

ACCOUNTS COMMISSION FOR SCOTLAND

PUBLIC HEARING

on

SHETLAND ISLANDS COUNCIL

held at the

Town Hall, Upper Hillhead, Lerwick ZE1 0HB

on

Tuesday 29th June 2010

Before:

John Baillie (Chair)
Christine May
Bill McQueen
Graham Sharp
Douglas Sinclair (Deputy Chair)

Mark Brough (Secretary)

PROCEEDINGS DAY TWO

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1 [SESSION 6]

2 CHAIR: Good morning everyone, welcome to the second day of this hearing in
3 public of the Accounts Commission. I formally reconvene the meeting of
4 the Accounts Commission and welcome you all as well as our first witness,
5 Mr David Clark. Can I please remind everyone to switch off their mobile
6 phones? Thank you very much. The first witness today is Mr David Clark,
7 welcome sir, the former chief executive of Shetland Islands Council, and I'll
8 start off the questions.

9 I think the first question would be around the area of why you were
10 attracted to come to Shetland Islands and to become the chief executive of
11 the council, given your private sector background. It does seem to be quite
12 a new venture for you.

13 DAVID CLARK: Well first of all I was brought up in the Shetland Islands so this
14 was very much, you know, part of my, you know, part of what makes David
15 Clark what is David Clark. In terms of private sector background, I had a
16 private sector background until 2005, and then spent 2005 to 2009 working
17 directly as an interim manager for the public sector in London. And during
18 that period I was heavily involved in the delivery of decent homes for
19 Westminster City Council and community build for Lambeth Council as well,
20 so I realised that I not only did enjoy the public sector environment, I was
21 also very good at it and could bring a 'can deliver' approach into the public
22 sector, and had been very successful in doing so.

23 At that point in time I'd had a contract that had been terminated
24 prematurely so, you know, I was looking for work and contracts. I wasn't
25 looking for permanent employment, but I saw that one come up and I
26 thought that would be a brilliant opportunity, I'd love to go back to Shetland,

1 it's a place I loved when I was a child, I've always wanted to go back, and it
2 was a fantastic opportunity. I mean the fact of the matter is the chief
3 executive of Shetland Islands Council is one of the best jobs in the public
4 sector. It is maybe a remote area and it maybe isn't the largest, but the fact
5 of the matter is the areas over which the council has control reach far
6 beyond what most other public sectors do as well, so there was a breadth of
7 opportunity as well as the fact that quite clearly the council had lost its way
8 in some respects, and despite having capitalised on having a lot of assets
9 from the oil period without starting, or without having diminished, and many
10 people thinking it was over, there was almost a complacency, you know, the
11 good days are gone and... ..

12 CHAIR: Okay, can I just interrupt you there? We'll come back to those issues in a
13 second as we start to go more deeply. You said you brought a 'can deliver'
14 attitude into the public sector. I infer from that you thought it wasn't there
15 already.

16 DAVID CLARK: I think it was quite clear from reading the Audit Scotland
17 report, which I read in preparation for applying and getting the job, it was
18 quite clear that didn't exist here.

19 CHAIR: Right, okay. So in terms of your impression of the council when you
20 joined, those were your initial impressions, I guess, before you joined. Then
21 you joined the council. What were your initial impressions of the council?

22 DAVID CLARK: It was rudderless, both within the elected area and the paid
23 officials. I mean for example, when I asked to see the minutes of the last
24 Executive Team meeting that had taken place months before, and they
25 seemed to be on an ad hoc basis with a fairly ad hoc membership, when I
26 asked when the last meeting had been of the full Heads of Service,

1 apparently nobody could remember if there ever had been one.

2 CHAIR: There seemed to be some tensions in working relationships fairly soon
3 after you took up the post between members, and between members and
4 officers. Some submissions we've seen suggest that this may be a longer
5 term problem. What is your view?

6 DAVID CLARK: Well they were ongoing well before I joined, and when I joined I
7 came in the middle of a spat which was Jonathan Wills having a public
8 criticism go at the Head of Planning, and he was castigating him in public,
9 and – now, planning is meant to be and is – has statutory independence,
10 and here I had a head of a statutorily independent body who couldn't
11 answer back when publicly castigated by one of the elected members. And
12 I put out a statement saying that I expected that the officers should be
13 treated with respect.

14 CHAIR: Okay. And then you run into some relationship difficulties around the
15 council too, it would appear. If I can describe those just for shorthand as
16 things started to go wrong, if I can use that term for a minute just for
17 shorthand purposes. When did you feel things started to, if you like, go
18 wrong for you, and why was that, do you think?

19 DAVID CLARK: Well as soon as I made that public statement, in *The Shetland*
20 *Times* that Friday, that was a cartoon, you know, a third of a page cartoon,
21 basically with me as a headmaster saying to Jonathan Wills, who was a
22 peerie boy sitting at a school desk with a catapult saying, 'No bullying in my
23 class, Wills'. And quite clearly that upped the man, and understandably so,
24 he probably felt humiliated, and from that point on there was a constant
25 barrage of attacks on myself at every level, be it in the chamber, which I can
26 accept, be it through the media, be it through gossip and rumour

1 mongering, being it coloured in with the gutter press. Or for that matter
2 publishing satirical articles on the internet.

3 CHAIR: Okay, thank you. Let me ask Douglas Sinclair to take up the questioning.

4 DOUGLAS SINCLAIR: Morning, Mr Clark.

5 DAVID CLARK: Morning.

6 DOUGLAS SINCLAIR: You would agree, would you, that you hadn't been a chief
7 executive before, so this was your first chief executive's appointment.
8 Given that, and given also the fact that the job of a chief executive is a
9 demanding, complex and challenging one arguably, would you agree more
10 so in an islands council given that in the absence of a party political system
11 you could argue an additional responsibility devolves on the chief executive
12 to ensure that the council is going forward and is continuously improving.
13 Given your background and given the challenge of that job, what steps did
14 you take to familiarise yourself with the kind of challenges that you would
15 face?

16 DAVID CLARK: Right, first of all I didn't even have to make that assumption about
17 Shetland: It was made explicitly clear in the advert for the job that there
18 was expected to be a community leadership role that went beyond the
19 normal chief executive role. I did my research; I read as many documents,
20 as many reports on Shetland as I could find on the internet prior to coming,
21 and when I joined the council I spent the first – I can't remember how long,
22 but let's say maybe the first week and a half making sure I spoke to the
23 Heads of Service of each of the different areas to familiarise myself with the
24 broad lay of the land, but also what were the key issues that were affecting
25 the council, and you know, taking up the officers' time at that point in time to
26 get a feel for the overall picture, but what are the key issues we need to be

1 looking at now. And it was evident within days that first of all I had to get
2 some kind of order within my own team. So I established weekly Executive
3 Team meetings from the outset, but also I wanted to have an inclusive and
4 collaborative style of working, so I initiated or I created what I call the
5 leadership team, which was the Executive Team plus all the other Heads of
6 Service to meet a minimum of once a cycle, so at least once every six
7 weeks. On top of that it was quite clear that there was some kind of issue in
8 terms of communications between elected members and officers, so to try
9 and get a framework for seeing how we could best address that within the
10 first couple of weeks, we agreed that the Executive Directors and myself
11 would meet on a regular basis with the senior councillors. Now at that
12 stage it was more an informal arrangement which was later formalised.

13 DOUGLAS SINCLAIR: Thank you for that, but could we just push a little about
14 actually how you do the job as the chief executive. I take the point about
15 building capacity within the council. But did you engage with other chief
16 executives in terms of some of the challenges they faced, how you manage
17 difficult relationships with members, how you get members to understand
18 what the roles were and the roles of officers? Did you join SOLACE; did
19 you seek counsel and help from chief executives outside? Did any of them
20 come up here to help you?

21 DAVID CLARK: I joined SOLACE. I attended regular SOLACE meetings when I
22 could. Unfortunately there was a number of meetings I had to cancel at the
23 last meeting, it tended to be attacks and crises were generated just as I was
24 about to go off the Islands. I attended SOLACE meetings, I joined – I don't
25 know what you would call it, but it was a group of new chief executives to
26 work with each other to try and see how – you know, what are the issues

1 affecting us, and also had meetings with the full number of chief executives
2 who could attend meetings. One of the first was in Orkney, I think it was
3 round about August, if I recall.

4 DOUGLAS SINCLAIR: Okay. Did you say what you thought were the skills that
5 you would require to develop in this job given it was the first job that you
6 had as a chief executive, had you thought through, 'Well this is different,
7 what are the skills I'm going to have to learn?' and what were they?

8 DAVID CLARK: Well one of the key ones was going to be influencing elected
9 members without direct authority. The other was quite clearly there was a
10 misconception over basically the relationship between elected members
11 and the chief executive as a boss/employee relationship. I mean I was
12 quite clear in my mind that the council as an elected body, was my boss,
13 and embodied through the convenor, and I never, ever had issue with that.
14 There was a perception that the chief executive has 22 bosses because it's
15 22 independent councillors. Now that was something that had to be
16 clarified, and I made it quite clear with the convenor that I would seek his
17 advice on a regular basis, we have very regular informal meetings, and
18 whenever I brought up issues to seek through how to develop them, I don't
19 mean this as a criticism, but his attitude was, 'I employed you to be chief
20 executive, on you go and get it done.' Now I took that as a support rather
21 than a leaving me hanging out there, but without doubt one of the key things
22 that had to be developed was that influencing in a political arena, which was
23 a key factor to trying to get, as an initial stage, the forum with the senior
24 elected members. Now I had all sorts of ideas for how in the longer term I
25 could be more inclusive about consulting with all of the elected members
26 with broader basis throughout the staff, but when you've got up to 5,000

1 people working for you and you've got 22 independent elected members,
2 you've got to start somewhere. And I'm quite confident that I made the right
3 moves in trying to get that commenced.

4 DOUGLAS SINCLAIR: So you saw your day-to-day accountability as being to the
5 convenor, and your overall accountability was to the council as a corporate
6 body?

7 DAVID CLARK: Yes.

8 DOUGLAS SINCLAIR: Can I just touch on your submission, because it very much
9 deals with the events from January 2010 onwards, and no doubt my
10 colleagues will want to pick up points about that. You've touched on this a
11 little bit in your answer to the Chair, when you joined the council could you
12 explain in a bit more detail your impressions of how well members
13 understood their role and how they perceived officers?

14 DAVID CLARK: Well there was quite a mixture. There was quite a diversity from
15 what I would interpret as what I saw as the view of the convenor who, and I
16 think he expressed to this some extent yesterday, which was this is a
17 democracy, I've got 22 independents, you're 22 independents can have a
18 say and at the end of the day that's democracy, we'll go with it. And if 22
19 members keep changing their mind, that's democracy and that's fine. You
20 know, a fairly liberal, *laissez-faire* approach to leadership, but one that was
21 more a convening role through to the other extreme which was a small
22 number that, 'We've got an agenda, and no matter what the council agrees
23 as an elected body and a majority, we are going to keep on disrupting
24 things will we get our way.' And there was absolutely no attempt as far as I
25 could see to have any kind of, shall I say, team leadership, and say, 'Look
26 guys, can we get a common agenda here? Can we thrash out what are the

1 key issues that need to be resolved so we can move forward and get some
2 things done?’

3 DOUGLAS SINCLAIR: Just to pick up a point there, what do you think was the
4 motivation of this group of councillors who you allege had an agenda?

5 DAVID CLARK: It’s very difficult to speculate on what other people’s motives are.
6 To be perfectly frank, I think that Cllr Wills, for example, has the Trotsky
7 view of perpetual revolution where whatever is decided upon has to be
8 overthrown before it can ever actually achieve anything. For example, we
9 were two weeks away from starting build on Anderson High School, which
10 would be well on the way to completion now despite the fact his manifesto
11 commitments were supporting that. He then changed his position to
12 challenging it, he then asked for a review to be carried out, and to be
13 perfectly honest, I could see the reasons for the review, I had no issues with
14 that. I ensured that that review was carried out. Ultimately as a basis of the
15 review, Cllr Wills got the change of site for the school, and yet despite that
16 he used the review as a basis to launch a continued barrage of attacks on
17 my competency. And, you know, it just seemed no matter what happened it
18 was going to be used as something to attack. Not looking for common
19 ground on how we could move forward, but let’s look for holes to see where
20 we can pick, where we can destroy, where we can bring down.

21 DOUGLAS SINCLAIR: Thank you. The council had not set any formal
22 performance management arrangements in place for you. What was your
23 view of that when you joined the council?

24 DAVID CLARK: Well, I would have much preferred to have a list of, ‘Mr Clark,
25 here’s a list of twelve things we want you to focus on.’

26 DOUGLAS SINCLAIR: Did you not ask for that?

1 DAVID CLARK: I didn't ask for a list of twelve things because in my
2 discussions it was quite clear that what I had to do was address the issues
3 that were highlighted in the Audit Scotland report, and that was the key
4 thing. Now, there was Anderson High School that needed to be addressed
5 as a very pressing, imminent, shall we say, crisis situation. But in terms of
6 longer term, there were the issues that were highlighted in the Audit
7 Scotland report that were quite clear. I mean nobody had to write them
8 down in a list for me, Audit Scotland had already done that for the council.
9 And the key issues there were getting control over capital spend,
10 prioritisation and delivery, but also one of the key elements that the council
11 had really done nothing with was efficiencies through procurement. And so
12 there were some very clear, strategic areas that needed to be looked at,
13 and to be perfectly frank, when you are in a job two weeks and you start
14 coming under a barrage of attacks being thrown at you, it becomes very – it
15 becomes impossible to say, 'Well, let's step aside and look at a five-year
16 prioritisation programme between myself and the convenor. Whenever we
17 spoke it was, 'Right, you need to get the Anderson High School resolved,
18 and the capital programming,' and you know, it was clear that issues
19 needed to be resolved.

20 DOUGLAS SINCLAIR: I understand the point that there were a set of issues to be
21 resolved.

22 DAVID CLARK: Well strategic issues.

23 DOUGLAS SINCLAIR: Strategic issues. But equally, as part of the role of the
24 chief executive, objectives are not just about issues, they're actually how
25 you implement those issues, the style of leadership. Were any objectives
26 discussed or set for you in terms of how you should approach the job?

1 DAVID CLARK: Any time I raised it I was told, 'We employed you to be chief
2 executive, go on and do it.' And I'll be perfectly frank with you, after asking
3 that maybe three times, if you keep going back and asking it looks like
4 you're not confident in doing your job.

5 DOUGLAS SINCLAIR: You mentioned just a minute ago that there were, even
6 within a fortnight, you know, you were subject to criticism. Why do you think
7 that was?

8 DAVID CLARK: Because I was prepared to say that I was not going to allow my
9 staff to be publicly persecuted through the media.

10 DOUGLAS SINCLAIR: Okay. Can I just pick up that point that refers to the
11 planning issue that you've touched on? Do you think with hindsight that
12 given that was something a councillor had done, and in your view was
13 inappropriate behaviour, instead of issuing a press release it might have
14 been appropriate to have gone to the convenor since the convenor was
15 responsible ultimately for the conduct of councillors and raised the issue
16 with him, and asked him to raise the issue privately with the councillor
17 concerned to get reassurances from that councillor as to future behaviour?
18 Do you think in hindsight what you did was the correct course of action?

19 DAVID CLARK: I do, because I felt my staff needed to know that they had a chief
20 executive who was prepared to protect them and look after their wellbeing
21 in their jobs.

22 DOUGLAS SINCLAIR: But with respect, you could have said to the staff in
23 Planning, 'I want you to know I've raised this issue with the convenor, he's
24 told me he's going to deal with it.' Would you not accept there was more
25 than one way to deal with that issue?

26 DAVID CLARK: Well how would that message have got through to the other

1 4,000 people?

2 DOUGLAS SINCLAIR: It would get through by virtue of the fact if the convenor
3 had got that reassurance it wouldn't have happened again.

4 DAVID CLARK: I will accept that every single thing I did in my job could have
5 been done differently, and perhaps better on some occasions, perhaps
6 equally well, and on some occasions worse. I'm not here to try and say that
7 everything I did was perfect, or the best way.

8 DOUGLAS SINCLAIR: Just on that point, you say that others use the media in
9 what you regarded as an inappropriate way. Why then have you sought to
10 play out a lot of your disputes with different people through the media?

11 DAVID CLARK: I haven't. When I was chief executive I made one statement that
12 said, 'I will not carry out my disputes through the media,' and I challenge
13 anyone here to find an example of me responding through the media to any
14 of these disputes. You will not be able to do so. Not when I was chief
15 executive. Since departing as chief executive, under the terms of my
16 agreement, I have the right to respond on a proportional basis, and when
17 members continue to attack me and my family, I am now going to exercise
18 that right, but you will not find any example of me publicly engaging in a
19 dispute while I was chief executive.

20 CHRISTINE MAY: Good morning, Mr Clark. My questions will centre around the
21 issue of the assistant chief executive, but before I do that, can I ask you one
22 general question in response to something you said? You said when you
23 took up the post you instituted a series of regular informal meetings with the
24 convenor. When you realised that there were perhaps dissenting views
25 from what might be called the official view of the council through the
26 convenor, did you consider making those meetings with the convenor less

1 informal and putting them on a formal basis and having a minute of the
2 meeting?

3 DAVID CLARK: No, I didn't.

4 CHRISTINE MAY: Okay, how did you communicate the results of those informal
5 meetings to your senior management team?

6 DAVID CLARK: I met my senior management team at least once a week, and
7 on a regular basis in between the weekly meetings, and we'd used these
8 opportunities to communicate on a one-to-one basis with my team.

9 CHRISTINE MAY: And was it your practice to have a formal note of those
10 meetings so that could be no dubiety about what had been discussed?

11 DAVID CLARK: There were notes taken of each Executive Team meeting, yes.

12 CHRISTINE MAY: And were those notes circulated?

13 DAVID CLARK: They were circulated, but I can't recall at this point in time how
14 widely they were circulated.

15 CHRISTINE MAY: Thank you. In that case, turning to the issue of the assistant
16 chief executive, you said in your submission, with reference to the
17 convenor, 'He presented an amendment to reinstate the post of assistant
18 chief executive having consistently supported the removal of the position,
19 advising that it was my responsibility to action the deletion as a staffing
20 matter, and promising me personally that he would not do so.' Can you
21 describe what part members played in the discussions about the changes to
22 roles and responsibility in your department?

23 DAVID CLARK: I'm quite happy to do so. Once I prepared the report on what my
24 thinking was on the matter, I sent that through to the convenor in writing and
25 got a response from him saying he was fine with it but he wished it to be
26 discussed, or suggested the best way forward was to discuss it with the full

1 group of senior elected members officers, which did in fact take place. Now
2 despite what you were told yesterday, at that meeting there was consensus
3 support for what I was proposing to do and there was absolute clarity that I
4 was expected to do this under my delegated authority, and that it was not a
5 decision to be taken in the chamber. In September I prepared a draft
6 report, which I've got here, which was to go before full council on 16th
7 September. And I took the unusual step, because I knew it was a
8 contentious issue, of circulating it to all councillors for comment. And I will
9 read...

10 CHRISTINE MAY: Sorry, Mr Clark, could I just ask, because it's relevant to what
11 you're saying, before you prepared that second report what advice did you
12 take on personnel and HR matters in preparing it?

13 DAVID CLARK: I sought advice from the Head of Organisation, and Head of HR,
14 from the Head of Legal, and basically having – and also I had sought the
15 advice of my Executive Directors. And the fact of the matter was I was
16 advised categorically and in no uncertain terms that this was an issue that
17 should be handled under delegated authority. Now despite that, if the
18 elected members had said, 'We'd prefer that there's a decision in the
19 chamber,' I wouldn't have had an issue with that. You know, it makes – I
20 would have to have changed probably two sentences in my report.

21 CHRISTINE MAY: Can I ask, advised by whom?

22 DAVID CLARK: I've just answered your question. I was advised by the Head of
23 Legal, by the Head of Organisation and the Head of HR.

