie, Douglas McAllister, David McBride, Jonathan McColl, Ronnie McColl, Jim McElhill, Craig McLaughlin, Marie McNair, John Millar, Iain Robertson, Martin Rooney and May Smillie.

Attending: David McMillan, Chief Executive; Tricia O'Neill, Head of Human Resources and Organisational Development; Andrew Fraser, Head of Legal, Administrative and Regulatory Services, Nigel Ettles, Principal Solicitor and George Hawthorn, Senior Administrative Officer.

Apologies: Apologies for absence were intimated on behalf of Councillors William McLaughlin and Patrick McGlinchey.

Provost Denis Agnew in the Chair

EXCLUSION OF PRESS AND PUBLIC

The Council was asked to consider approval of the following resolution:-

“That under Section 50A(4) of the Local Government (Scotland) Act 1973, the press and public be excluded from the meeting for the following item of business on the grounds that it may involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 7A of the Act.”

At this point Councillor Rooney attempted to move a motion (not seconded) which, if approved, would have allowed the press and public to be present but would not allow the report to be made public and would not permit members of staff to be named during the debate.

Councillor R. McColl attempted to move a motion (not seconded) which, if approved, would have excluded the press and public with the exception of the appellant and his trades union representative (who were both in the public gallery).

In response to Members' questions, the Head of Legal, Administrative and Regulatory Services informed the Council that although, in his opinion, both motions were competent, neither of them could fully comply with the requirements of the legislation (as stated in the above resolution) to either exclude or not exclude the public.

Thereafter, the Head of Legal, Administrative and Regulatory Services was heard in response to Members' questions concerning legal advice given to the Social Work and Health Improvement Committee on 10 December 2008, which appeared to contradict the legal advice being given at this meeting.

The Chief Executive and the Head of Human Resources and Organisational Development informed the Council of their concerns if the Council agreed to allow the appellant and his trades union representative to be present as this could prejudice any further hearing or tribunal relating to the appeal. The Head of Human Resources and Organisational Development further advised the Council that if the public was not excluded that it was inappropriate to discuss the conduct or discipline of a particular officer in such a public forum.

ADJOURNMENT

After hearing Provost Agnew, the Council agreed to adjourn for a period of 10 minutes to allow the Head of Legal, Administrative and Regulatory Services to consider the issues which had been raised by Members of the Council.

The meeting reconvened at 2.43 p.m. with all those Members shown on the Sederunt in attendance.

At this point Provost Agnew invited the Head of Legal, Administrative and Regulatory Services to inform the Council of his legal opinion on the issues raised by Members. The Head of Legal, Administrative and Regulatory Services informed the Council:-

- (a) that there was no provision in the Local Government (Scotland) Act 1973 to exclude some people to attend the meeting but not others, therefore his legal advice would be that the Council would either need to decide to exclude the press or public or not to exclude the press or public from the meeting;
- (b) that, he took on board comments made by Members about the appellant being allowed to remain in the meeting of the Social Work and Health Improvement Committee, but pointed out that his recollection of the circumstances of that meeting were different due to the provisions of the Social Work Complaints procedure and that his advice in relation to the business for the present meeting was as detailed in (a) above;
- (c) that, in this case, there were good reasons to exclude the press and public, as follows:-
 - (i) the report contained detailed information on employees of this Council and the motion was likely to involve discussion on the conduct of employees of the Council and therefore should be excluded in terms of Paragraph 1 of Part 1 of Schedule 7A of the aforesaid Act;
 - (ii) the Head of Human Resources and Organisational Development had already outlined the potential impact on any future appeal hearings or tribunals which could arise out of the decision taken by the Council; and

- (iii) that there might be disclosure of personal information in breach of the Data Protection Act.

The Head of Legal, Administrative and Regulatory Services further explained that if the Council decided not to exclude the press and public, there would be no need to adjourn the meeting to consider the matter as adequate notice of the matter under discussion had been given.

Following further discussion and questions on the Head of Legal, Administrative and Regulatory Services' statement, Councillor Calvert, seconded by Councillor Rooney, moved:-

This Council notes with concern that the behaviour of a councillor is under serious question in the report from the Chief Executive, to be considered at this Special Council Meeting.

Given that all elected members must be subject to the scrutiny of those they represent, it is not acceptable that allegations of Councillors' behaviour are held behind closed doors.

Therefore, this Council agrees that the press and public will be permitted to be present during the whole of this Special Council meeting.

At this point Councillor J. McColl attempted to move an amendment which was not seconded.

The Chief Executive and the Head of Human Resources and Organisational Development advised the Council not to allow the public access to the meeting as it could prejudice any future hearing concerning the matter.

As an amendment, Councillor C. McLaughlin, seconded by Councillor Robertson, moved:-

That the press and public be excluded from the meeting for the following item of business on the grounds that it may involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 7A of the Act.

Following debate, the Council agreed to proceed by way of a Roll Call Vote.

On a vote being taken, 9 Members voted for the amendment (namely Provost Agnew, Councillors Brown, Finn, Hendrie, J. McColl, J. McElhill, C. McLaughlin, Robertson and Smillie); and 11 for the motion (namely Councillors Black, Bollan, Bootland, Calvert, Casey, McAllister, McBride, R. McColl, McNair, Millar and Rooney).

The motion was accordingly declared carried.