24 CHRISTINE MAY: And my question related to the involvement of elected
25 members as well as the advice you took.

26 DAVID CLARK: Yes, and you interrupted me while I was trying to tell you. I sent

1 out a draft report to all elected members where this, and I read, 'This report
2 was communicated to the convenor on 7th July 09, and at his request
3 discussed with the next meeting of the Executive Directors with the senior
4 councillors on 12th August 09. There was a consensus view that this was a
5 staffing matter for the chief executive and not for the elected members to
6 decide on.' Now I'm hardly going to write a report and then circulate as a
7 draft for comment if that wasn't the case. And in my recommendations,
8 'Note the review and endorse the progress of implementation.' If it had
9 been a decision for the council, it takes two minutes to change that to,
10 'Approved the review and approved the implementation.' You know, it was
11 no skin off my nose. I sought to understand what the rules of this council
12 were for implementing it, and to my knowledge to this day, did implement
13 them correctly. And for that matter, Audit Scotland has found that I did
14 follow the redeployment policy. And on that matter, they have stated I did
15 not follow the redundancy policy because I didn't consult with the unions.
16 Now the fact of the matter is the redundancy policy does state that I should
17 have consulted with the post holder's union. He was not a union member
18 on the 24th so he did not have a union representative to consult with. And
19 I'll sit here today and make the assurance to you that if anybody can
20 produce evidence that the assistant chief executive was a member of
21 Unison on the 24th, I will issue a public apology to Unison. But if they can't
22 produce that evidence, and it's accepted that he was not a member of a
23 union on the 24th, then this Commission has to find that I didn't breach the
24 redundancy policy either. There have been accusations that I have
25 breached employment law, acted illegally. I breached no employment law.
26 There was actually external legal advice sought with the council as well. I

1 did not breach any policy or regulation in what I did. I sought to consult – I
2 am not going to say everything was handled perfectly. If it had been
3 handled perfectly we wouldn't be in this situation discussing it now. But I
4 did my best to ensure that I was following practice and procedure, and went
5 beyond that. I actually sought to look after the wellbeing and the needs of
6 the individual, and to offer a range of options for the individual that would
7 have meant that the status within the council was maintained and that there
8 wasn't any impact for his family as a result of this change.

9 DOUGLAS SINCLAIR: If you had been a bit more experienced as a chief
10 executive, would you not have thought that given this was a senior post,
11 given the post had been established by the council, that the
12 disestablishment of this council, irrespective of whether you thought they
13 had the authority or not, that a more wise course of action, particularly in a
14 small council, would have been taking the item back to the councillors for
15 them to make a decision?

16 DAVID CLARK: Well, when the councillors have told you they don't want to take
17 that decision, I felt it would have been fairly confrontational. I think with
18 hindsight what I should have done is said, 'Look, the person who's involved
19 here was a reserve candidate, any action I take could be perceived as
20 being of a personal nature,' and I think at that stage with hindsight, and the
21 lesson I've learned from it is I should have sought permission to get an
22 external body in to carry out a full review of the job.

23 CHRISTINE MAY: Okay, thank you, Mr Clark. Can I just go back and confirm
24 one thing with you, because I'm not clear from the answer you gave me.
25 When you say you were told that it was a matter for the chief executive, and
26 I'm assuming that you were told that by councillors, was it by all councillors

1 or a small number of councillors or one councillor?

2 DAVID CLARK: It was by the full group of senior councillors, or all the ones that
3 were there on the day.

4 CHRISTINE MAY: At a council meeting or at a committee meeting, and if so,
5 which?

6 DAVID CLARK: Sorry, I've clearly not expressed myself very well. In my second
7 week into the job, in order to facilitate communications between the elected
8 members and the officers, I initiated a meeting which would meet every
9 cycle or as required, and it would be all the senior members and the two
10 Executive Directors and myself. That was subsequently formalised as the
11 senior liaison team or whatever the actual wording was, but it was that
12 forum there, so it was the convenors and vice-conveners of the key
13 committees.

14 CHRISTINE MAY: Okay, thank you. And was there a formal remit agreed for that
15 committee on a reporting mechanism?

16 DAVID CLARK: I'm sorry, I keep repeating myself. I've just told you it was an
17 informal meeting, not a formal one.

18 CHRISTINE MAY: Okay, thank you. But given that you were deleting a position
19 which had been formally agreed by the council, if you were to be there
20 again, would you choose to use an informal, albeit constituted group of the
21 council for such an important deletion?

22 DAVID CLARK: Well two things. First of all, yesterday is the first anybody has
23 ever said to me that it was created by full council. My understanding of
24 what I was advised was that it was the former chief executive who created
25 the position. So what you were told yesterday was news to me, because
26 that wasn't what I was told at the time. I was told it was created under

1 delegated authority, that it was created without consultation, and that unions
2 opposed it at the time. So had I been told that it had been created as a
3 decision by council, then there's every chance I would have handled things
4 slightly differently.

5 DOUGLAS SINCLAIR: But with respect, if the chief executive had the delegated
6 authority to establish the post and did so, that in effect becomes a decision
7 of the council. If he had the delegated authority from the council to
8 establish the post, then he was acting on behalf of the council, had the
9 authority to establish the post, and therefore it became a post that the
10 council had delegated authority of the chief executive to make, therefore the
11 council had approved it.

12 DAVID CLARK: Yes, so I had that same delegated authority to disestablish the
13 post.

14 CHRISTINE MAY: On what do you base that assertion?

15 DAVID CLARK: On the advice I was given by the legal team.

16 DOUGLAS SINCLAIR: You've also just admitted that with the benefit of hindsight,
17 given the background to the applicant, given the complexity of the situation,
18 that with hindsight it would have been more appropriate for you as a more
19 experienced chief executive to take the matter back to the council, or as you
20 say, refer the matter to an outside body to determine it.

21 DAVID CLARK: No, sorry, that isn't what I said. I said with hindsight I would have
22 taken it to an outside body. What I said was if I had been told what this
23 meeting was told yesterday, and I have never been told that, that there had
24 been a full decision of council, then I would have perhaps seen it as a
25 decision to take to the forum of the full council. But having been
26 established by a decision by the chief executive, which was what I was

1 advised, I saw it as entirely consistent to exercise that same delegated
2 authority.

3 BILL MCQUEEN: Mr Clark, can I get your sense of the process of reaching the
4 negotiated settlement? Your submission to us, which goes into some detail
5 about this, says that you returned to work in early January, and looking
6 forward to working with the convenor and the council in 2010. And then
7 there were these incidents around 19th to 25th of January, and on 26th
8 January you got confirmation from the council that they would meet your
9 legal costs, and you cleared your desk. And I wondered, was that the first
10 time that you then engaged legal advisors to help you in the matter of the
11 settlement with the council?

12 DAVID CLARK: That was the first time that I had ever engaged legal advice.
13 Even whilst I was put through the disciplinary proceedings I entirely
14 represented myself. I had never any desire to get into legal confrontation
15 with the council.

16 BILL MCQUEEN: You say, again in your submission, on 28th of January that week
17 that you commenced action against the council. Did you submit an
18 employment tribunal claim, or what did you mean by commencing action at
19 that stage?

20 DAVID CLARK: My lawyer wrote the council a letter, or the council lawyers a
21 letter, detailing the areas in which we felt I had a claim against the council
22 for the treatment of me. That letter was based very largely on the basis of
23 the council's own legal advice in November, which in particular Jonathan
24 Wills and Gary Robinson had failed to abide by. And on the basis of that,
25 we wrote that letter and agreed to have a meeting to see if we could have a
26 mutually agreeable settlement to avoid the need for tribunal or legal action.

1 BILL MCQUEEN: We heard yesterday from the council's legal advisor that a
2 major factor in the amount of the settlement was the possibility of a claim
3 arising from what he called 'whistle blowing'. And I understand that requires
4 a disclosure to be made. Can you tell us what all that was about and when
5 it was made and to whom?

6 DAVID CLARK: That was surrounding the fact that I had been party to putting in a
7 complaint against Jonathan Wills for his breach of code of conduct.

8 BILL MCQUEEN: Okay. Now we've looked at the compromise agreement that
9 the council agreed with the legal advisors, and it appears that council paid
10 you £230,500 for personal injury and injury to feelings. What was the actual
11 injury that you suffered?

12 DAVID CLARK: Okay, let me ask you a hypothetical question, which isn't
13 hypothetical –

14 CHAIR: He doesn't guarantee to answer it.

15 DAVID CLARK: No, and I bet he won't either. You are in the garden and your
16 partner gets a phone call from a Publican to tell them that the Publican has
17 had a phone call from the Head of the Licensing Board spreading rumours
18 and raising rumours that the pair of us had had sex in a public toilet and
19 been thrown out. And then my partner has to go and explain that that
20 rumour is now circulating. She's got to go and explain that to her 17-year-
21 old daughter, because of what a so-called elected member is doing, acting
22 on rumour and innuendo. That is the kind of personal hurt.

23 BILL MCQUEEN: Thanks. The agreement was structured in a certain way. Was
24 there any particular reason from your point of view, or your legal advisor's
25 point of view, why it was structured as it was with a substantial amount put
26 down to personal injury, and no element for loss of future earning?

1 DAVID CLARK: The fact of the matter is that we went in to reach a negotiated
2 settlement. The council's negotiating team refused to negotiate a
3 settlement on a basis of individual points and insisted on just reaching a
4 figure.

5 CHAIR: Thank you. Let me just put a couple of points to you, small points, I think,
6 certainly the first one. In your written submission to us, for which I thank
7 you, at the last page, the fourth last paragraph refers to Shetland's
8 reserves. When you say Shetland's reserves, who is the Shetland in that
9 description?

10 DAVID CLARK: The Shetland community.

11 CHAIR: Community. Okay, thank you. And another point is that your submission
12 makes quite a few references to the convenor's Up Helly Aa Squad. Can
13 you just clarify what you mean by that?

14 DAVID CLARK: Right. There is a fire festival in Lerwick called the Lerwick Up
15 Helly Aa.

16 CHAIR: Yes, we're aware of all that.

17 DAVID CLARK: Oh, sorry, I thought you asked me to explain it.

18 CHAIR: No, what I meant was what you meant by the reference to the squad as
19 such.

20 DAVID CLARK: That's the squad that he's a member of.

21 CHAIR: Right, and what's the inference that you're leading us perhaps to,
22 because I'm unclear on...

23 DAVID CLARK: I'm not leading any inference, I'm reporting what I was told.

24 CHAIR: The Squad itself, is that a reference to other members of the council?

25 DAVID CLARK: No, it's the Up Helly Aa Squad. A squad of people that dress
26 up and carry torches through Lerwick on Up Helly Aa Day.

1 CHAIR: Okay. So just to be quite clear for the record, this is not a reference to
2 anyone who is a council member or anyone who's a council employee, is
3 that correct?

4 DAVID CLARK: Correct. And for the record, it is not a reference to the Yarl
5 Squad, and it is not a reference to the Up Helly Aa Committee either.

6 CHAIR: Right, thank you very much. Let me just check with my colleagues if
7 there are any further questions. Douglas?

8 DOUGLAS SINCLAIR: We heard yesterday from the council's external legal
9 advisor that in his view some of the actions of some councillors in breaching
10 the code of conduct resulted in the settlement being higher than it
11 necessarily might have been. Would you share that view?

12 DAVID CLARK: There wouldn't have been a settlement if it hadn't been for the
13 action of councillors colluding with the gutter press in the article in *The Sun*,
14 which sought to defame me and draw untrue implications, and make my
15 private life look as though it was something which it was not.

16 DOUGLAS SINCLAIR: Why do you think, in your view, there seems to be a
17 particular problem in this council about the observance of the code of
18 conduct?

19 DAVID CLARK: Because they get away with it. And when the Ethical Standards
20 Commission tell me it's alright, it's just going to get worse.

21 DOUGLAS SINCLAIR: Well we'll...

22 DAVID CLARK: Well I would ask you not to ignore it. I think it's a very valid point.

23 CHAIR: But that's your personal view of the last point.

24 DAVID CLARK: Well I'm here to give my view, I thought.

25 CHAIR: Your point is on the record and will be evaluated as part of the evidence,
26 just to assure you of that.

1 DAVID CLARK: Can I also make the point that to this date, despite the fact
2 that I was a complainer in the complaint against Jonathan Wills, and one of
3 the key people involved in it, the Ethical Standards Commission excluded
4 me from their initial interview list, and then to this day, haven't even sent me
5 a copy of their note of findings. So I still don't know what it said apart from
6 what I read on the internet.

7 CHAIR: Let me put a final question to you, Mr Clark, given your experience here.
8 And you've kind of touched on some of this throughout your evidence to us,
9 and it's this. With everything that has passed, your experience over the last
10 year, if you were going to put the council on what you consider to be the
11 right road, what would you do?

12 DAVID CLARK: It's impossible till there's elections.

13 CHAIR: Pardon me?

14 DAVID CLARK: It's impossible until there are new council elections. The leaks
15 will continue. I mean everyone knew this hearing was being held on
16 Monday and Tuesday of this week, and yet last week Gary Robinson
17 launched a public attack on the monitoring officer. Nothing's changing.

18 CHAIR: And from what you say it's quite clear you see nothing will change, is that
19 right?

20 DAVID CLARK: Especially in light of the fact that the Ethical Standards
21 Commission have said rules aren't really there to be followed. If you say it's
22 in the public interest you can do what you like.

23 CHAIR: Right. Mr Clark, thank you very much for your evidence.

24

25 [SESSION 7]

26 CHAIR: Ladies and gentlemen, we move on to the next session, which is

1 representatives of the trade unions. Can I ask you please, gentlemen, for
2 the record to introduce yourselves briefly with your position.

3 ROBERT WILLIAMSON: Certainly. I'm Robert Williamson, representing the
4 GMB.

5 BRIAN SMITH: I'm Brian Smith from the public services branch of Unison in
6 Shetland.

7 ALLAN HANNAH: Allan Hannah, from Unite.

8 CHAIR: Thank you very much. Douglas, you want to start off.

9 DOUGLAS SINCLAIR: Good morning, gentlemen. I want to start off with the
10 leadership process for the chief executive post appeared to be less rigorous
11 than the one used for the recruitment of the Executive Directors. What role
12 have the trade unions played in seeking to ensure that the council chooses
13 appropriate approaches and indeed follows best practice in recruitment?

14 BRIAN SMITH: I have to tell you that that's not a matter the trade unions have
15 been consulted with at all at any point.

16 DOUGLAS SINCLAIR: That begs the obvious question, why have you not been?

17 BRIAN SMITH: That's a good question.

18 DOUGLAS SINCLAIR: Well it may be a good question, but it would be nice if
19 you'd give me an answer.

20 BRIAN SMITH: It simply isn't a question that's in day-to-day discussion, or week-
21 to-week or month-to-month consultation has ever arisen. It may be that it
22 needs to in future, but I simply tell you the factual situation.

23 DOUGLAS SINCLAIR: Okay, right. I think that brings me onto the question,
24 perhaps you could describe for me what the current consultative
25 arrangements are, how effective they are and what improvements you'd like
26 to see to them.

1 BRIAN SMITH: The consultative arrangements are that there is an employee joint
2 committee which meets every cycle between representatives from each
3 trade union and the council. That committee has been in existence in
4 different forms now for the past 30 years. It has gone through periods when
5 it has been more effective than others. It has gone through periods when
6 there have been difficult discussions there, but nonetheless it has continued
7 to exist, and I believe at the moment is as effective as it has been. It has
8 protocols which ensure that staff are consulted about issues which might
9 affect individuals or groups of staff.

10 DOUGLAS SINCLAIR: When you say it's been through some better times and
11 some difficult times, could you elaborate as to why you have that view?

12 BRIAN SMITH: Well it's based on observation of events. I can tell you that in its
13 earliest days, in the late 70s and early 80s, when there were some fairly
14 combative chief executives, the atmosphere at these meetings was
15 extremely difficult. There was no cooperation, or not much cooperation
16 between the two sides. That situation ceased to exist a long time ago, and I
17 believe that the council and the staff side now regards it as important that
18 proper consultation takes place.

19 DOUGLAS SINCLAIR: The council's representative on the JCC, is that council
20 members or is it Head of Organisational Development and staff, or both?

21 ROBERT WILLIAMSON: Certainly. On the JCC, the quorum of the JCC is three
22 members from the council side, which is elected members, and at least
23 three from the union side. Normally the chief executive would be in
24 attendance with regard to that, but obviously over the last little while that's
25 not been happening. But with regard to your question about union
26 involvement: no, we haven't been involved at the level of the appointments

1 of chief executives, though we do have policies and procedures regarding
2 what I'll call the bulk of the council's employees, but at that level, certainly
3 for my part, my assumption was that we have had a culture of employing
4 consultants and things with regard to senior posts and things. And I had
5 assumed that that process would have been gone through.

6 DOUGLAS SINCLAIR: And in addition to the formal arrangements that you have
7 through the JCC, is there a dialogue that you believe is a good dialogue, is
8 an effective dialogue with appropriate staff in HR? I mean would they share
9 draft papers with you, draft ideas with you?

10 ROBERT WILLIAMSON: Yes, certainly. I mean I would say they're actually very
11 good in developing dialogue with regard to that with the unions and the
12 officer team, and/or elected officials. That is something that's coming
13 forward here.

14 DOUGLAS SINCLAIR: Good. The council's obviously experienced quite a bit of
15 difficulty over the last few months. Could you just outline in some detail
16 what you think your impression has been of the impact of those difficulties
17 on staff in the council?

18 BRIAN SMITH: I can say that I represent several members who have been
19 involved in these events in various ways, and I can report that there has
20 been high levels of stress in some cases by people who feel that perhaps
21 they can't comment very much on what's been going on, but who have felt
22 under attack. I also have a member, as you know, whose post was deleted,
23 or an attempt was made to delete his post at one stage, and of course he
24 himself, and you'll hear from him, was under huge stress as a result of
25 those events.

26 DOUGLAS SINCLAIR: Do any of your colleagues want to add to that?

1 ROBERT WILLIAMSON: Yes, certainly, I mean it's not made life very easy for a
2 lot of the senior officers in the council and a lot of the staff. What do you do
3 when you can't say how you feel about things, people do tend to be
4 governed by protocols and policies and procedures in this, and as council
5 employees, most of the people try to be bound by that. We have a job to
6 do, it's not always easy, but we try to do it. But this has been played out in
7 the public sector, and that's made it incredibly difficult for a lot of people
8 who are trying to do their jobs.

9 ALLAN HANNAH: It's not just people's frustration, there's a lot of anger out there
10 with some of our members that the amount of cash that is being paid out
11 when services are being cut across the board, there's money getting paid
12 out and there's nothing to say this is why it's been paid out, and this is the
13 closet of secrecy being put in place to cover the compensation.

14 DOUGLAS SINCLAIR: What are your views on some of the points that have been
15 made about the appropriateness of public criticism of officers of the council?

16 ROBERT WILLIAMSON: I think it is entirely inappropriate in the way that it's been
17 played out in the public sector. These people can't defend themselves, and
18 the issues that we've been dealing with as unions are staffing matters. We
19 have organisations, policies, procedures and protocols within the
20 organisation to protect people from just what's happened here, and...well,
21 need I say more?

22 DOUGLAS SINCLAIR: And how do you think the council can recover this situation
23 so that it doesn't happen again?

24 BRIAN SMITH: I think the way is not to do it again.

25 DOUGLAS SINCLAIR: Well, yes. Could you just expand a little bit about what
26 needs to be put in place to make sure it doesn't happen again? What

1 steps?

2 BRIAN SMITH: I think the council needs to discuss how best to keep these
3 matters in the places where they should be, and as Robert has said, staffing
4 matters should be discussed internally using local procedures. They should
5 not be published all over *The Shetland Times*, *The Shetland News*, all these
6 vast numbers of media that we have in Shetland.

7 DOUGLAS SINCLAIR: Do you think that those kind of actions actually send a
8 message to staff that they're not valued?

9 BRIAN SMITH: I think so, yes. I think so.

10 CHRISTINE MAY: Good morning, gentlemen. To carry on on that theme, your
11 submission suggests that the issue is with councillors not appreciating the
12 difficulty and the effect that their disputes have on the work of the council.
13 Now you don't give any examples in your submission. Can you tell us what
14 you mean, and more importantly what you as the recognised trade unions
15 intend to do to see that the position does not arise in the future?

16 BRIAN SMITH: A difficult question. Examples of how this has gone wrong.
17 Concerning my member, the assistant chief executive, I do wish that this
18 matter had been dealt with following the council's own procedures privately
19 without a great deal of attention being given to it in the media. I believe that
20 councillors can exercise self-restraint, and you know, keep these things out
21 of the press. But I fear that this is a matter for the council. The council has
22 got to decide how it restrains these public manifestations. The unions can
23 comment on it, but really it's a matter for the council to show self restraint,
24 I'd submit.

25 CHRISTINE MAY: And can I ask all three of you if you have taken any advice
26 from your union headquarters on what suggestions you, as the recognised

1 trade unions, might make to assist in resolving the situation?

2 BRIAN SMITH: Well if I could comment first on that. I have of course discussed
3 these developing events with officers in my union, but generally speaking
4 the situation here seems to be so unusual that my colleagues tend to throw
5 their hands up, and you know, regard this as something that only happens
6 in Shetland.

7 CHRISTINE MAY: Thank you. Can I move on to the assistant chief executive's
8 post. The council says that its policies and procedures were not followed
9 correctly in relation to this, and this was confirmed by the chief investigating
10 officer in a report to the Standards Commission. That's the complaint LASI
11 914 against Councillor Wills. Can you say why you think this was, and
12 perhaps go on to say why you think the role of this post has not been
13 properly defined?

14 BRIAN SMITH: Okay, with regard to the deletion of the post, your first question.
15 The situation is quite simple. As the Ethical Standard Commission
16 reported, there is a protocol which dates from 2002 – 2003 where the
17 council – the chief executive has delegated authority, provided that Unison
18 and other relevant unions, as relevant, have been consulted and that they
19 have no objections to the proposal. As you know, that didn't happen in this
20 case. So all the stuff about the assistant chief executive not being a
21 member of Unison on the 24th of August is irrelevant. The council had a
22 protocol which said that delegated authority was only permissible if the
23 unions had been consulted, and I can tell you that they weren't. The first I
24 heard about this was an email on the 24th of August telling me that the post
25 had been deleted, no consultation at all.

26 CHRISTINE MAY: And the question about the role of the post.

1 ALLAN HANNAH: Yes, following on from Brian, there's been talk that Mr Shannon
2 wasn't a member of a union before the 24th August. He was a member of a
3 union before the 24th August. I'm hoping that Mr Clark's apology that he
4 was offering up to Unison if they can prove it will now be offered to Unite, as
5 he was a member of Unite at the time.

6 CHAIR: Sorry, can I just be clear, he was a member as of what date?

7 ALLAN HANNAH: It was earlier than August. There were staffing matters and
8 issues that were dealt with, but Mr Shannon can talk about that.

9 CHRISTINE MAY: However, as Mr Smith has confirmed, that in terms of the
10 council's policies and procedures is not relevant because consultation
11 should have taken place regardless of the membership of an individual or
12 otherwise.

13 ALLAN HANNAH: That's correct, yes. But there have been other attacks in the
14 newspaper in some of the statements that Mr Shannon's post wasn't a post,
15 and there's a bit of a dispute in how the job came about. None of this was
16 Mr Shannon's fault. He was given a job and he did it.

17 CHRISTINE MAY: Why do you think the role of the post hasn't been properly
18 defined?

19 ROBERT WILLIAMSON: That's a good question, and I'm not sure exactly how
20 that came about. I believe there were issues. Mr Shannon will be able to
21 answer that, I'm sure. But my understanding of it was there were a lot of
22 things involved in this post. He had been trying to get it clarified for a long
23 period of time, and for whatever reason that hadn't happened. But that's a
24 question for him.

25 CHRISTINE MAY: Thank you. My final question, you described the situation as
26 being resolved in December 2009, presumably because the post was

1 reinstated. The council however talks about the position going to be
2 resolved this month. When and how will the position of assistant chief
3 executive be resolved?

4 BRIAN SMITH: Well yes, I did mean by resolve that the post holder return to
5 work. There is still material that has to be dealt with as a result of what
6 happened and what the post holder is doing. I believe that the council has
7 promised that that will happen this week.

8 CHAIR: Gentlemen, thank you very much indeed.

9

10 [SESSION 8]

11 CHAIR: Right, we're now ready to take the next evidence session, and we
12 welcome Mr Willie Shannon, the assistant chief executive to the table. As
13 ever, Mr Shannon, can you just describe your position for the record?

14 WILLIE SHANNON: Thank you, I'm Willie Shannon, I'm assistant chief executive
15 with Shetland Islands Council.

16 CHAIR: Thank you very much. Christine.

17 CHRISTINE MAY: Thank you. Good morning, Mr Shannon.

18 WILLIE SHANNON: Good morning.

19 CHRISTINE MAY: My first question to you is, as a member of the senior
20 executive team of the council, why have you chosen not to appear as part
21 of that, or participate in the Executive Team in recent months?

22 WILLIE SHANNON: I was a member of the management team, it was called the
23 Executive Management Team. I joined it in 2006, when I became assistant
24 chief executive. At that time it was the chief executive and two executive
25 directors and me. Shortly afterwards the head of finance joined, and couple
26 of years later heads of organisational development, and law and admin, and

1 latterly economic development. I was a member of the management team
2 until last summer, and I think my last management team meeting was in
3 July or the very beginning of August of 2009. But the post, as you are
4 aware, was deleted under delegated authority. I returned to the council in
5 January of this year, but the council invited me to return to resume my
6 duties. Of course matters had moved on. In the interim period while I was
7 off, the council brought in ACAS to try and resolve the situation and to
8 mediate. It was a very short meeting with ACAS, there was no resolution,
9 and the matter went back to council and I think as you heard yesterday and
10 earlier this morning, when the motion of the convenor, I was invited to
11 return. However, the role was not sorted out as I was told it was going to
12 be, and I agreed with the convenor to undertake a couple of tasks for him
13 where matters were resolved. And that is why I've not been with the
14 management team since that time.

15 CHRISTINE MAY: There do seem to be tensions, and there were tensions in the
16 working relationships between some members and officers and the former
17 chief executive before – or fairly soon after he took up the post. Can you
18 give your view on that and perhaps go on to discuss what part members
19 played in the discussions about the changes to the roles and responsibilities
20 in the chief executive's department, i.e. in the deletion of your own post?

21 WILLIE SHANNON: Well I had no involvement in the deletion of my own post, you
22 may be surprised to hear. However, there were tensions. There have been
23 tensions as someone has referred to, I think, in fact it was Ian Clark.
24 Tensions have existed for a significant period of time. That in itself was not
25 unhealthy. Tensions do exist in all organisations and in local authorities.
26 And perhaps more pointedly in local authorities where you are dealing

1 exclusively with a membership which is made up exclusively of
2 independents rather than any party political basis. So there inevitably are
3 tensions. This is a small community; it is very much like living in a goldfish
4 bowl. Those tensions may be magnified, and personality issues can come
5 to the fore, but on the whole I would say that members do on the whole act
6 in a professional manner. When they go into the council chamber there is a
7 protocol and by and large I think that is observed with members.

8 CHRISTINE MAY: And in terms of members' involvement in the discussions
9 around the deletion of your post, can you comment on that?

10 WILLIE SHANNON: I was told at the meeting with David Clark and the HR
11 Manager on 24th August; it was a very short meeting; it lasted no more than
12 ten minutes. I was told that he had conducted the review, that he had
13 discussed the matter with senior members, and the Executive. The
14 Executive Management Team was shortened to the Executive. So he'd
15 discussed it with my colleagues on the management team, if you like. I
16 think earlier on Mr Clark also advised you he'd taken advice from the Head
17 of Legal and Admin, Organisational Development and the HR Manager.
18 Now these were all my colleagues. He also spoke with the two Executive
19 Directors. Now I gather that this was discussed at an informal meeting of
20 the Liaison Group on 12th August. Mr Clark also referred to having
21 produced a report dated the 7th of July, which he gave to the council's
22 convenor. Now bearing in mind the interviews for the chief executive were
23 in late May, Mr Clark started on the 1st June, and he deleted the post on the
24 7th July. This I'm told is referred to an informal group of members, and I
25 was told on the 24th August there was a significant period of time in which
26 this could have been discussed, consultation could have actually place.

1 None of it did. So obviously relations do get strained in these
2 circumstances. What I did hear yesterday, which took me by surprise, was
3 an acknowledgement from two elected members who were at that meeting,
4 I believe, on 12th August, who said they remembered very clearly what had
5 been said, and one of them said he actually made the comment that this
6 was a matter for council. I was unaware of that until yesterday. At the
7 meeting on the 24th August between myself, David Clark and the Head of
8 HR, I asked one question. I said, 'Does he have the delegated authority to
9 do this?' And the answer was, 'Yes, he does.' I was quite unaware of any
10 extent of plenipotentiary powers that may have been able to the chief
11 executive, I'd never been shown. But that was the one question that I
12 asked. But in the minute of that meeting from the HR Manager, she makes
13 it very clear that David Clark said he had taken advice from senior members
14 and officials, including the Executive Management Team, prior to coming to
15 his decision, which he said was purely a management decision for him and
16 him alone.

17 CHRISTINE MAY: Thank you. I suspect my other colleagues may well want to
18 follow up some of that. But one thing does occur to me. You have heard
19 over today and yesterday considerable evidence that most of what happens
20 in this authority is in the public domain within minutes on occasions, and
21 certainly within 24 hours. Were you surprised that this particular issue had
22 not been leaked or made it into the public domain?

23 WILLIE SHANNON: I could say there were no more than signals from my
24 colleagues. You pick up indicators, perceptions that perhaps things are not
25 entirely right. But there was nothing of substance that I could point my
26 finger to. I was on holiday during the summer, as was Mr Clark in fact,

1 there was a period of time when neither of us was around, so that may
2 indicate why I was unaware of what was going on.

3 DOUGLAS SINCLAIR: Good morning, Mr Shannon. I appreciate you've been
4 through a very stressful time. My first question is, as an experienced local
5 government officer, given Shetland Islands Council has been in operation
6 since 1975, would you agree with me that it is somewhat incredulous that
7 after that period of time that it isn't clear and transparent in its governance
8 arrangements beyond doubt who has the authority to establish a post or
9 who doesn't have the authority to establish a post?

10 WILLIE SHANNON: In short, yes. I've been involved with induction, with
11 members' induction and indeed with the council staff induction. One of the
12 great ironies, I returned to my post in January, and one of the first things I
13 was asked to do was to go and welcome new staff through a council
14 induction. I felt that should have been at the other end of the table. But
15 whenever you do this and give an induction you always set out, you know,
16 the basics of how local government works. You know, the ground rules of
17 needing to have the legal power in case because we are a creature of
18 statute. And that means two things. Statute creates us and statute dictates
19 what we can do. All authority rests in the council, and it is a collective,
20 Shetland Islands Council. You can delegate in terms of that to a committee
21 or subcommittee or to an official, and I recognise the councillors may not
22 always appreciate it, but you cannot delegate to an individual elected
23 member. And the third aspect, of course, is you always need to ensure you
24 have the money in place with the authority to spend.

25 DOUGLAS SINCLAIR: So what you're saying is clear delegation is fundamental
26 to good governance.

1 WILLIE SHANNON: It is the foundation for a local authority, yes.

2 DOUGLAS SINCLAIR: Right, can I just go to the point of the establishment of
3 your post in 2006. And correct me if I've got this wrong, because it is a bit
4 confusing. But my understanding is that the post wasn't advertised
5 externally, it wasn't advertised internally, which one might argue one would
6 have expected for a senior post to this authority, that it was established
7 without a job description, and that you were not interviewed for the post but
8 appointed to it.

9 WILLIE SHANNON: Yes.

10 DOUGLAS SINCLAIR: If you as an experienced local government officer saw that
11 happening in another council, you would at least raise your eyebrow and
12 think, 'That's pretty unusual practice.'

13 WILLIE SHANNON: Yes, if you don't know the facts and circumstances you
14 would, yes, that is correct.

15 DOUGLAS SINCLAIR: My second point is on your submission you say that you
16 met with the convenor at the end of September.

17 WILLIE SHANNON: Yes.

18 DOUGLAS SINCLAIR: And he advised you of the trade unions present, but he
19 recognised the lack of authority in Mr Clark's action, and that he would try to
20 support you. I'm quoting directly from your submission.

21 WILLIE SHANNON: Yes.

22 DOUGLAS SINCLAIR: What surprised me a little bit about that was the fact that
23 you had, as an employee, direct access to the convenor in the sense that
24 that wouldn't normally happen in a council, you would normally be required
25 to observe the council's grievance procedure and go through the proper
26 channels. I mean I kind of wonder as to whether you thought that was good

1 practice. I can understand your particular situation, but looking with
2 hindsight, is that standard good practice? Because other employers might
3 say, 'Well, if Willie Shannon had access to the convenor why can't I have
4 access to the convenor?' and it negates the whole grievance procedure.
5 And it also places, I would argue, the convenor in a very difficult position in
6 terms of if he was a member of an Appeals Committee, his ability
7 transparently to hear that.

8 WILLIE SHANNON: Yes, I had written to the convenor in the middle of June and
9 indicated to him that unfortunately I thought I may be in a position where I
10 would have to resort to the grievance procedures of the council. But in
11 advising him I said I recognised that he would play no part on any
12 Grievance Panel or Appeals Panel at the time. The meeting with him at the
13 end of September was brokered through the trades union. It may well be
14 unusual, but this is a small community, and perhaps officials do have more
15 ready access to members than they would ordinarily in another authority,
16 given the level that I've been operating at in the council. Part of my role
17 was member liaison, so I've had a fairly good and strong working
18 relationship over a number of years with members, and in particular the
19 convenor.

20 DOUGLAS SINCLAIR: I understand that, but would you accept my point, there
21 needs to be that perception of fairness that if you've access to the convenor
22 as a senior officer, equally the most junior officer should have that as well?

23 WILLIE SHANNON: Oh, absolutely, yes. Can I just pick up one point on
24 grievance, Mr Sinclair?

25 DOUGLAS SINCLAIR: Not that I'm suggesting that's good practice, but I'm trying
26 to make a...

1 WILLIE SHANNON: Can I just – if you don't mind, if I can go back on one point.
2 Not in terms of grievance, you do not have to lodge a formal grievance for a
3 grievance to in fact exist in law, as you'll appreciate. And if I may come
4 back to that point some time later on I'd appreciate it.

5 DOUGLAS SINCLAIR: My final question is, in a sense, trying to look forward.
6 Recent Standards Commission Reports have highlighted significant
7 difficulties in working relationships. What do you think, given the post that
8 you occupy, can be done to rebuild support and create a positive working
9 environment for members and officers, what are the building blocks that you
10 think are necessary and appropriate?

11 WILLIE SHANNON: If I can briefly go back to – if you don't mind, if I can quote
12 from an appraisal in 2007 from the chief executive at that time. He wrote,
13 'We're talking about the challenges that we may face in the role I would
14 have in that,' and I refer to not having a defined role at that time. And what I
15 said in 2007, this was August, 'The council will continue to face challenges
16 on a number of fronts, including best value in community planning, and be
17 subject to scrutiny in a wide variety of areas. If the role of assistant chief
18 executive is armed to be proactive with the authority and responsibility
19 required, it can help considerably both within the council and in dealing with
20 external agencies.' That still applies today. I think your point goes onto the
21 working relationships issues aren't correct within the council. I think there's
22 two parts. One is there has to be an element of rebuilding trust, because
23 quite clearly that has been damaged across the council, not just at member
24 level, but members and officials, and indeed across officials as well. So
25 there has to be that process of rebuilding trust. Someone yesterday
26 mentioned truth and reconciliation, which was very interesting. And I think

1 that applies. It's almost people have to accept what has gone wrong and be
2 able to acknowledge their part in it before the council can move ahead. In
3 doing that you can then at least move into a consensus building aspect of
4 that, so I think there are two bits. There's the trust and then there's building
5 consensus in order to take the council ahead. And it can be done.

6 CHAIR: Thank you, Mr Shannon. Sometimes we might put questions in the form
7 of appearing as if we've made up our mind on things, but be assured we
8 haven't. They may be put forward in that way simply as a challenge to you
9 rather than seeking confirmation of anything, so the Accounts Commission
10 has made no decisions on anything yet.

11 You've seen all the written submissions, I take it, and you've read them?

12 WILLIE SHANNON: Yes.

13 CHAIR: Can I give you the opportunity to make any comment on any of those
14 written submissions where you feel you should?

15 WILLIE SHANNON: I don't think you can go through a process like this over the
16 past ten months. I effectively feel I've lost a year in my career. You cannot
17 go through it without being affected in some way. I wouldn't wish this
18 experience on anyone, but at the same time it's probably been a salutary
19 experience, because the first time in my career in local government I've
20 been on the outside looking in, and I've seen the walls of the bureaucracy
21 closing down, and that's not a good thing to see. And I think, you know,
22 those barriers have to be broken down if the organisation is going to move
23 ahead. And to hear that acknowledgment yesterday from a councillor
24 saying, 'We actually said this should come to council,' on the meeting of
25 12th August, that's the first time I'd heard this. There has been a period of
26 silence, so I think what's come across to me is people have been quiet, they

1 have kept their heads down, and this is a small community. But quite
2 genuinely you have to lift your heads if you're going to move ahead and see
3 where you're going. And that does require a bit of courage as well. It's
4 affected my professional career, and with your permission, it's also had an
5 effect personally on family, and I think everyone could buy into that. As far
6 as the submissions are concerned, people are entitled to their views, and
7 you can test the evidence. I returned home on Friday evening some time
8 after 5.30. As I got home, some of the children came running out to meet
9 me, and one of them ran up and said, 'Daddy, who's this man Les? He
10 says you're in a non-job. Are we leaving Shetland now?' That didn't feel
11 very good. Now Mr Sinclair can make any comment he wishes, subject to
12 him not being malicious or reckless, and I'll ask you to test that that this
13 afternoon. But there are real people affected by these kinds of events, it's
14 not just people in suits talking about systems and procedures, it does affect
15 wives and families as well. And I think that should be remembered. Thank
16 you.

17 CHAIR: Thank you very much, Mr Shannon, for your evidence. Just one point
18 you made at the end I should clarify. It's for each witness to consider
19 whether they're saying something that's knowingly untrue, reckless or
20 negligent, just for the guidance of other witnesses.

21 WILLIE SHANNON: Thank you very much.

22 [Meeting Adjourned]

23
24 CHAIR: Ladies and gentlemen, good afternoon. Welcome to the – what we think
25 may well be the final session of evidence gathering at this particular hearing
26 in the public. We welcome to the witness area Mr Rory Mair, chief

1 executive of COSLA. Welcome – I gather you just about made it in terms of
2 fog at the airport.

3 RORY MAIR: Yes, thank you.

4 CHAIR: Thank you very much for coming all this way to help us. I've got just one
5 general question and then the team you see here will take over from me
6 and we'll go through the various headings that we've done with every
7 witness. My general question is a pretty obvious one: could you explain to
8 us please your and COSLA's involvement with the council – both in relation
9 to the specific matters that the controller of audit's report covered and in the
10 longer term?