APPEALS COMMITTEE – 14 AUGUST 2008

The Head of Legal, Administrative and Regulatory Services informed the Council that as the original requisition contained a paragraph which stated that the “Council requires to agree exclusion of the Press and Public in terms of Sections 50a and 50e of the Local Government (Scotland) Act 1973”, which was no longer relevant as the Council had decided to the contrary, in his opinion, removal of the paragraph would be a material change and was therefore a matter for the Provost to determine if he would accept the amended requisition motion, as a matter of urgency.

After hearing the Head of Legal, Administrative and Regulatory Services in response to Members’ questions, Provost Agnew agreed to accept the motion, as amended, as a matter of urgency.

(a) Report by the Chief Executive

In response to a question by Councillor Black, the Head of Legal, Administrative and Regulatory Services explained why the report appeared before the motion on the agenda.

A report was submitted by the Chief Executive:-

- (i) detailing the factual, procedure and propriety position to ensure that all Members were aware of this prior to making a decision; and
- (ii) reporting on why the decision had not been fully implemented in accordance with the wishes of the Acting Chair of the Committee and on the situation with the report, thus answering the second part of the motion.

Councillor Rooney, seconded by Councillor Calvert, moved:-

This Council notes, with grave concern the unacceptable interference of Councillor Ronnie McColl in due process following the decision of the Appeals Committee on 14 August 2008.

This Council accepts that interference of this nature by individual Elected Members of the Appeals Committee that puts pressure on Officers to change decisions incurs serious risk of subverting proper Personnel Procedures, transparency and openness of Council decision and therefore risks bringing the reputation of this Council into disrepute.

Since such unwarranted interference by individual Elected Members is in clear breach of the Council’s Officer/Member Protocol, this Council will give every support to Officers in resisting such unacceptable behaviour by Elected Members.

Therefore this Council instructs the Chief Executive to request the Standards Commission to carry out a full investigation into the alleged behaviour outlined in his report.

Furthermore this Council insists that any future occurrence of such behaviour by an individual Elected Member is reported by the Chief Executive, without exception, as a complaint against the offending Elected Member to the Standards Commission for investigation.

This Council calls on Councillor Ronnie McColl to step down from all positions he holds on Regulatory Committees pending the outcome of the Standards Commission investigation.

At this point Councillor R. McColl apologised to Provost Agnew for his angry outburst at the last meeting of Council when the Provost refused to accept his motion on this matter as a matter of urgency.

As an amendment, Councillor R. McColl, moved as follows:-

This Council notes the very serious allegations, inaccuracies and conjecture contained within this report.

Council instructs officers to forward this report in its entirety to the appropriate body conducting the investigation called for in the motion at 3(b) in these papers (see below).

The Chief Executive and Head of Legal, Administrative and Regulatory Services were heard in clarification of some of the issues mentioned in Councillor R. McColl's contribution and then in answer to Members' questions.

After hearing Councillor J. McColl, Councillor R. McColl agreed to accept the undernoted addendum to his amendment:-

This Council instructs the Chief Executive to ask the Standards Commission to investigate the allegations made concerning the behaviour of Councillor Ronnie McColl which are in conflict with the Councillors Code of Conduct.

Thereafter, Councillor J. McColl seconded the amendment, as amended to include the addendum.

ADJOURNMENT

Following debate and having heard Councillor Rooney, the Council agreed to adjourn for a short period of time.

The meeting reconvened at 4.30 p.m. with all those Members shown on the sederunt in attendance.

Councillor Rooney, with the agreement of the Council, withdrew his motion. There being no other motion before the Council, the Council approved the above motion by Councillor R. McColl, as amended to include the addendum.

(b) Motion by Councillor Ronnie McColl

This Council instructs officers to fully implement the decision of the Appeals Committee in August 2008, including sending a letter stating –

1. The grievance category.
2. All parts of the details of grievance listed in Appendix 1 on Page 6 of the Appeals Committee papers.
3. All contents of the letter sent to the appellant dated 15 August 2008.

Furthermore, the Council instructs officers to submit an independent report to a full Council meeting no later than the February meeting on –

1. Why, despite repeated attempts by the Acting Chair of the Committee, it has taken over four months and this motion to get a committee decision fully implemented?
2. Why the report requested with regards to actions taken by the Executive Director of Social Work and Health has not been forthcoming?

Councillor R. McColl spoke in support of the above motion.

After hearing Councillor Black, Councillor R. McColl agreed to accept the undernoted addendum by Councillor Black:-

This Council notes that the JCF, after considerable debate, agreed the following:-

- Appeals Committee members will receive a copy of all decision letters sent out by the Council.
- The category of the Appeal will be clearly stated in the decision letter.
- The terms of the Appeal and details of whether each has been upheld or otherwise will be clearly stated in the decision letter.
- The further actions instructed by the Appeals Committee will be clearly stated in the decision letter.

Council fully supports this decision and instructs officers to implement this decision.

Council further agrees that minutes of an Appeals Committee will come before the next Appeals Committee for agreement or otherwise in line with the practice for other Council committees, and in accordance with Standing Order 27 (a).

Thereafter, Councillor Black seconded the above motion, as amended to include the addendum.

After hearing the Chief Executive and the Head of Legal and Administrative Services express concerns about the last paragraph of the addendum (namely that a differently constituted Appeals Committee with different Members be asked to approve the accuracy of a previous Committee decision), the Council agreed to approve the above motion by Councillor R. McColl as amended to include the addendum.

The meeting closed at 4.55 pm