11 RORY MAIR: Yes, I can Chair. I think we first became involved with the council
12 over the issue of the disciplinary action that had previously been taken
13 against the chief executive, where we were asked to provide advice about
14 any external adjudicator. And, clearly, for COSLA, when you are at a stage
15 where a council is having disciplinary action with its chief executive, that
16 begins to say, 'We should keep an eye on this' – that's a very serious
17 matter as far as we were concerned. So, our first involvement was simply
18 advice around about that issue. After that, it became clear that the council
19 still considered there were performance issues to be dealt with and I had
20 arranged that myself and the chief executive of the Improvement Service
21 would come and meet with the council with regard to ensuring that there
22 was a proper and robust performance management process that governed
23 the relationship between the council and the chief executive. And, indeed,
24 we were really on our way to do that when the situation changed and it
25 became clear that the council felt that the relationship between themselves
26 and the chief executive was untenable and that what they then wanted was

1 some advice from COSLA about how they would take that matter forward.
2 And, in that respect, that has been no different than any other councils
3 where, as a result of a best value report there has been discussion between
4 the council and the chief executive, and COSLA has quite often been
5 involved in that and, as you know, we've offered a variety of direct supports
6 to councils who are trying to push forward with continuous improvement.

7 CHAIR: You mentioned that it's no different from – in principle – from any other
8 council. Could you help us by giving us your observations on where,
9 perhaps, you saw issues just peculiar to Shetlands Islands Council and how
10 those developed, and then the rest of the team will take over.

11 RORY MAIR: I think, when we were first approached, I don't think we did see
12 these issues as being any more or less difficult. I think when you come and
13 work here, a couple of things strike you fairly immediately. One is just the
14 intimacy of the relationship between the council and its community, and I
15 don't say that as a criticism at all; in fact, I think that must be a very great
16 strength, but you just notice it – that, you know, the second time, I think, I
17 came here, the taxi driver in the way in from the airport said to me, 'Well,
18 you'll be having an interesting day because I know what you're doing', and
19 just that level of contact I think does require a different management
20 arrangement. And so, you notice that.

21 And, secondly, I think, in working with the council, perhaps more
22 than in any of the other councils that we've worked with, a less clear
23 understanding of a responsibility to the corporate body that is the council
24 and a greater willingness to see issues from an individual point of view, and
25 I spent, I think, quite a number of occasions saying to the council that they
26 had – what had to be done there was what worked best for the council and

1 not simply what individuals felt was correct in any particular circumstance,
2 and I think I saw those as two particular issues with regard to working here.

3 CHAIR: Thank you very much just now and I'm sure both of those points we'll talk
4 more about – thank you. Douglas?

5 DOUGLAS SINCLAIR: Thank you. Good morning, Mr Mair. Just to follow up the
6 Chair's comment there, could you just explore with us in a bit more detail
7 what you would characterise as members' and officers' understanding of
8 their roles? You touched on that a little bit and how would you characterise
9 the relationship between members and members, and between members
10 and officers?

11 RORY MAIR: Just to say, it's very difficult for me to comment broadly on that. I
12 can only comment as this issue was -

13 DOUGLAS SINCLAIR: Based on your experience –

14 RORY MAIR: As I say, I think two things: I think there was a very strong wish for
15 people to say, around about the issue of information, that the communities
16 had the right to know and it was a good thing for them to know certain
17 things. I think the difficulty for me was that clearly there was a proposition
18 here. If, for instance, letting a community know what might be the costs to
19 them in a course of action actually meant that these costs just immediately
20 got bigger because issues then became in the public domain; that clearly
21 isn't in the public interest and it isn't in the council's interest, so there was
22 this dichotomy between, 'What do I want to say to the community?' –
23 perhaps my community that was an individual member – and, 'What is it in
24 the council's interest to have known at this point?' and I was continually
25 reinforcing that the crucial thing here was that everybody concentrated on...
26 what was in the interests of the council to be known and we drove that

1 forward, and of course there was a time when all that had been discussed
2 would be made public, but it wasn't necessarily as you went through it. So,
3 I think there was an issue there about that.

4 With regard to member/officer relationships – I mean, at the level of
5 operating together, I felt that relationships were reasonably good. There
6 was no difficulty of relationship. I think what was difficult was a) decisions
7 being made and stuck to unquestioningly – I mean, once I'd seen they'd
8 been made but the council, that was it – and even processes which were
9 quite – seemed to me to be quite formal and have been quite well-exercised
10 were still being questioned quite a long time after the event. So, it seemed
11 that you – even once you'd made a decision, you never quite got to move
12 cleanly from that to the next step. There was a constant revisiting of things
13 that perhaps would've been best saying, 'Well, we've decided about that;
14 let's not revisit it' and, certainly, if people didn't agree with decisions that
15 had been made, these things kept coming back and back and back, and
16 that did make forward progress quickly quite tricky because you were
17 constantly revisiting things that you thought had, perhaps, previously been
18 decided.

19 DOUGLAS SINCLAIR: Given that the council had been established since 1975,
20 were you surprised that issues of a lack of clarity about where the public
21 interest lay as opposed to the council interest of agreed processes or that
22 whole agenda revisiting issues. Did that surprise you?

23 RORY MAIR: Well, I was surprised because, as I've said already in the evidence
24 I've just given, it applied to a greater extent than any other council that we
25 had been involved in. So, yes, I was surprised about that, but I wondered to
26 what extent this issue of intimacy between community and council is part of

1 the explanation of that. I'm not saying it excuses it; I'm simply saying it's
2 part of the explanation of it.

3 DOUGLAS SINCLAIR: Just can I refer to the Controller of Audit's report? I just
4 want to better understand the timelines involved. She said in paragraph 30
5 the council contacted COSLA seeking advice – and you've touched on this
6 about developing a council performance management arrangement and an
7 appraisal system for the chief executive. And my reading of that is that that
8 occurred either just before or just after the investigating committee –
9 disciplinary committee – reported in October and found a case. In other
10 words, there wasn't a case to answer. So, you had the request from the
11 council; how did COSLA respond to that request and in what time frame?

12 RORY MAIR: I think it was actually slightly later than that that we got contacted. I
13 think the issues were, in my understanding of the timeline – the issues
14 were: the disciplinary had happened and there was no case to answer, but
15 there were still issues between the council and the chief executive, and my
16 concern was – and I think COSLA's concern was – that in the absence of a
17 robust performance management framework for the chief executive in the
18 council, then it would be very difficult to pursue any of the outstanding
19 issues to anybody's advantage. The council couldn't prosecute issues
20 relating to any perceived lack of performance, but nor was the chief
21 executive protected from unrealistic accusations about his performance.

22 So, it was a kind of two-way process, if you like. I was saying, 'If you
23 want to continue with this process of being able to assess the performance
24 of the chief executive, it is only fair on both sides that there is an explicit,
25 robust performance management process, as you would expect there to be
26 for any chief executive in Scotland, and as there are examples elsewhere in

1 Scotland that would allow that discussion to take place. What I didn't want
2 on the back of a disciplinary that had been not proven was an un-thought-
3 through performance management set of issues that had no framework
4 within which they could ever be decided. And it was – we had planned to
5 come up in February to – myself and the chief executive of the
6 Improvement Service – to talk through with the council the issues about
7 establishing that performance management framework.

8 DOUGLAS SINCLAIR: Were you also surprised that there wasn't a performance
9 appraisal system in place for the chief executive – given the fact that this
10 had occurred before and, indeed, COSLA had been involved in a case with
11 a previous chief executive?

12 RORY MAIR: Yes, and I think also because in recent years there's been an
13 understanding that there should be a performance management process
14 and, indeed, there's been quite a lot of discussion about, amongst chief
15 execs and others, about how does that work and how do you get the kind of
16 external support that operates at the level of a chief executive, to make that
17 process robust and fair.

18 DOUGLAS SINCLAIR: My final question is that Ian Clark, in his submission – I'm
19 not sure if you've seen this – suggested that the problem is that senior
20 elected members don't protect the position of the council's officers
21 appropriately. Based, obviously, on your limited experience and contact
22 with the council, do you think there's a systemic issue there that needs to
23 be addressed?

24 RORY MAIR: I think there are some issues in there about roles and that you
25 almost got the impression sometimes that officers were making suggestions
26 and it was up to the council to see them as opposition or not, and I think

1 that does need to be addressed; it has to be much more collegiate than
2 that. But, you know, in terms of what you see in the council chamber
3 downstairs, I suspect that in other council chambers that a number of us
4 around this table have inhabited, the kind of discussion with officers was no
5 more robust than you or I would expect to see in quite a lot of other places,
6 and I certainly didn't see a systemic breakdown of relationships between
7 councillors and officers.

8 I think we experienced the same kind of issues in other places where
9 the whole process of bringing reports to council through an agenda process
10 etc has been unclear and, therefore, it's not absolutely clear what backing
11 there is for reports before they actually arrive at the council and the council
12 then becomes the place where if there are disagreements, they just take
13 place in public and that's all very exposed. And that, I think, does put
14 officers in a difficult position. I think sometimes officers are unsure here
15 what the reaction of the council is going to be to some of the propositions
16 that they're making, which probably you would not expect to see on big
17 decisions.

18 DOUGLAS SINCLAIR: Just one final question, if I may. What role do you think
19 COSLA should have or does have in helping elected members understand
20 their obligations under the code of conduct?

21 RORY MAIR: I think that... Well, I think we and the Improvement Service have a
22 joint role here, which is that we would want all councillors to understand
23 their obligations in that regard, and I think when there have been elections
24 we have offered training around the country to ensure that councillors are
25 able to take up their role knowing exactly what's expected of them, and
26 knowing that there are some rules that govern their behaviour and these

1 have got to be adhered to.

2 CHRISTINE MAY: Good afternoon, Mr Mair. I'd like to concentrate on the issues
3 around the departure of the chief executive and, firstly, ask you to, again,
4 just explain briefly how you think the council got itself into a position where it
5 was obliged to reach that negotiated settlement.

6 RORY MAIR: I can't give too much information about how the council got into that
7 situation because, to some extent, I was involved after that situation had
8 arisen. So, when... as I say, we were coming to the council for a different
9 purpose which was to say, 'Well, that's not what's happening. What's
10 happening is we are setting up a performance management process which
11 will allow the council to have its discussions about performance and might
12 well lead to increases in performance which would be acceptable, but if it
13 didn't that would give you a basis for discussion with the chief executive
14 about his behaviour.

15 Before we had a chance to do that, it became clear from discussions
16 with the council that the expectation that that was a route that was going to
17 solve this issue in the timescales that it was felt it needed to be solved was
18 no longer the case, and we moved into a situation of the council saying, 'We
19 think it's time to part company with the chief executive' and I said, 'Well,
20 okay then. If that's going to happen, we really need to be absolutely clear
21 the basis on which that's going to happen', and there are rules around
22 about 'Buy now, pay later' and all of those policy documentations where the
23 council has to be absolutely sure that it knows and understands each of the
24 options open to it, it knows and understands the issues associated with
25 each of the options and it makes a decision about what it now wants to do,
26 and that led to my report on the 4th of February where I was trying to outline

1 to the council the kind of routes there were for any council to part company
2 with its chief executive.

3 And, you know, my first real engagement with the council as a whole
4 was around about that issue, 'If you've decided that the time has come that
5 this is no longer a tenable situation, how is that going to be brought to a
6 conclusion?' So, to some extent, I wasn't involved in the council arriving at
7 that issue; I was involved once the council had arrived at that position and I
8 was wanting to make sure that this was done in a way that was fair to the
9 chief executive and had the minimum amounts of exposure for the council.

10 CHRISTINE MAY: Okay, before I explore that a bit further with you, though, you
11 said in response to Douglas Sinclair's question that – okay, it was a bit later
12 than October when COSLA was contacted – but that you had intended to
13 come up in February. That's a relatively long period of time for something
14 that was perhaps a little more urgent, given that you were aware of some
15 concerns. Why was it not until February that you were coming up to
16 discuss the implementation of performance management?

17 RORY MAIR: Simply because, you know, we weren't asked in that sense. I
18 mean, what happened was, we were involved in the disciplinary process
19 giving advice. That, as Douglas Sinclair said, was found to be not proven.
20 There was then a gap in terms of contact with us where we were not hugely
21 involved. I had, as I've said to you, felt that we needed to keep a watching
22 brief in case there was further involvement needed. But it wasn't until post-
23 Christmas that we were deciding that the right course of action was to be
24 coming up and dealing with the performance management issues. Now, in
25 that period, I suppose the hope that everybody had was that the disciplinary
26 was over, we can now move forward without any of the processes that then

1 followed.

2 CHRISTINE MAY: Okay, thank you. In your paper to the council on the 4th of
3 February, you had some early recommendations and you've just outlined
4 what they were. Are you content that those were fully recognised and
5 debated?

6 RORY MAIR: Yes. I mean, I think we had a good debate about that on 4
7 February.

8 CHRISTINE MAY: Including all of the other options other than a negotiated
9 settlement.

10 RORY MAIR: Yes, and... I think we had a good debate about a number of things
11 and the endpoint wasn't the endpoint that I had gone into the meeting
12 expecting because in fact, the endpoint of that meeting was a dual
13 recommendation. One was that we should go and explore mutual
14 separation, but only after I had been asked to review what were deemed to
15 be outstanding disciplinary issues, which I think were in the letter signed by
16 the six councillors. So, there was a dual recommendation at the end of that
17 and I think the other thing that was important in that meeting was that I was
18 fairly explicit in saying that if you went for mutual separation – and I didn't
19 see another route at that time – then there would be a cost to the council in
20 doing that. And I outlined an outline cost to the council and I said to the
21 council absolutely explicitly, 'If that cost is simply unacceptable to you, do
22 not delegate authority to me to go away and negotiate on your behalf'
23 because I wanted to be sure that the council understood that this was not
24 going to happen without costs if we went down the mutual separation route,
25 and I wanted them to understand not the exact costs, because I didn't have
26 them at that time, but the order of costs we could be talking about. So, I

1 thought we had a pretty explicit discussion about the options and about the
2 likely order of costs if we went down the route of mutual separation.

3 CHRISTINE MAY: Okay. Later on, and in quoting the council submission that they
4 refer to actions and/or emissions, which actions and/or omissions do you
5 consider resulted in the settlement having to be made?

6 RORY MAIR: I'm not sure I can answer that question because I wasn't involved in
7 that process. I mean, as I've said to you, when we came back in February it
8 was clear that the relationship between the council and the chief executive
9 had broken down and that the council wanted advice about how you could
10 take that matter forward. So, I wasn't involved in arriving at that decision.

11 CHRISTINE MAY: Okay, but I understood that you referred somewhere to some
12 actions of councillors resulting in a later settlement not being able to be...

13 RORY MAIR: Oh, sorry, I think... Sorry, you're asking me about the detail of the
14 settlement – sorry. Well, I think, you know, I don't know whether you want
15 me to go into the detail of how we negotiated to the settlement that we got
16 at this stage or whether you just want me to comment on that. I think one of
17 the issues about it that surprised myself and Murray McCall who were doing
18 the negotiations directly with the chief executive and his representatives
19 was that the one thing you might not have wanted, as a negotiator, to have
20 known to the opposition was the outline figure you'd given to the council of
21 the order of costs, because it was very unlikely after that became known
22 that we were going to get a lower figure than that. So, in one sense, the
23 chief executive's team were aware of what I'd said to the council about the
24 likely order of costs, and I think from that moment, from the moment they
25 became aware of that, which they never should've, then it was unlikely that
26 a lower settlement than that could be reached.

1 CHRISTINE MAY: And what impact do you think that might have had on
2 consideration of the other options which were also in your report, and which
3 the council was going to debate and consider?

4 RORY MAIR: Well, hold on. I think we're getting – again, I'm either
5 misunderstanding the chronology here. We had a discussion about the
6 other options at our meeting on the 4th and the result of that was that the
7 council accepted, and I think it was on my recommendation, that the options
8 of voluntary severance, disciplinary action and resignation were unlikely
9 ways for this to be resolved. I just didn't see that that would happen in this
10 instance and, therefore, we arrived at mutual separation as being the option
11 with this one caveat that the council asked me to review the outstanding
12 disciplinary issues that were in the letter signed by the six councillors, so
13 that was done and as far as I was concerned, after the 4th of February, my
14 responsibility was to start to pursue the option of mutual separation, but
15 before that actually was put into action, we should review the disciplinary
16 issues that were contained in the letter of six and see whether they actually
17 did provide a different route for ending this relationship between the chief
18 executive and the council. We did both of those things. We looked at the
19 outstanding issues and both myself and Murray McCall recommended to
20 the council leader that we did not see any route for disciplinary action that
21 would resolve this matter and, therefore, mutual separation was the only
22 option available to us.

23 CHRISTINE MAY: Okay. So, if I'm right then, the only discussion of the range of
24 options was at the meeting on the 4th of February –

25 RORY MAIR: Yes.

26 CHRISTINE MAY: And no further discussion on any of the other options on the

1 18th and recall meeting on the 19th of February.

2 RORY MAIR: No, we were sent away to negotiate on the option of mutual
3 separation with this caveat about were there outstanding disciplinary issues
4 which might lead to this being resolved in a different way.

5 CHRISTINE MAY: And yet in one of the papers, I see that the council felt capable
6 of defending itself against all of the chief executive's claims and that, for this
7 reason, a much smaller payment relating to three-to-six months' salary was
8 the most likely outcome that the council would tolerate. Why was that not
9 part of the discussion on the 19th?

10 RORY MAIR: Sorry, I'm not sure which paper you're referring to.

11 CHRISTINE MAY: It's a paper I have here – 19th... 18th February Employment
12 Issues, it's headed, '18.2.10'.

13 DOUGLAS SINCLAIR: That was the paper that went to the council on the 19th of
14 February.

15 CHRISTINE MAY: Page 2 about two-thirds of the way down.

16 RORY MAIR: Sorry, I'm not finding it in my papers... Yes – what you're seeing in
17 here is that, as I think was relayed to you yesterday we were faced in
18 negotiation with the other side in the negotiation starting off from suggesting
19 a seven-figure settlement and what we were pointing out to them was that,
20 yes, they had a range of options available to them in terms of how they
21 might counter-claim against the council, but that we, as the council's
22 representative, were saying to them, as a negotiating position, we believe it
23 unlikely that all these would be successful and if they were successful the
24 level of payment that we made.

25 All you're seeing into here is that we were trying to say to council,
26 because we knew it would be an issue, 'Look, we didn't walk in and just

1 arrive at a figure of the final settlement. There was a negotiation that went
2 on there with claim and counter-claim being made about what the likely
3 implications of various courses of action were'. But that was after the
4 council had decided to go for mutual separation. But once we'd gone for
5 mutual separation – I don't know if people are misunderstanding this - once
6 we've gone for mutual separation, we've got to arrive at a figure where both
7 parties are prepared to settle in order to bring the mutual separation about.

8 And, as far as I was concerned, once we'd arrived at mutual
9 separation, none of the other processes were on the table in our
10 discussions with the chief executive and his team. The council had said,
11 'We recognise that we're not going to solve this by voluntary severance;
12 we're not going to solve it by the chief executive's resignation; we're not
13 going to solve it by disciplinary action; we're going to resolve it by mutual
14 consent' and that's what we were negotiating at that time.

15 CHRISTINE MAY: Thank you. And I know the Chair wants just to come in and I
16 know Douglas does also.

17 CHAIR: No, I just want to interrupt for a second, Christine, if I may, on this matter
18 of the counter-claim. We heard yesterday from Mr McCall of
19 Anderson Strathern that the valuation of that series of counter-claims was
20 about £2 million. Were you or Mr McCall able to assess the validity/strength
21 of each of the heads of claim in that so that that could be presented to the
22 council as a likely comparator against whatever settlement might be
23 reached?

24 RORY MAIR: I think we could make some assessment of that, in the sense that
25 we had a view on it, and I think our view was that the totality of all of these
26 counter-claims being upheld and that the figure of £2 million being arrived at

1 in compensation for these kinds of claims profoundly unlikely. What I think
2 we also felt was it was equally unlikely that none of them would be upheld
3 and that no compensation would be paid. So, we were in that in-between
4 situation. What I would say is: in terms of negotiating with the chief
5 executive and his team, the issue of his counter-claim and what the council
6 might be exposed to was only one element of arriving at a settlement.
7 There were other elements that had to be taken into account as well.

8 CHAIR: Yes, I understand that. Second of two questions on this point: you
9 refer in your schedule which is headed up, 'Audit File Note' – I think this is a
10 retrospective summary for the record of your involvement and how it
11 proceeded. You refer at the top of the last full page to a point where you
12 say that you had a concern that the council was likely to be outraged by the
13 extent of the counter-claim. So, when that extent was reported to the
14 meeting of councillors, which I presume it was, along with the heads of
15 claim, as a comparator, was there indeed outrage?

16 RORY MAIR: There was outrage at the level of public money that was ever being
17 considered to meet this.

18 CHAIR: Okay. And was this despite the subsequent explanation by you that from
19 what you just said that this is an extreme figure and is likely to be tempered
20 by all the points you've just made to us.

21 RORY MAIR: Yes, that's right. And I think that what you've got there is, if you
22 like, from me, an explanation and you're the only people that note has been
23 shared with, an explanation of any gaps there were between what I would
24 consider as best practice in dealing with this matter and what I was actually
25 doing. And, you know, for instance, Chair, I would say, if the policy says
26 that councils should be fully aware of all of the implications – financial and

1 otherwise – of decisions it's about to make, and they're only getting reports
2 two days or one day, or on the day, is that satisfactory? And why I wrote
3 that note was: I was consistently being pushed into compromises against
4 best practice, in my mind, by the fact that I was, on the basis of what had
5 gone before, sure that if I wrote reports, gave them into the council system
6 five or six days before a meeting, I might as well have published them in the
7 newspaper because I would then be dealing with that, and that it wasn't in
8 the council's interest in this negotiation to have these long lead-in times or
9 such explicit information.

10 CHAIR: Thank you. Just a supplementary before I ask Christine May to pick up
11 the questioning again. When you conveyed the extent of the extreme
12 quantification – the £2 million – to the council, do you have any view about
13 whether with that background, that tempered a review about the
14 reasonableness of the – of a much smaller figure to be settled?

15 RORY MAIR: No. Sorry – no, I don't think it did. I think the view still was that this
16 was a large amount of money that was being paid to settle it. And, in my
17 own mind, you know, I suppose I felt that the £2 million figure was the start
18 of a negotiation by the people we were negotiating with. It wasn't where
19 they expected they would end up either. I think they felt that there was
20 going to be an element of trading of what was available in that discussion.

21 What I think is important to understand about what we were offered
22 by the chief executive and his legal advisors was when we met them you
23 couldn't doubt their seriousness about some of these issues. They had
24 been properly researched; they had their independent reports on certain
25 elements and it was clear that these were not just vexatious, if you like –
26 they were weren't just off the top of their head and secondly, I think we were

1 clear that these would be pursued; they wouldn't melt away, so they had to
2 be taken into account in our cons of what was best for the council.

3 CHAIR: Thank you, Christine?

4 CHRISTINE MAY: Thank you. I know Douglas Sinclair wanted a supplementary,
5 so perhaps you would permit that.

6 DOUGLAS SINCLAIR: Mr Mair, you made the point at the meeting on the 4th of
7 February: the council discounted voluntary severance, they discounted
8 resignation and they discounted disciplinary procedure. Would you agree
9 there was potentially another option – it's touched on in your paper – of the
10 introduction of a performance appraisal assessment? Just to quote, 'There
11 is nothing to suggest that reference to a robust personal appraisal and
12 performance management process could not happen reasonably quickly,
13 but it does not provide an immediate solution to the council's outstanding
14 issues'. Would you agree that that could've – if that had been introduced
15 perhaps over a six-month period, we would either have evidence of
16 improvement in performance by Mr Clark or evidence of non-performance
17 which the council could have used in terminating his contract of
18 employment at much lesser cost to the public purse?

19 RORY MAIR: Yes. I mean, I think I had said that, you know, in raising it in the
20 report I was saying that is a potential option, but it's going to take some
21 time; it's not going to be an immediate conclusion to this issue. I think, by
22 that stage, as I outlined to yourself, it seemed clear to the council that a
23 breakdown of relationships had occurred which meant a more immediate
24 solution even than that. And, as you know, from the work that COSLA was
25 originally engaged to do, we were intending to go down the robust
26 performance management appraisal route.

1 CHRISTINE MAY: Okay, thank you. Leaving that option then aside, can I ask you
2 to give your view on how rigorously the council considered the remainder of
3 the options regarding the chief executive before arriving at the negotiated
4 settlement and how the decision was arrived at, and by whom?

5 RORY MAIR: Well, I think through all this, let me say that I was giving advice, so I
6 was part of the process of saying to the council my understanding of
7 whether or not these other options would actually happen. So partly, I was
8 saying to the council voluntary severance will not be a route that's going to
9 happen here. I was saying that disciplinary action – given that we had one
10 major disciplinary case that had been found not proven and then we had
11 this other range of things which I had spend a considerable time reviewing
12 and did not think gave rise to the potential for a disciplinary action at all, but
13 certainly not one that could lead to dismissal and that resignation seemed to
14 me profoundly unlikely.

15 I was saying to the council, 'I think if you have decided to end this
16 relationship, then it is going to be the mutual separation route you have to
17 go down', and I felt at the time that the council accepted that and that the
18 council made a decision to say, 'Right, let's explore that route; you're
19 delegated to do that'. They wanted – as I say, the caveat of that one bit of
20 reassurance that I had relooked again at the disciplinary route, because
21 clearly there were some people – I don't say this as a criticism of those
22 people – there were some people in the council who felt that the chief
23 executive could potentially have been the subject of further disciplinary
24 action that might have led to his dismissal, and quite properly, those
25 individuals wanted that explored before we went down another route.

26 But... I suppose I felt I should say this to you. In coming to the

1 council – given that their chief executive was not giving them advice – I felt
2 that what the council needed from COSLA was robust advice, and I was not
3 holding back about what my recommendations were because I felt that
4 where we were required real action quite quickly in order to move the
5 council forward. My concern was twofold: one that, just in terms of being an
6 operable council, if this just carried on as an unresolved situation for a long
7 time, the council could not possibly move forward and it had issues that it
8 had to deal with, and I was concerned about that particular length of time. I
9 also had a concern that – I don't know whether this was covered with
10 Murray McCall yesterday; I think we both had a concern that given the
11 comment that was made about the chief executive, and given the
12 information that would leak out, it wasn't to the council's advantage to carry
13 this on for much longer, because my view was what would happen was that
14 the chief executive's counter-claims would gain more and more information
15 as people said things out of turn that perhaps would have been best left
16 unsaid.

17 So, I was saying to the council, 'If you've decided to do this; if the
18 route of performance management – wait six months or eight months and
19 have a body of opinion', which I had to also say to the council might not
20 lead to the chief executive parting company. It might prove that the chief
21 executive has performed. 'If that's not the option you're going, then I would
22 advise you to go down mutual separation because these other options are
23 not really available to you' and I was quite definitive about that, Chair.

24 BILL MCQUEEN: Just a couple of questions, Mr Mair. We heard from Murray
25 McCall yesterday that the public interest disclosure, which he called whistle-
26 blowing, was an element in giving support to the chief executive's claim.

1 And, judging from what you say, can you confirm that he had a clear view of
2 what that whistle-blowing element was in the other side's claim and that it
3 figured in the advice that you were offering to the authority?

4 RORY MAIR: Yes, and I think Murray and I discussed that; him from a legal point
5 of view and me from an implications for the council point of view. And our
6 belief was that that did – that was another reason for wanting to settle this in
7 another way.

8 BILL MCQUEEN: When you came to finally shape the deal, it was structured in
9 the way that there was no figure for loss of future earnings and there was a
10 very high figure – £230,000 – awarded for personal injury. What was the
11 thinking behind structuring the deal that way?

12 RORY MAIR: I had very little to do with structuring the deal that way; I was
13 involved in negotiating the headline figure and then we were structuring it in
14 a way that was to the best advantage of the council, I think. So, I think that
15 in those terms, the deal wasn't structured from the beginning of the
16 negotiation to arrive at that position; it was kind of – I won't use the word
17 retro-fitted – but it was structured that way after we'd arrived at a headline
18 figure.

19 BILL MCQUEEN: I appreciate that and then I think that just leads to this question:
20 in the deal the council has indemnified the employee for any tax and
21 national insurance claims that the Inland Revenue might mount against him
22 for the personal injury element. Did Murray McCall give you considered
23 legal advice about whether there was a risk of challenge from the Inland
24 Revenue in that aspect?

25 RORY MAIR: Yes, we recognised that if there was a challenge it would be the
26 council's responsibility to meet the costs of tax and the deal we negotiated

1 was one where we were, if you like, as you say, guaranteeing the outgoing
2 chief executive a net figure.

3 BILL MCQUEEN: So it was the net figure that was important because I think it
4 might be more usual for the council to ensure that the employee carries that
5 burden of risk with Inland Revenue.

6 RORY MAIR: Surely. And if I could have negotiated the same deal as a gross
7 figure I would have negotiated it. I do think, Chair, in order to fully
8 understand that negotiation, there's probably a bit more I have to say about
9 our thinking – about my thinking around it, if you like, from a... from an
10 implications-for-the-council point of view.

11 BILL MCQUEEN: Please do.

12 RORY MAIR: Going into that discussion, I think there were a number of things
13 that were driving me about it. First of all, we had this issue that we had
14 definitively said that disciplinary action, voluntary severance and resignation
15 were not options we were doing. So we were negotiating on a no fault
16 basis on both sides, so we had said we would like to part company and I
17 think, therefore, we were saying to somebody who was employed on a
18 £100,000 a year contract, let's say, 'We're going to bring this to an end.'
19 And, clearly, some element of compensation for wanting to bring that to an
20 end was going to have to be paid. So, there was an issue about – this was
21 without prejudice – we were negotiating a deal in order to end that
22 relationship.

23 Secondly, as I've said, his negotiating team already knew about the
24 £200,000 estimate figure and that did set something of a bottom limit, given
25 where the chief executive's team had started – without that being in the
26 public domain, I might have started much lower, but that wasn't an option

1 available to me. But that wasn't an option available to me.

2 I think thirdly, I was aware of the costs of other separations of chief
3 executives in this situation. I think this was an unusual situation because
4 when COSLA has been involved in negotiating other separations, there's
5 been a pensions issue and that's been the major cost to the council – is that
6 the chief executive has been asking for four or five years' additional
7 pension, so the upfront costs look reasonably small, but over the life the
8 pension's being paid, actually this sum of money against those other
9 situations does look... is not out of context, if you like. So I was in... I had
10 some detailed knowledge of how those other issues had been resolved.

11 BILL MCQUEEN: Can I just interject to say and that's the case in your view for a
12 period of employment that was under nine months. Taking all those things
13 together, you're saying it's out of line with the settlements that you'd been
14 involved in negotiating elsewhere in senior offices.

15 RORY MAIR: Yes. I think the nine months cuts both ways in this circumstance
16 because you might say, 'Well, the person's only been employed by the
17 council for nine months'. The other question that was coming at us from the
18 other point of view is how in nine months, without a performance
19 management process, did the council arrive at a position that it wanted to
20 be rid of its chief executive? So, the nine months issue isn't just wholly in
21 favour of a small settlement. It also suggests that a relationship has pretty
22 fundamentally broken down quite quickly and that compensation needs to
23 be paid for that, and here's a chief executive who has moved, has taken on
24 a new job, has been in it for nine months and has been told that the council
25 now wants to sever that relationship.

26 So, just... I felt the nine months – clearly you did have to have an

1 understanding the person had not been here long, but also it suggested a
2 level of breakdown in the relationship that had to be put in here. I think the
3 other things that drove me were that I felt that the council was saying that it
4 did want to move on from this and that one of the concerns we had was that
5 if we didn't settle, whatever the likely final financial outcome of any counter-
6 claims would be, we did think there would be some of those which were
7 industrial tribunal based; we did think there might be some of those that
8 were civil court based and then there was the issue of the whistle-blowing.

9 So, with those three coming into play, I foresaw that if we didn't
10 settle, a quite considerable period of time might pass before the council was
11 in a position to move on from the situation it was in and that on top of any
12 straight financial concern that we would pay in compensation, what is the
13 cost of a council not being able to move forward with strong leadership for a
14 period of, say, six to nine months with a budget the size of the one this
15 council has. So, I had to have some view in my mind about the turning a
16 situation where the council could move on from where it was and start to
17 run its affairs in a way that the councillors clearly wanted to and the
18 community would expect them to be able to do.

19 So it wasn't a simple negotiation of 'what would they get if we didn't
20 go down this route? What are we prepared to offer?' It was a much more
21 complex set of situations than that that we were trying to square that circle
22 and that's why I – we eventually arrived at. But at the end of the day, there
23 was also an element of horse trading; we had to look each other in the eye
24 and I had to feel that I could not drive the cost of this any lower, and I felt I
25 had to be able to come back to the council and say, 'Send me away to do
26 this negotiation again if you'd like, but my belief is in the negotiated

1 settlement, we will not get this any lower'. I think that was Murray's view as
2 well and I felt we had done the best job we could.

3 When I went back to the council, I wasn't sure whether they would
4 find the figures we were talking about acceptable. That was for the council
5 to decide.

6 CHAIR: Thank you for that. I think that's quite a clear explanation. Graham, you
7 want to put something to Mr Mair, do you?

8 GRAHAM SHARP: Just a small point of clarification. When the negotiating team
9 went back to the council on the 19th of February, was it made clear that the
10 tax indemnity was part of the package or...?

11 RORY MAIR: Yes – and at that time we didn't know exactly what the tax liabilities
12 would be and, therefore, we said – but we did say there could be tax – and,
13 indeed, the question raised I think in the council chamber explicitly was, 'So
14 you're saying it could be of the order of £300,000 overall' and we said, 'Yes,
15 that could be a possibility'. So, we did have that explicit discussion and
16 I'm... again, in my – in trying to look at best practice versus what was
17 happening, I would much preferred to have been able to go to the council
18 and say, 'Absolutely down to the last pound, this where we're going to be',
19 but I felt to get to that stage was going to take another considerable period
20 of time and what I needed to do was to outline figures to be as accurate as I
21 could make them and ask for the council to approve that we went ahead on
22 that basis and the compromise agreement was then negotiated.

23 DOUGLAS SINCLAIR: The question is in two parts. What lessons do you think
24 the council needs to learn from this incident and, indeed, a similar incident
25 in 1999, and what do you think the council needs to do in terms of moving
26 forward?

1 RORY MAIR: Okay, in terms of this incident, there are two clear lessons. One is
2 that the appointment of a chief executive is one of the biggest single
3 decisions a council will make and that it is important to have the best
4 possible professional advice about that; it is important to have a due
5 diligence process that checks out any of the variables there might be before
6 you get to making a decision. So, I think that's one. I mean, there's just an
7 issue about recruitment that it must be... there must be a secure recruitment
8 process and I think I would say that in pursuing an interim chief executive,
9 the council has clearly already learnt that lesson and has had the back-up
10 of professional support at every stage in that process, and I think the
11 council would recognise that the process of the interim chief executive
12 search has been conducted in a different way than the previous chief
13 executive search was. Now that is not to say I'm making a judgment that
14 you wouldn't have ended up with the same person. I'm simply saying the
15 process should have been more robust than it was.

16 And, secondly, I think the other lesson that I would say the council
17 has to learn is this issue of corporate responsibility – that there is something
18 called the council and that when people are elected as councillors or
19 appointed as officers, they're not just appointed as officers abstractly; they
20 are officers of the council and they're elected to be members of the council.
21 And the needs of the council predominate over individual expressions.
22 Now, that doesn't say people shouldn't criticise, but it should be done in a
23 way that allows the council to make decisions, stick to them and not be
24 continually looking over its shoulder to see whether these are going to be
25 double-guessed, and I think if that lesson isn't learnt it's very difficult to
26 move forward and I was explicit on that on a number of occasions during

1 just this process and I would be explicit – I'm being explicit about it here
2 again. I think that's an absolutely crucial first stage in moving forward.

3 CHAIR: I've got one final question and it kind of extends that area of enquiry, and
4 already you've said in response to an earlier question that you're concerned
5 here, in this particular incidence, with the areas around the employment etc,
6 etc or of the chief executive, rather – not the employment, but the departure
7 of the chief executive. But you will have seen the Controller of Audit's
8 report and you will say that it very properly looks at the departure of the
9 chief executive in the light of bigger issues. Do you have any view, from
10 your experience – any comment you want to offer us on those bigger issues
11 like governance – so, you've touched on that just now, but governance and
12 sustainable budgeting etc, etc – and, for example, strategic leadership? Is
13 there anything that you want to offer us on that?

14 RORY MAIR: I don't think so, Chair, because to some extent, I was so focused on
15 dealing with the issue that COSLA was asked to come in to deal with that I
16 didn't expand beyond that, but I think this issue required strategic
17 leadership. I would say that, as I've said in my evidence earlier, that I felt
18 that the council needed from me, externally, the strongest possible
19 recommendations on all of these things because without it I didn't think we
20 would move as quickly as we should towards a conclusion, and I suspect
21 that for a period of time, on a number of other issues, the council also
22 requires of its officers very, very clear directions to be given and a way – if
23 those directions are to be challenged, a way must be found that challenges
24 them in a proper manner and doesn't lead to any disintegration of
25 relationships.

26 So, this process of giving really quite strong advice about what

1 should happen from a professional point of view and then being up for that
2 to be challenged politically. One which we would see in almost any other
3 council in Scotland, but done in a way which doesn't damage relationships
4 and does allow movement forward quickly – that's what the council needs to
5 work on here.

6 CHAIR: Mr Mair, thank you very much indeed for coming to talk to us and, as I
7 said earlier, all this way – it's more than just one hour of evidence we
8 realise in terms of the time you've devoted to us today so thank you very
9 much indeed.

10 -----

11 CHAIR: Ladies and gentlemen, we're ready to start our next session of
12 evidence gathering and we welcome to the table for evidence Mr Tavish
13 Scott, MSP, and Mr Alistair Campbell, MP. Gentlemen, thank you very
14 much for sparing the time to come to see us. Sorry? Did I? Oh, I beg your
15 pardon, Carmichael; I can't read my own writing; my own printing.

16 ALISTAIR CARMICHAEL: That's quite alright, Chair. I've been called an awful lot
17 worse than that over the years.

18 CHAIR: I change my surname every month, for the sake of my creditors, but that's
19 another matter. Can I start by putting a general question to you because
20 you've both emphasised the importance to the council – the importance of
21 the local community to the council and, indeed, for the council to move
22 forward. Mr Carmichael has said that the circumstances at the council got
23 out of control and can't easily be remedied from within. Can I ask you
24 please both, what do you see are the key changes or improvements that
25 are needed? Mr Carmichael, first of all.

26 ALISTAIR CARMICHAEL: Okay, if I can perhaps lead off on that? My principle

1 concern throughout the last 12 months has been an apparent insufficient
2 regard for what I consider to be proper rules and procedures; what I have
3 loosely termed to be governance issues for the council. They're all rules
4 and procedures which are there for a purpose: they protect the council, they
5 protect the people who work for the council and they protect the local
6 community. They are important in any council, but I think they are
7 particularly important when you consider the position of the council in
8 Shetland. The council in Shetland, within the community, holds a dominant
9 position. There are very few households in the county that are not affected
10 directly or indirectly, in some way, by the actions of the council. So, for that
11 reason, particularly in a small community where there might easily be
12 situations of apparent conflict or anything of that sort – conflicts of interest,
13 that is – I think it's very important that you stick strictly to the rules and
14 procedures that the law provides; that the various codes of conduct which
15 govern the business of local authorities provide, and it has been apparent to
16 me – and you will see that this is something which has been considered at
17 some length by the Ethical Standards Commission in recent times – that
18 that regard for proper procedures has not been present. It has led to a
19 situation where there has been a loss of confidence in the council in the
20 community and if you want to ask me how I think that might be best
21 restored, then I think a new approach, a culture change which ensures that
22 you do have that proper regard and that all the mechanisms of governance
23 that exist, should be taken forward properly. This is not new territory; this is
24 essentially the same area that was highlighted by yourselves in 1999 when
25 you considered then – and Robert Black reported as Controller of Audit,
26 following the removal of the then chief executive – and indeed, I would just

1 observe in passing that paragraph 4.23 of that report says: ‘Finally, I would
2 suggest that there should be a review of the disciplinary procedures for
3 chief executives and as part of that review a consideration of the role of
4 independent person and any report or recommendations made by that
5 person’. I’m not sure that any of that has ever been done.

6 TAVISH SCOTT: On Alistair’s main point about the culture of the council and of
7 the manner in which the council conducts itself, any local authority, and
8 certainly, this one – our one in Shetland – must have the appropriate
9 checks and balances within the system and I think what we learnt and what
10 anyone in Shetland can learn from reading the official investigations – and,
11 no doubt, your own deliberations and the evidence that’s been laid in front
12 of you over the last couple of days – I think would be clear, is that those
13 checks and balances didn’t exist and I’m sure you’ll want to – and I hope
14 you do – make recommendations about those checks and balances. So
15 that’s all I’d say on the central argument Alistair made there, which I
16 obviously agree with. On the generalities, on the rather broader point,
17 members have to show leadership. It is essential in my view – and I’m a
18 former councillor, as others on this panel, on your Commission, have been
19 as well – that members show clear leadership as to what they wish to do
20 and it is, I think a worrying time in any local authority. But certainly in this
21 authority, and I’ve been a member of this council – I have sat in this hall as
22 a member of this council – there is a clear split between officers and
23 members and that relationship is understood, and that relationship is
24 stronger because of that. In my view, one of the gravest – no, that is too
25 strong a word – one of the significant changes that took place, which has
26 not been beneficial to either members or officers in Shetland, has been the

1 abolition of the previous committee structure. I always believed – and I
2 know this is probably back to the future – but when you had an education
3 committee, when you had a marine operations committee, when you had
4 other committees such as that, then those committees had – the members
5 of them – had ownership of the policy areas that they were responsible for.
6 And I think in Shetland, with an independent council, not a political council,
7 but an independent council, that is helpful to elected members and
8 demonstrably helpful to officers serving those members as well.

9 And, just one final point, I do hope that in your consideration of what
10 you wish to recommend to Shetland Islands Council – I do hope that, you
11 know, huge pressure will not be placed on the incoming chief executive's
12 shoulders, because I think at times maybe all of us in Shetland have
13 considered the arrival of a new chief executive to be, as it were, a new
14 dawn. I think that's quite unfair. I think the central point I'd wish to make is
15 that members have to lead and officers have to respond to that leadership
16 and that's the essential split that needs to take place.

17 CHAIR: Thank you very much. Just a supplementary for Mr Carmichael: you
18 referred to concern in the community; is this what you are seeing with your
19 surgeries and, of course, with your tour around the islands?

20 ALISTAIR CARMICHAEL: Certainly at the time when the compromise agreement
21 was entered into by the council and the former chief executive, I would say
22 that the traffic of email correspondence and telephone conversations, as
23 well as, sort of, comment on the street on a Friday afternoon, was as heavy
24 as I have known it in nine years as a Member of Parliament, and there have
25 been some points in that nine years, believe me, when it has been quite
26 vigorous. I would say the point at which I first became actively involved in

1 this, instead of being as a – viewing it as a spectator, was when the post of
2 the assistant chief executive was deleted. There was certainly fairly
3 significant concern in the wider community beyond the family and
4 individuals concerned.

5 TAVISH SCOTT: And can I just – on that... When you go shopping in Lerwick, in
6 one of the two supermarkets, never mind anything else, when you are the
7 local MP or the local MSP, you get it. You absolutely get it. And I can
8 assure you, going for a Saturday morning shop with the kids, when all that
9 was going on, every aisle I was getting it. So, please don't underestimate
10 the level of public disquiet amongst our constituents in the last year as to
11 what's been going on.

12 DOUGLAS SINCLAIR: Good afternoon. The point of expression of public disquiet
13 is also underlined by a recent Standards Commission report, which you've
14 also referred to, which has highlighted significant difficulties in working
15 relationships in the council. What do you think needs to be done to rebuild
16 a positive working environment for members and for the officers? I was
17 particularly interested in the point you made, Mr Scott, about the need for a
18 clear split as to the roles of members on the one hand, and officers on the
19 other hand. It would be interesting if you could expand on that point.

20 TAVISH SCOTT: Mr Sinclair, I just think the – when you have an independent
21 council, obviously that's different from pretty well anything you see on the
22 mainland of Scotland; it is a tougher situation for officers because there is
23 not a, as it were, manifesto that members are working to. There is not,
24 maybe, a corporate plan that members are working to, and there are more
25 individual ideas. Now, that isn't necessarily a weakness; that can be a
26 strength. It can reflect the diversity of a community, and Shetland, at times,

1 is a pretty diverse community in all that we are and all that we represent.
2 But I do think it's important to ensure that in building a structure which
3 allows members to take sensible and constructive decisions – and there are
4 big ones this community faces; the council's made a very significant start on
5 education policy, just in the last week or so – that in doing that members
6 feel clearly they own where they are driving, in terms of that policy. And I
7 think that does come down to, or at least I suggest – I don't know if that's
8 absolutely the case – but I think it can be assisted by a structure which
9 allows members to feel that they control the policy agenda; they control the
10 ownership of that and they work on that. I mean, in simple terms it is
11 because they have the responsibility of that area that they are interested in
12 it.

13 When I served on, for example, the Marine Operations Committee
14 many moons ago, with a number of colleagues who are still councillors in
15 this administration, there was a real collegiate grip of that committee,
16 because we all cared about it. It was Sullom Voe, it was inter-island ferries,
17 all the things that matter to us, and that seems to me now not to exist,
18 because the council have large committees, they all sit on them and I'm not
19 sure that they create that ownership of what they are seeking to do and
20 possibly the collegiate approach to it where individual members as
21 independents come together to try to achieve things on behalf of the people
22 of Shetland. And it's my simple suggestion – I could well be wrong about
23 this – my simple suggestion that that might be a way forward in terms of
24 how you allow officers to properly support members in taking sensible
25 decisions.

26 ALISTAIR CARMICHAEL: Can I just add to that, and forgive me if I'm being

1 legalistic here, but you may be aware that I am a recovering lawyer. You've
2 referred to the report of the Ethical Standards in Public Life Commission.
3 You will see from that report a number of instances where the council has
4 probably been left fairly significantly exposed on different occasions in
5 relation to different matters, because the correct procedures have not been
6 followed. I just pick out three from the notes in front of me: the conduct of
7 the hearing into the allegations concerning the conduct of the chief
8 executive following the decision on the Anderson High School; the
9 appointment of a consultant with regard to the consideration of the project
10 as a whole, Mr Andrew Laidler; and the authority of the chief executive to
11 delete the post of assistant chief executive. On all these significant decision
12 on the part of the council, the view taken by the fairly comprehensive report
13 by the Commission for Ethical Standards in Public Life is that the
14 procedures were flawed. These procedures being flawed leaves the council
15 exposed.

16 I was particularly concerned at the point at which the deletion of the
17 post of assistant chief executive was mooted, because that left the council
18 exposed both financially and reputationally. There was a significant claim
19 possibly available to the assistant chief executive – it may well still be
20 available to him, there are people better qualified than me to adjudicate on
21 that – but also in reputational terms, because as you know yourselves from
22 your report of 1999, this is old ground for the council. It was difficult in
23 1999, and it has been even more difficult this time round.

24 DOUGLAS SINCLAIR: Can I just put a supplementary on the point you made,
25 Mr Carmichael, about 1999? Would you agree that it does seem that the
26 common denominator in both the case in 1999 and the most recent

1 termination of the chief executive, that the common denominator was a
2 failure to implement from the outset of their appointment a proper
3 performance appraisal system?

4 ALISTAIR CARMICHAEL: That's certainly the conclusion of the report of 1999
5 when this was all being considered by the council. Rory Mair from COSLA
6 very kindly made himself available for a very lengthy telephone
7 conversation to me at that stage and it was apparent to me from that
8 conversation that that was certainly the conclusion that he had reached. I
9 do not know enough of the detail to make that conclusion for myself, but
10 certainly I see very little that would contradict that conclusion.

11 DOUGLAS SINCLAIR: My next question is: do you think that councillors display a
12 sense of collective leadership to the community, and if not, how could that
13 be improved?

14 ALISTAIR CARMICHAEL: I mean, I think this whole point about leadership from
15 the council is one that it is possible to overstate, because I do have a high
16 regard for virtually all the councillors in the Shetland Islands Council, and I
17 think we shouldn't lose sight of the fact that Shetland Islands Council
18 provides a quality of service to its local community of which any community
19 in Scotland could justifiably be glad to have and would be proud to have.
20 So, you know, notwithstanding the difficulties, the quality of service provided
21 is still exceptionally high. Having said that, I do know from my own informal
22 contacts that there is said to be something of an issue with morale
23 difficulties within some parts of the council, so I don't think we can afford to
24 be complacent about that. I feel, Mr Sinclair, you are inviting me to be
25 critical of councillors individually or collectively, and I would be reluctant to
26 do that. In nine years I have very rarely intervened on council business. In

1 fact, I would say the only points when I have directly intervened beyond the
2 sort of normal informal contacts were in 2005-6 possibly, when the council
3 was in dispute with the port authority over a dredging contract, where I
4 sought to persuade both parties to go to arbitration, and last year in relation
5 to some of the procedural aspects of the Viking Energy wind farm project,
6 and now, the matters that are before the Commission today.

7 CHAIR: Before I invite Mr Scott to comment, can I just clarify: if there was any
8 inference that we were leading you to an answer then, I apologise for that.
9 We sit here as objective and we will not start to make up our minds until we
10 have a) finished the evidence and b) had a chance to go over it all again.
11 So that is just for the record. Mr Scott, sorry.

12 TAVISH SCOTT: I would say Christine May has led me in evidence many times in
13 front of a parliamentary committee, but the only other aspect I was going to
14 suggest in response to Mr Sinclair's question is that it would be fair to say
15 that the council I sat on was considered to be the worst council ever, and
16 every subsequent council is always considered to be the worst council
17 again, and that in many ways is utterly unfair, but people need someone to
18 have a go at in a smaller community and, at times, council is that and
19 probably always will, to some extent, be that. But where it becomes a
20 greater issue, I think, is when decisions are seen by the public to be
21 overturned and reversed. And, arguably, over the last few years, there
22 have been a number of very significant decisions for this community –
23 particularly the Anderson High School – where people, the general
24 population, are concerned that ultimately a decision has not been taken and
25 it has been reversed, and I think that leads to possibly the environment – a
26 deeper concern amongst the population at large – that something is not

1 right with the administration – something is not right with the council –
2 where it cannot come to a conclusion. And you will have gained and
3 learned, I'm sure, from the evidence that has been led to you in terms of
4 some of the decision-making processes, why that may be, but certainly it
5 strikes me that some of the public disquiet that has manifested itself in the
6 last year also reflects some very, very serious and significant issues about
7 major capital projects, and possibly other areas of policy as well, where
8 decisions have not been consistently retained.

9 DOUGLAS SINCLAIR: Mr Carmichael, I wasn't asking you to criticise the council,
10 but let me just ask for your views on the comment made by the controller of
11 audit, and I quote from the report: 'We found little evidence of strategic
12 leadership or of elected members acting in the interests of Shetland Islands
13 Council as a whole. Councillors have not demonstrated that they can set
14 and maintain a clear, strategic direction for the council.'

15 ALISTAIR CARMICHAEL: I think you can occasionally in politics get into the
16 situation where you're in a downward spiral, where you get two or three
17 significant hits that, you know, people then stop engaging with their
18 community; they don't necessarily get the feedback that they ought to and
19 they don't listen to the feedback they're getting, and that can then put you
20 into this downward spiral, as I put it. And certainly that was the conclusion
21 of the controller and I think that that may be the conclusion that he reaches
22 having observed the process that I've described.

23 DOUGLAS SINCLAIR: I think the other point I'd like to put to you is: you've
24 touched on the issue of the quality of services provided by the council and I
25 think the Commission has heard substantial evidence about the quality of
26 services provided by the council, but you would accept that the

1 Commission's interest is in good governance. Would you agree with me
2 that, as the council faces the prospect of reduction in the resources
3 available to it, that in order to ensure the right kind of decisions are made
4 about service reductions, the importance of good governance, if anything,
5 increases?

6 ALISTAIR CARMICHAEL: Absolutely. I mean, we have, I think, by common
7 consent, lived through a golden age of public expenditure and however we
8 slice and dice it we are coming for a time of exceptional financial constraint.
9 It's easy to gloss over the procedures if there is plenty to give out to
10 everyone, but if there is a greater constraint in the money that is available,
11 then the importance of governance becomes even greater because any
12 procedures that lead to people losing financial contributions must be seen
13 to be fair. And that's why the procedures must be seen to be followed, so
14 that everybody can be confident at the end of the day that, even if you've
15 got a decision that you're not necessarily happy about, it is at least one that
16 has been fairly reached. So, you see the difficulties that a poor approach to
17 governance can bring you to; that's only going to get worse unless it's
18 addressed.

19 TAVISH SCOTT: The only thing I'd add to that is in this kind of community, Mr
20 Sinclair, I think it also reflects on the personalities of those who are the
21 senior officials and, indeed, the senior elected members of the council. It is
22 a very public place and in that sense its quite unforgiving when difficult
23 things have to be dealt with, when difficult decisions have to be taken, and,
24 fairly or unfairly, the senior officials of Shetlands Islands Council are
25 well-known to this community, which puts a – in some ways – a quite
26 intolerable burden upon them. But that is the reality of it. But that does

1 lead, I think, to some very important decisions about who is recruited to
2 those posts, because of the inevitable public face that they are. I suspect
3 Christine May would tell me that when she recruited our chief executive to
4 Fife Council, that person probably wouldn't be easily recognised across the
5 whole of the Fife Council area. In Shetland, inevitably, the very senior
6 figures of Shetland Islands Council are very well-known right across the
7 Islands, and that does mean that their conduct in all senses is very much a
8 matter of public record, and that may be quite unfair, but it's the reality of
9 Shetland.

10 DOUGLAS SINCLAIR: Can I just pick up that final – that point, in my final
11 question. You're right to make the point that councillors, officials in islands
12 communities, live in a goldfish bowl, but as well as the standards of conduct
13 they need to maintain there's also the protection of those officials. Would
14 you agree that an integral part of good governance is the importance of not
15 only an understanding of the code of conduct in terms of public criticism of
16 officials, but the full observance of that code in order to provide the
17 protection of officials, who, as you say, lead a very public life?

18 TAVISH SCOTT: Yes, I'd certainly recognise the importance of the code; I was an
19 MSP who passed the code; I was part of a government who passed that
20 legislation – initiated that legislation and passed it – so, self evidently I
21 believe that's an important part of local government in Scotland, local
22 government in Shetland. So, it is certainly the case. But it is also, of
23 course, why we have the checks and balances; why the Ethical Standards
24 Commission work is there, and, after all, we have had a couple of very high-
25 profile references to that particular body in Shetland in the last year, and in
26 the case of both Councillor Wills and Councillor Robinson, they were both

1 cleared of the charges laid at their door by others. So I think it's important
2 to recognise that the independent statutory bodies that Scotland's
3 parliament has created, as it were, passed the test. A full examination of
4 the circumstances took place and in those two cases that I highlight, the
5 elected members concerned were cleared of the charges that had been laid
6 at their door and I think that reflects, does it not, that, yes, the code of
7 conduct is self evidently important and councillors, of course, must follow it,
8 just as MSPs must follow their code of conduct, and rightly so, and they can
9 be held to account for mistakes upon that, but there is also an independent
10 body which looks into any complaint initiated and finds as it found.

11 CHAIR: Thank you Douglas. Can I ask Christine May to take up the questioning
12 please.

13 CHRISTINE MAY: Thank you. Good afternoon, gentlemen. To some extent you
14 have covered my next point, but I would still like to put it to you. Given the
15 nature of the Shetland Islands community that you have described –
16 relationships, family history going back for hundreds of years sometimes,
17 including family and inter-family antagonisms – and the fact that difficult
18 decisions are going to have to be made over the next few years – the
19 history there has been of difficulties between the council and its chief
20 executive – can you speculate for me on what you would like to see put in
21 place to help to support the chief executive against being that single figure
22 of opprobrium, if you like, for those difficult decisions? And, you know, what
23 other views you might have on how this situation could improve in the
24 future?

25 TAVISH SCOTT: Thank you. I think to start with there have been some
26 recommendations in relation to procedures that should be followed and Mr

1 Sinclair referred to, Alistair referred to the – I don't think I need to call you
2 Mr Carmichael – Alistair referred to the 1999 report and the
3 recommendations therein and it strikes me there are some – self evidently,
4 some procedures and some practical measures that any senior individual in
5 any organisation, private or public sector, should and would expect when he
6 or she came into post. And I very strongly assume and hope that when Mr
7 Buchan takes charge on the 9th of August he will have that in place and that
8 will be in place. I think that's important both for – again for the senior
9 elected members, and, indeed, all the elected members of the authority, as
10 well as the officials concerned. And, that, surely is a starting point. It's
11 difficult at times not to reflect on one's own time in a council, because at
12 that time I felt we did have a structure which allowed the convenor, the vice
13 convenor and the senior members who were committee chairs to operate
14 as a team – by gosh, there were plenty of disagreements – but broadly
15 speaking they operated as a team and I think at that time senior officials of
16 the council, including the then chief executive, had a pretty clear
17 understanding of what members were seeking to do. Now, I grant you that
18 was a time when money wasn't an issue and I totally take the Commission's
19 point that we are all reflecting on at this current time that when money is
20 being – when money is more difficult to spend and, indeed, to have, it is self
21 evidently a much more difficult environment in which to operate. But I do
22 think that there is a legitimate structure which can assist, again, both sides
23 of the particular equation, but it must be based, surely, on the correct
24 procedures and the correct checks and balances within a council, including
25 the formal statutory rules that exist at officer level as well.

26 ALISTAIR CARMICHAEL: I feel that your invitation to speculate almost

1 presupposes that there is an inevitability about the chief executive being a
2 figure of opprobrium. I don't think that's necessarily fair. I think that the
3 chief executive – as indeed, we all are, as public figures in Shetland – will
4 be subject to a level of scrutiny and comment as a consequence of their
5 recognition that would not be the case elsewhere in Scotland, or indeed the
6 United Kingdom. The previous chief executive, Morgan Goodlad, was
7 somebody about whom there was certainly fairly robust comment made
8 locally, occasionally, as is the case for us all, but I don't think he was a
9 figure of opprobrium, if that was the term that you used. And just regard for
10 the proper procedures, the proper standing that you have within the
11 community and regard for the importance of the position that you hold, an
12 acceptance perhaps, that your life here as chief executive is not going to be
13 the same as the chief executive of, say, Fife or Glasgow, or wherever else,
14 not least because the chief executive of Fife can probably live in Edinburgh
15 or Angus or somewhere else if he or she chose to do so. If you're going to
16 be chief executive in Shetland then you have to live in Shetland, and if
17 you've got children, your children will almost certainly go to school in
18 Shetland and, if you're husband or wife chooses to take employment, then
19 they'll be working in Shetland. You don't have the opportunity for that
20 space, so you have to conduct yourself differently.

21 CHRISTINE MAY: Thank you. If I can just very briefly address the next question
22 to Mr Scott, and this is on the negotiated settlement with the former chief
23 executive. You both expressed concern, but David Clark says Tavish Scott
24 sought to prevent the settlement being implemented. Would you like to
25 comment on that and perhaps your view on how the council got itself into
26 the situation and what it might have done in your view?

1 TAVISH SCOTT: My concern about all of that, which to some extent I think again
2 is reflected in the Controller of Audit's report, which I'm sure you have and
3 have noted in terms of that particular finding, in relation to the size of the
4 settlement and in terms of the manner in which it was handled, is the
5 enormous public disquiet about that. Again, we reflected earlier on – in
6 response to your questioning – how grave the situation has been in the last
7 year. I don't think any MP or any MSP representing these islands, or, for
8 that matter, any constituency in the country could ignore the level of disquiet
9 about that. We've just observed that the council's embarking on a very
10 significant school closure programme – for our islands, a very significant
11 school closure programme. Mums and dads ask me, 'so they are going to
12 close your school, but they paid off that man with all that money.' That's
13 where people are on this one in Shetland and I just do hope the
14 Commission has recognised the huge level of public disquiet about that.

15 I can't play any formal role; that's not my job; if I wanted to, I'd be an
16 elected councillor, and I'm demonstrably not, so I don't really understand
17 the comments that are attributed to the former chief executive and I'm not
18 going to comment on them. But all I will observe, is that the level of public
19 concern about all of that, including the evidence you heard, I think,
20 yesterday, which had been reported on the news last night in Shetland, is
21 enormous and continues to be enormous, and we would all be helped, as a
22 community, if you were able to make sure that the details of all that were
23 published. I noticed a very welcome statement from the convenor in
24 response to your questioning yesterday, in which he said he was seeking to
25 find a legal manner in which that settlement could be published. I think all
26 of Shetland deserves to know the full details of that. We're all paying for it,

1 we deserve to know.

2 ALISTAIR CARMICHAEL: Can I maybe just add one small point to that. You
3 might have regard to paragraph 5.2.7 of the Ethical Standards report where
4 it says – and I don't understand what is meant by this – 'the fifth
5 complainant' – that's the Director of Legal Services – 'was also keen that I
6 should be aware of the council's concerns about the significance to them,
7 as employers, of the outcome of this complaint and the possible taxation
8 ramifications on the settlement reached with the third complainant' – that's
9 the former chief executive. As I say, I don't actually understand exactly
10 what's meant by that, but that's something which has clearly been
11 uppermost in the mind of the council and it would be something which
12 would help restore confidence if comments or conclusions of that sort could
13 be explained to the community.

14 DOUGLAS SINCLAIR: Turning to the post of assistant chief executive, the council
15 stated that its policies and procedures were not followed correctly. It stated
16 that in its submission and this was confirmed by the chief investigating
17 officer in his report to the Standards Commission and the complaint against
18 Councillor Wills. Why do you think that was?

19 ALISTAIR CARMICHAEL: Well, I mean, the decision was one that was taken by
20 the former chief executive. It was one which was not carried out in
21 accordance with the proper rules and procedures, the proper governance,
22 to use your own term, Mr Sinclair. Now, the governance of the council does
23 provide that there are checks and balances within the council which should
24 avoid the council acting in a way which would be illegal or otherwise *ultra*
25 *vires*. There are powers invested – I'm sure you'll be aware of them – in the
26 office of the monitoring officer. The monitoring officer, of course, is the

1 director of legal services, who in this case is subordinate in the council
2 hierarchy to the chief executive. So, it must be difficult, I would suggest, for
3 the monitoring officer- necessary, but difficult – for the monitoring officer to
4 question the actions of the chief executive. It was because I recognised
5 that difficulty that I sought in, the first instance, going back to September
6 last year, to suggest to the convenor of the council that procedures had not
7 been properly followed, which, as you say, is something which is now
8 accepted by all parties, and that it would be sensible to bring somebody in
9 from the outside who would be able to identify the weaknesses that I
10 personally had identified and give the council some suggestions for the
11 rectification of these weaknesses. It pains to me say that had that been
12 done at the time, we might not have had many of the difficulties which
13 followed subsequently.

14 DOUGLAS SINCLAIR: A couple of follow-up points, if I may, on that. I take the
15 point you make about the difficulty, particularly in a situation like Shetland,
16 of the monitoring officer going against the chief executive, but would you
17 agree with me that in terms of statute that he did have that right to submit
18 his own independent report to the council?

19 ALISTAIR CARMICHAEL: I wouldn't agree that he had a right; I would agree that
20 he, in fact, had an obligation.

21 DOUGLAS SINCLAIR: Well, my second point is: in terms of good governance
22 which both of you have stressed, I'd be interested in your views as to
23 whether you were surprised in terms of good governance that the post of
24 assistant chief executive was neither advertised internally nor externally – a
25 senior post in the council. It had no job description attached to it and the
26 person was appointed to the post without interview. Do you think that

1 constitutes good employment practice?

2 ALISTAIR CARMICHAEL: No, absolutely not. And, you know, it has been put to
3 me by a number of constituents, who say 'Well, why are you getting
4 involved in this situation now? This has been going on for years.' And I
5 have to say to them candidly, 'Well, yes, there have been occasions when I
6 might perhaps have spoken publicly in the past'. Do I regret now that I
7 didn't do so? Yes, I almost certainly do. But you apply your best judgment
8 from balancing different considerations at different times, involving the
9 continuation of what is an important working relationship for the community
10 between myself and Tavish as parliamentarians and the council as a local
11 authority on the other hand. But, you know, just because you haven't
12 identified – or publicly – weaknesses in the past, can't justify you continuing
13 to ignore them now.

14 TAVISH SCOTT: Can I make two points, Mr Sinclair? Firstly, on your first point
15 about why; I think we can all understand when a new post holder comes in,
16 again, to any organisation, the desire of new colleagues to support that post
17 holder. Gosh, it even happens in politics, so I can see that and I think we
18 can all see how a set of circumstances might have arisen. Also, Alistair
19 gives some wider context to that. Can I also just secondly stress that we've
20 been criticised for getting involved with a staffing matter, the only time we've
21 ever done it publicly in all the years we've both been parliamentarians and
22 in response to this community, in response to someone coming to see us; in
23 response to constituents time and time again coming to see us saying 'this
24 is not right; something must be done'. And I hope – and we hope never to
25 have to do that again, and for the record, I am involved in two or three
26 staffing issues as a constituency member at the moment, which are not in

1 the glare of publicity, which we are dealing with with officers. Heaven
2 knows whether we'll sort them out or not, but I've always recognised –
3 we've always recognised, the responsibility we have to be really serious
4 about issues like that, because, of course, they are about someone's
5 individual circumstances, but I think given the set of circumstances that did
6 arise over Mr Shannon and Mr Shannon coming to see us, I don't think we
7 had any choice in what we did.

8 CHAIR: Thank you for that. We now turn to the Shetland Charitable Trust and
9 Graham Sharp's going to pick up the question.

10 GRAHAM SHARP: We heard yesterday various views on this charitable trust and
11 the structure of the charitable trust and both the merits of councillors being
12 the charitable trust board, which would facilitate coordination between that
13 charitable trust and the council and also indirectly provide an ability for the
14 electorate to, in effect, appoint trustees. The alternative is that, if there is a
15 majority of non-councillors on the board of the charitable trust, that more
16 clearly demonstrates independence and reduces potential conflict of
17 interest. Do you have views on those different structures?

18 ALISTAIR CARMICHAEL: I think it's fair to say that – well, first of all place on
19 record that the structure that we have had since the early 1970s has served
20 Shetland very well. But, the world has changed a great deal. The issue of
21 local authority governance, of corporate governance and, indeed, the law of
22 trusts itself, has changed significantly in that period. And, without
23 suggesting that there is any inappropriate conduct, I think we have probably
24 now reached the point where the present structure is not going to be one
25 which can be sustained for much longer and the community must now
26 decide how it wishes to move forward, recognising the competing demands

1 that there are for accountability to the community, which must be primary,
2 and effectiveness in the mechanism by which that accountability is
3 achieved. The point I would make is that I don't think this is a time for a
4 botched job that is going to do us for another five years. We've had a
5 structure that has served us well for the best part of 40 years. If that has to
6 change I would like to see the sort of change that is going to be enduring
7 and I would not want to see the charities regulator breathing down our neck
8 again in five years' time. It's for the community to decide.

9 TAVISH SCOTT: Yes, I think that's the point, Mr Sharp; I would rather the
10 Shetlands sorted out what it wants out of its charitable trust. These are
11 revenues that have been accrued by some pretty sensible and successful
12 negotiations many moons ago and it should be done here. I think what
13 elected members have to deal with and have to respond to is the – yes, the
14 slight threat that is coming through from the charities regulator in terms of
15 the need to reform and need to change, and they need to deal positively
16 with that. But I must confess there's one point I would entirely support the
17 council on and that is I think they've been subject to some observations on
18 their grouping of accounts and things like that; I've found a number of
19 directors of finance going back to when I was a councillor, I think, making
20 entirely plausible arguments as to why the account arrangements are fine.
21 As long as accounts are transparent and open and can be read, I actually
22 don't think that the requests of them to group all the accounts together have
23 been particularly fair. I thought Andrew Matthews, who was the director of
24 finance when I was on the council was quite right about that and I think the
25 current director of finance, Graham Johnston's also right about that. So I
26 think there is a difference between the issue of the structure of the trust and

1 the balance of membership, which you're driving at and the manner in
2 which the accounts need to be utterly transparent – yes, to you as the
3 auditors and to others who are auditing the council's finances – but as
4 importantly to the people of Shetland.

5 GRAHAM SHARP: I'd just comment on that, that I wouldn't dispute that what
6 matters first is getting the structure of the organisation correct for the
7 purposes for which the organisation is there and then once that's done
8 clearly there are legal and accounting consequences depending on what
9 you have and one has to look at that in the context of the regulations that
10 apply.

11 BILL MCQUEEN: In the course of preparing for this inquiry, and indeed, in the
12 course of holding it, we've heard evidence about leaks to the media and
13 sometimes of confidential information from the council and the sense that
14 business in this part of Scotland is played out in the media as well as, or
15 perhaps instead of, in the council chamber, and we're interested in your
16 views on that. We heard some consequences put to us this morning of it in
17 relation to the settlement with the former chief executive. As politicians
18 who've been active at a national level for a number of years, have you got a
19 sense of whether it's more prevalent here than elsewhere? Is it worse here
20 than elsewhere? And obviously one's recognising that a strength of local
21 democracy is a vibrant, engaged local media, but what is your sense of the
22 situation in this community at the moment and can or should anything
23 attempt to be done about it, rather than – other than encouraging best
24 practice and procedures policies and adherence to those?

25 TAVISH SCOTT: The public interest test is one that I'm sure you, as a
26 Commission, have, shall we say, noted with considerable interest in terms

1 of the reports that you've read and we've read. And, in this community,
2 given the finances, given some of the other issues that have been around,
3 then, you know, we've had an independent report that's kind of, I think,
4 made a bit of an assessment on that particular point in respect of a couple
5 of our elected – local elected members. Is it worse here, Mr McQueen? I'm
6 not sure it necessarily is. I read my local papers in Edinburgh when I'm
7 down working through the week in Parliament and I see an awful lot of
8 stuff coming out of Edinburgh City Council on a daily basis, leaked to the
9 evening news, leaked to *The Scotsman* and leaked onto websites and that
10 kind of thing, which is said to be a leak and then there's a leak inquiry and
11 all that.

12 I'm not convinced it's any greater in Shetland than it is in any other
13 local authorities across Scotland. I think it has been significant here, not in
14 terms of number, but weight, simply because of the issues that have arisen
15 and that have been subject to such enormous public interest and that's
16 possibly the judgment you'll reach in terms of assessing what you've heard
17 over the last couple of days. But I think you could look at any local paper
18 around Scotland and find plenty of examples of leaks, for want of a better
19 expression.

20 ALISTAIR CARMICHAEL: I think you have to see the leaks as the symptom
21 rather than the disease. And the symptom may be – or the disease, rather
22 – would be a council, which has gone into this – or, indeed, any
23 organisation, be it a council, political party – we all go through these phases
24 from time to time. I know; I'm the party chief whip, so I see a fair bit of this.
25 If information is being put into the public domain which ought not to be,
26 according to the sort of rules and procedures of the council, that's normally

1 because there's some other reason for that. It might be the settling of some
2 score; you want to embarrass somebody, or it might be that it's been
3 withheld inappropriately. I think that when you have an organisation which
4 it is the subject of extensive and prolonged public criticism, then the people
5 who are at the heart of that organisation withdraw into the bunker, and
6 information that could be quite reasonably be put in the public domain is
7 withheld. That is seen by others and then as a consequence of that, it does
8 tend to be leaked. That's what I mean about this being the symptom, rather
9 than the disease. I think if you have proper leadership in the organisation
10 and you have proper regard for due governance – due regard for proper
11 governance, then the leaks would stop.

12 CHAIR: Thank you for that. Gentlemen, we've reached the end of the specific
13 questions we wanted to ask you, but let me end with a general question. Is
14 there anything else you would like to add to what you've told us? I don't
15 know if you've had the chance to read any of the written submissions in
16 evidence to us and if there's anything there you wanted further to comment
17 on? We'd be very interested to hear it now.

18 ALISTAIR CARMICHAEL: No, I have read some of the written submissions; I've
19 not had the opportunity to read them all. I have followed some of the press
20 reports of your proceedings over the last 48 hours. I think the one point that
21 I would want you to leave with is an understanding that having been, along
22 with Tavish, instrumental in bringing outside influences, which you now
23 represent, this was not a decision which I or he took lightly. Tavish made
24 reference earlier to the handling of the deletion of the post of assistant chief
25 executive, as a staffing matter. Had I thought for one second that it was
26 merely a staffing matter, I would not have involved myself publicly in it. It

1 was because I saw it as an issue of governance within the council that I felt
2 it was important to speak about it publicly and why I subsequently, along
3 with Tavish, sought an examination of what had been going on from an
4 agency outwith the islands.

5 CHAIR: Thank you. Mr Scott?

6 TAVISH SCOTT: Thank you, Chair. I just – just simply one point and that is: I
7 want this council to succeed. This council is fundamentally important to our
8 islands. Alistair and I are able to do our jobs with considerably more skill
9 and ease if we've got a really solid working relationship with our chief
10 executive of this council as we do with many other bodies across Shetland,
11 whether it be the local NHS, the Harbour Trust, the Sullom Voe Oil Terminal
12 – whatever it may be – and it is fundamentally important to being a good
13 constituency MP or MSP that we have a constructive and utterly
14 professional working relationship with the senior management team and the
15 senior elected members of the council and I look forward to that day
16 happening again as quickly as possible, and I hope your deliberations will
17 help that process and ensure that that day happens rather sooner than
18 later.

19 CHAIR: Thank you very much, both. Just one point of clarification: our hearing in
20 public over the last two days was prompted by the Controller of Audit's
21 report which we considered on the 13th of May when the kind of things
22 we've been talking about today raised concerns for us and we came here to
23 find out more about it. Gentlemen, thank you very much indeed for taking
24 the time and the trouble to come and let us have your views. Thank you
25 very much indeed.

26 Ladies and gentlemen, for your information, after the next session

1 I've invited the council and it's in the form of the convenor and the deputy
2 chief executive and the monitoring officer, to come back, and answer any
3 points that they feel have arisen in other evidence that they've heard, and
4 we also have one or two points that we want to put to them. So that will
5 follow the next session. Thank you.

6 -----

7 CHAIR: Well, we've reached the last of the sessions scheduled and, of
8 course, as I've just said, we have the recall session after this. And we
9 welcome four individual witnesses. We happen to have them in front of us
10 as a foursome, but in fact they are individuals; they are not here as a group
11 and that's an important point to make. Can I ask them please to introduce
12 themselves by saying their name and their position for the record please?

13 KATHY GREAVES: My name is Kathy Greaves, I'm a Lerwick Community
14 Councillor, but I come here just as an ordinary member of the public.

15 KEVIN LEARMONTH: I'm Kevin Learmonth; I'm Vice Chair of Sustainable
16 Shetland.

17 LES SINCLAIR: Les Sinclair, I'm a lecturer at a local college, but I'm here in a
18 personal capacity.

19 VIC THOMAS: Vic Thomas; I'm just an ordinary member of the public.

20 CHAIR: Thank you. Let's then start by my asking you a general question related
21 to the issues that you raised, because they highlight in their turn a number
22 of matters and concerns. And, of course, you don't all agree on the issues,
23 but if I just go across the table: what do you think are the priorities for the
24 council to improve as you see it and how do you think those priorities are
25 perceived by the people of Shetland?

26 KATHY GREAVES: I have a whole list of things which could be changed,

1 because I have taken lots of information from members of the public. I'm
2 not really a public figure as our MP and MSP are, but I do get stopped in the
3 street and the supermarkets because people know that I tend to put forward
4 views of the public and you will see from my submission that there are
5 many issues here, many of which are covered by the people to my left, and
6 they can answer any questions in more detail. But you are asking us now,
7 what can we do for the future, is that your question, sir?

8 CHAIR: Yes, and to improve how the council is perceived, as well, because I think
9 it's fair to say we've had a number of criticisms heard of the council and
10 we've just heard two witnesses say there's a lot of disquiet about...

11 KATHY GREAVES: Well, I'll leave my notes to one side, but I can – I think we're
12 all agreed that leadership comes from the top. The captain of the ship runs
13 the ship and, if it's a good ship, runs well. We need to have better
14 leadership, better governance in this council; we need more openness,
15 more honesty. We need to have the Shetland Charitable Trust separate
16 from the council, with different members, so that people can see that it's
17 operated differently, so that they feel they have a fair chance of benefitting
18 from that. More openness and information to the public – you've mentioned
19 a few times about the media; if it wasn't for the media; if it wasn't for these
20 little bits of information coming out, then we wouldn't know very much about
21 what's going on.

22 CHAIR: Yes, and when we ask about the media, we were asking as a point of
23 information and taking views, rather than making any comment.

24 KATHY GREAVES: I thought you wanted me to put the whole lot at once; I beg
25 your pardon.

26 CHAIR: That's fine. Mr Learmonth?

1 KEVIN LEARMONTH: Thank you, Chair. In terms of what can the council do to
2 improve its performance, I mean, as an organisation we've got a lot of
3 sympathy with the workload of councillors. In a lot of ways they're run
4 ragged, trying to perform dual roles of acting as elected councillors, and at
5 the same time, sometimes conflicting roles of acting as trustees.
6 Sometimes, when they try and ride two ponies at the same time they
7 become unstuck and that is at the root of a lot of the problems, that when
8 they're considering one matter, quite often at council meetings, members
9 will arrive with the agenda papers unopened before the meeting and that's
10 the first they see of it, so that quite weighty matters are sometimes taken on
11 a whim and a lot of that comes down to pure workload and that they don't
12 have enough physical time to go through the papers for both organisations.

13 CHAIR: Can I just pursue that a little more? You mentioned that sometimes the
14 dual role of trustee and councillor comes unstuck. Was part of that
15 unstuckness the point about arriving at meetings unprepared or were you
16 thinking of other things?

17 KEVIN LEARMONTH: I think it's the sheer workload of performing both as
18 councillor and as trustee. They will be, as our MSPs pointed out earlier,
19 stopped in the street and questioned about a variety of things. Quite often
20 those questions will be in the role as a charitable trustee; other times that
21 role will be as a councillor. Both organisations have a fairly hefty workload
22 and I don't think there are enough physical hours in the day for them to
23 cover that workload. You know, something has to give.

24 CHAIR: I'm interested in this general view about coming unstuck. Are you seeing
25 decisions you regard as bad decisions being reached or is it simply you
26 wouldn't know if they're bad and neither would they, because they've no

1 time to prepare?

2 KEVIN LEARMONTH: I think the ones that sort of stick in my mind is where it's
3 decisions relating to the charitable trust, quite often involving Viking Energy,
4 a subsidiary of the charitable trust. They all know if they looked hard
5 enough, that they all have an interest in Viking Energy, because they're all
6 trustees of the charitable trust, except one. When these matters come
7 before them there is a lot of, sort of, shuffling and floor gazing.
8 Occasionally there will be a declaration of non-pecuniary interest and the
9 meeting will carry on as normal, as if, if you are not gaining financially it's
10 okay to take part in that decision.

11 CHAIR: Thank you for now, Mr Learmonth. Mr Sinclair?

12 LES SINCLAIR: I think that despite a lot of expressions of – anger, would
13 probably be the best word for it, in the council –

14 CHAIR: Can you speak into the microphone. I think some people are losing you.

15 LES SINCLAIR: Okay. Oh, that's not uncommon. There is a lot of really good
16 work being done by senior officers and council employees as it is. What I
17 think we need to do here is to try and help them to develop that work, to
18 carry it forward and to make a success of their day-to-day business and
19 operations of the council. Hopefully the new chief executive, who I know
20 through reputation, will help along those lines. But to build on the work
21 that's already being done, is the first step, in my view. The difficulty with the
22 elected officers is more complex, I would say. It's going to be very, very
23 hard to repair damaged relationships there and I, personally, would say they
24 are going to need a lot of help of outside bodies to do that. Who the bodies
25 might be; who would help them, is a different story. But they're going to
26 need a lot of help and support to go through that process. But there is good

1 work being done, despite what is being said, in Shetland, broadly, across
2 the whole community.

3 CHAIR: We'll maybe come back to the areas of good work when we get into more
4 specific questions in a moment or two. Mr Thomas?

5 VIC THOMAS: The delivery of public services in Shetland over the years has
6 been absolutely wonderful. Some of the decisions taken have not, and my
7 question, really, about the whole outcome here is that we've managed to
8 make a lot of mistakes while financial times have been rather good in
9 Shetland. We need to sort something out fairly rapidly before the financial
10 crunch really hits the public purse, and we start to see services whittled
11 away. And I think in Shetland we are in for a bigger, bigger problem with
12 this than they are in the mainland where they've been having less wealthy
13 times and less money to spend per head of the population.

14 CHAIR: You compare yourselves with other – you're saying there'll be even more
15 severe times here than elsewhere, is that right?

16 VIC THOMAS: I think we're going to have to cut a lot more meat off the bone
17 here.

18 CHAIR: Why do you say that?

19 VIC THOMAS: Because we've been a very wealthy local authority and we've
20 been doing a lot of things that a lot of local authorities would only dream of.

21 CHAIR: Right, so as a luxury in the context in which you talked, that has to go?

22 VIC THOMAS: Yes, and I think the governance, as we mentioned before, needs
23 to be far more robust and a greater sense of openness and fairness in the
24 way that decisions are taken.

25 DOUGLAS SINCLAIR: Good afternoon. You'll have no doubt read of the recent
26 Standards Commission reports which have highlighted significant difficulties

1 in working relationships in the council. I'd be interested to know what
2 effects of this, if any, are evident in the wider Shetland community.

3 KATHY GREAVES: All I know is from what people have said to me, again, mostly.
4 I've read it through myself and I can see there are certain issues on
5 governance of Shetland, but people are saying to me, 'Really, it doesn't
6 make any difference. Nothing is going to happen, nothing is going to
7 change'. I feel that's what the Shetland public have been saying to me.

8 KEVIN LEARMONTH: Just so I'm clear, the question is, what to do the public
9 expect? Is it?

10 DOUGLAS SINCLAIR: No, the public reaction to the Standards Commission
11 report: what impact, if any has it had on the public?

12 KEVIN LEARMONTH: I think minimal. When it's reported it's reported locally – or
13 explained to reporters locally – that it's a minor technical matter, that we're
14 repeatedly told by councillors and other agencies that it's a technical matter;
15 it's just the case that Audit Scotland don't understand our special position
16 here, and if we just – somehow, if we just explain it to them, the problem will
17 go away. So in the public mind it's slightly confused about what exactly the
18 problem is, because they're not hearing it firsthand and not hearing it
19 directly. I looked at the news report of this event last night and the news
20 report felt to me quite different to what actually took place here during the
21 day. It focussed on maybe one particular aspect, where there're lots of
22 other aspects been raised. But I think the public understanding of it is
23 improving a lot over the last few years.

24 As an example, in 2007 there were various people agitating for
25 reform of the charitable trust. The meetings attracted large numbers of
26 people and some councillors attended. At those meetings, less than a third

1 understood that councillors automatically became trustees on election. And
2 these were people already interested in reform. So two-thirds of the
3 meeting had no idea how councillors became trustees. That situation has
4 improved, but it's come, not because of those organisations, but almost in
5 spite of them, that that understanding has grown.

6 LES SINCLAIR: My own feeling is that this report has rekindled interest in what's
7 going on in public life in Shetland. I think a lot of folk now, who maybe 10
8 years ago would've said, 'Well, it's a council, let them get on with it'; they
9 are now beginning to sit up and realise what's going on. They've taken an
10 interest in what's happening. They want to know what is going on in
11 Shetland Islands Council; they want to know why decisions are being taken
12 the way they are; they want to know what decisions are being taken. So I
13 feel this could revive the public interest in what's going on and probably
14 help the process along in the future.

15 VIC THOMAS: My observation is that there's been decisions taken over the
16 course of a number of years that have found quite a lot of disfavour in the
17 community, but they've rumbled on and it's got slightly worse as time's gone
18 on, but, to me, the issue of the former chief executive was a real turning
19 point in the feelings in the general community in Shetland as to the way the
20 council was running things. Alistair used the word public disquiet; I would
21 have said it was almost hysterical. And I work in a position where I see an
22 awful lot of elderly people and people on low incomes and I've seen little old
23 ladies coming from the west side of Shetland over this issue practically
24 spitting their false teeth out, and I've never seen that before. So this issue
25 that we're discussing now culminates, in my opinion, in the issues
26 surrounding the former chief executive and it's kind of the straw that's

1 broken the camel's back in terms of the public's perception and
2 expectations of our local authority.

3 CHAIR: If I could just interrupt for a second, Douglas. That's a useful point at
4 which for me to put a question. I think it's particularly to Mr Sinclair; it
5 comes from your submission, where at the second paragraph you say that
6 'working relationships in the council have been under strain for a
7 considerable time and I believe that the report' – that was the Controller of
8 Audit's report – 'does not put sufficient emphasis on that'. Recent events
9 may have exacerbated working relationships, but they were already bad
10 long before the appointment and subsequent departure of David Clark. I'm
11 asking you to comment because you wrote it, but others may wish to
12 comment given your reference to a much longer time period. But Mr
13 Sinclair, you wrote it: would you like to expand on that for me?

14 LES SINCLAIR: Yes. I speak to a lot of people in all sorts of walks of life and one
15 of the commonest topics of conversation is how people are dissatisfied at
16 work, and the Shetlands Islands Council being a major employer here,
17 clearly they are going to have a lot more folk working for them than for
18 anybody else, so the proportion will be higher. But also in the local paper a
19 few months back there was a report on absenteeism and the reaction of
20 some councillors was – it left a lot to be desired, you know, like, 'Send some
21 managers to their door and drag them out from under their duvet', and that
22 sort of comment being made. I didn't think it was very helpful, so I started
23 taking a bit of interest in what was going on there. I tried before the hearing
24 today, but due to lack of time I couldn't get the figures, but I think if you look
25 at the figures for absenteeism; the figures for a sickness absence; the
26 figures for early retirement; the figures for staff turnover, for example, I have

1 a strong feeling they wouldn't be very good reading in terms of personnel
2 management practice or human resource practice. There was a -

3 CHAIR: Sorry, can I just interrupt? So you are putting down those statistics to – I
4 mustn't lead you – but are you suggesting – am I inferring rightly, you're
5 saying that that's stress-related as arising from working relationships being -

6 LES SINCLAIR: Well, I think that's the common factor in all stress-related illness,
7 surely.

8 CHAIR: Alright. I just wish to understand for the record what it is you're saying,
9 that's all.

10 LES SINCLAIR: Well, I think – that's one of the areas I teach, and, as far as I'm
11 aware, that's the main cause of stress.

12 CHAIR: I understand what you are telling me. Thank you. Sorry, Douglas.

13 DOUGLAS SINCLAIR: My other question to each of you is would you agree that
14 the council seems to have a great deal to do rebuild its reputation with the
15 community and if I asked each of you, what would you consider the three
16 most important steps the council would take; what would you suggest to the
17 commission?

18 KATHY GREAVES: Well, I've been asking since last September for the council to
19 stand down and be re-elected, but that's probably not going to happen, but I
20 think it'd be a good start. But as can do – training for a start and learn from
21 the training. We need someone separate and independent here, I think, for
22 a while at least, to oversee the council to make sure that they're, you know,
23 obeying the rules, doing what they should be doing. I think we'd all be
24 happier with that. It's not going to happen by itself, anyway.

25 KEVIN LEARMONTH: For my part I think crucially it is for councillors to remove
26 themselves from Shetland Charitable Trust and to have an independent,

1 elected charitable trust, which frees up the councillors and gives them the
2 time to concentrate on being councillors. It removes the conflicts of interest
3 and it gives the community confidence that the council is on top of the job.
4 The other one is that councillors clearly articulate their politics before
5 election. It was suggested earlier that we have a non-political council. We
6 have a political council, but it's non-party-political. But the trouble is that the
7 councillors – most of them – are elected on a non-political ticket. They
8 studiously avoid stating any particular policies, so we elect clubbable
9 individuals – folk we ken, folk we like – but we have no idea what they
10 actually stand for and we only discover that on selecting, so that's a long,
11 slow process for the whole community. Thirdly, I think that decisions are
12 seen to be fair and well-grounded in evidence and have the support of the
13 community. That makes any decision of the council much more likely to be
14 carried out. What we have at the moment is – because it's not clear where
15 these decisions have come from – sometimes it looks like we have a
16 process where it's first of all we have a decision by one or two individuals
17 within the council, then the evidence is generated to support that decision,
18 then the councillors discuss the decision already reached, and the blueprint
19 for education is a good example of that; where the work started, evidence
20 was gathered and then presented to councillors for discussion. And the
21 evidence gathered does not bear much relation to the conclusions reached.
22 So I think those three things would make a big difference in terms of the
23 councillors being able to perform their job properly and the community
24 giving their support and enabling those decisions to be carried out.

25 LES SINCLAIR: I think the most important thing for any elected officer in any body
26 at all is to listen to the people they're representing, and I think there's a lack

1 of evidence of that happening in Shetland Islands Council. For example,
2 I'm not really aware of any councillors advertising surgeries – they may be
3 doing that, but I'm not aware of that. There doesn't seem to be much
4 interaction with the electorate. So that for me would be the first step: start
5 listening to your electorate. The second step: I was involved a number of
6 years ago – 15 or 20 years ago – in developing an SQA Award for elected
7 members and it fell by the wayside; I think the conclusion was reached that
8 very few elected members or potential elected members would have got
9 through the award and it was dropped, but I agree with Ms Greaves that
10 training is essential. I spoke to one new councillor shortly after election and
11 they were telling me about the difficulties with the very steep learning curve
12 they had. They weren't aware of what was involved in public life until they
13 got on to the council, and I think that's essential to address that. And then,
14 the third thing is really knuckle down and think about the people who
15 elected you.

16 CHAIR: Can I interrupt again, Douglas? I'm sorry. We've heard quite a lot of
17 discussion over the last two days about the importance of councillors
18 representing not just the local constituency, but also taking a corporate
19 view. Where does the balance of attention lie in your opinion, or where
20 should it lie?

21 LES SINCLAIR: That's a really difficult question. In this day and age, you would
22 almost have to say 50:50. They are managing major projects; they are
23 managing major amounts of money and they are still answerable to an
24 electorate in a very small community, so it's a really fine balancing act.

25 CHAIR: And given your connections with the community and clearly knowing a bit
26 about that, do you think each local constituency and the people would be

1 content to see perhaps a greater emphasis on corporate versus ward
2 business?

3 LES SINCLAIR: I believe if it was managed properly and they knew what was
4 being done and why it was being done, that would be a very welcome step
5 forward.

6 VIC THOMAS: I don't have three answers as to what the council could do to
7 improve things. I think if I did I'd stand for election as a councillor. But what
8 I do want to see; I want to see as a taxpayer – I don't want to see my
9 money being thrown away and it's as simple as that.

10 GRAHAM SHARP: I was going to ask you a question about the structure of the
11 charitable trust, but particularly Ms Greaves and Mr Learmonth already
12 talked at some length about that and the points I picked up – particularly
13 from Mr Learmonth – are really two: the issues of time on councillors
14 performing two significant roles and also potential conflicts of interest when
15 acting as councillors dealing with matters that pertain to the charitable trust,
16 or subsidiaries of the charitable trust. Yesterday we heard commentary
17 about the advantages in councillors being both councillors and trustees and
18 being able to coordinate activities of the council and the trust, and that was
19 a benefit to the community. Now, I think, Ms Greaves, if I picked you up
20 correctly, you were saying that there were also disadvantages in that
21 arrangement, and I was wondering if you'd like to comment on those.

22 MR GREAVES: What I would like to see, obviously, is a complete separation,
23 possibly with some councillors as trustees of the trust. But I think the
24 council should approach the trust for any funding they would require the
25 same as any other organisation. I don't think there should be any special
26 relationship – not extra special – there should be closeness, but I don't think

1 that they should have overall control of the trust, which appears to be the
2 case now.

3 GRAHAM SHARP: And do you think there are any disadvantages to the
4 community in – in the council also being the board of the trustees?

5 KATHY GREAVES: Well, in the people's perception it's the same thing. They can
6 give themselves different names, but they think it's the same people, only
7 with extra money to handle, and not only that, but to subsidise their own
8 little pet projects, and that really comes across strongly with almost
9 everyone I speak to. That is in their minds and it doesn't matter what the
10 councillors say or the trustees say, that's what people believe.

11 GRAHAM SHARP: Right. Would anyone else like to comment on that topic?

12 VIC THOMAS: I just feel over the years the charitable trust has made Shetland
13 what it is and outside of this investigation the life here is wonderful. But
14 there is a perception out there that the charitable trust is more or less just
15 another department of the council.

16 CHAIR: Can I just pursue it a little further, because, again, you're in a local
17 community. I'm trying to understand the strength of that view that you're
18 expressing, of the need for separateness, if you like, because – perhaps I
19 could refer to your written submission, Ms Greaves, where you talk about
20 'members of the public have been campaigning for years to separate the
21 council from those who sit as trustees'. When you say 'members of the
22 public', have you any feel for whether that's likely to be a vast number, or is
23 it people who are – perhaps have a singular concern? Mr Learmonth?

24 KEVIN LEARMONTH: I think about a year and a half ago *The Shetland Times*
25 newspaper ran a poll, and it was specifically about the Viking Energy
26 project. One of the questions asked was along – if I can remember

1 correctly – the lines of ‘do you think the charitable trust should be
2 reformed?’ And I think the result was 76-80% of the population of Shetland
3 thought it should be reformed. Now there was no question on the nature of
4 that reform, but some illustration of it might be that the charitable trust
5 conducted a reform exercise for its own reasons and the submissions and
6 responses to those reform proposals were never made public. My
7 understanding is all of the submission received – there were about 15
8 representing thousands of people in Shetland – there was about 15
9 submissions received – none of them supported the measures for reform
10 because they considered them too limited. And that as an organisation,
11 Sustainable Shetland, we represent, sort of, 670 members – that’s a lot of
12 folk out of 22,000 population; our submission was critical of the reform
13 proposals, because it looked on the face of it that the reform proposals
14 weren’t prompted to reform the organisation –

15 CHAIR: Sorry, I missed that there, could you say it again?

16 KEVIN LEARMONTH: Sorry, our concern was that the reform proposals for an
17 eight-councillor, seven-independent-appointed-member split, were designed
18 to give the charitable trust a route through the impasse with conflict of
19 interest, specifically the Viking Energy project. It would have allowed the
20 councillors to leave the meeting, but the seven appointed trustees to make
21 the decision that those appointing them wanted them to make. I mean, that
22 was a very limited reform proposal. I suspect there is a strong appetite for
23 reform, but that public debate still really hasn’t started in Shetland.

24 BILL MCQUEEN: We’ve touched on the territory I’m going to go into, but we have
25 your submissions before us and we’ve read those. Some of the points in
26 there suggest concern about high-cost, high-risk investments being made

1 without sufficient good appraisal and there's also some significant concern
2 about the involvement of elected members in some of the businesses.
3 Now, as I say, we have your submissions with the material that's in there,
4 but is there anything you want to say by way of amplification or addition to
5 those points and, in particular, are there cases where there's evidence –
6 evidence that you've got, or real or perceived – where real or perceived
7 conflicts of interest are not being managed correctly in accordance with the
8 proper decision-making procedures?

9 KATHY GREAVES: One of the first times I wrote to the local newspaper in
10 complaint was about the replacement of the flagstones in the street, so it
11 was 10 years ago. We're talking about waste here. So these flagstones
12 have been up and down; the street's been tarmaced; the flagstones laid
13 over and over again. When this first happened I made enquiries of the
14 council 'Why is this happening? Who is responsible? Is there a contract?
15 What's the small print?' I have never had any answer. There is a cost to
16 the community every single year for the relaying of those flagstones. We
17 never know what the original contract was and it's wasting our money, year
18 on year. And that's just one instance.

19 May I put my second please? Moving on from that, was the loan of –
20 I keep hearing the amount of money – £4.7 million to Smyril Line. That
21 money was loaned to the shipping company to bring more passengers from
22 north Europe, you know, to Shetland, and after a few years that ceased, but
23 when the contract was first signed – I mean, I've no idea what the contract
24 was – but there was no guarantee of any Shetlanders being employed.
25 When I finally made enquiries about, you know, using Shetland produce, I
26 was told that the contracts had already been signed. So, came to Shetland,

1 didn't employ any Shetlanders, didn't use any Shetland produce – in fact
2 when they stopped coming to Shetland they didn't even pay the £4.7 million
3 or the interest, so that was a total loss to Shetland.

4 CHRISTINE MAY: You may have dealt with this, but can I just be absolutely clear;
5 I think it was Mr Thomas who referred to a number of decisions which have
6 found disfavour and that was apart from the issue of the chief executive.
7 Can you give us some examples of what those were? Sorry, and can you
8 also say whether they were decisions of the trust, the council or both?

9 VIC THOMAS: It is like a dripping tap. It's been happening for years, and the
10 momentum in the community for dissatisfaction is growing, and the latest
11 incident that I referred to, being the chief executive, was really the straw
12 that broke the camel's back. One of the things that Kathy refers to is that
13 when you try to find out explanations from the council for various things:
14 where the money's gone, who's responsible, why it's happening, you meet
15 with a blank wall. I have had a number of emails and letters totally ignored
16 by councillors and by officials in all departments whenever I've felt that
17 there was a question that required answering. And I think the
18 communication from the council going out to the community, basically is so
19 bad, we rely on the newspapers and the radio.

20 DOUGLAS SINCLAIR: Can I just follow that up. I mean, if you're not getting the
21 information – which you are entitled to as a rate payer – council tax payer –
22 you can surely make use of the council's complaints procedure. If you're
23 not satisfied with the council's complaint's procedure, you've a right to go to
24 the Public Services Ombudsman.

25 VIC THOMAS: Well, what we tend to do is write to Alistair or Tavish. And in this
26 case, we wrote to you. So we're doing that. But it is very frustrating that we

1 can't get those answers locally and more swiftly.

2 DOUGLAS SINCLAIR: You might not be able to answer this question, but how
3 well-known is the council's complaints procedure?

4 KATHY GREAVES: I have, as Vic has, you know, written to the council on various
5 points – not necessarily my own councillors, because they have, of course,
6 on occasion replied sensibly, but when I've had no response and I've had a
7 complaint and I did take one letter to one of your organisations –

8 DOUGLAS SINCLAIR: Ombudsman?

9 KATHY GREAVES: No, the other one. Anyway, they said to 'write to your
10 council'. So, I mean, this is a catch-22 situation; they say to write to your
11 council with your complaints, if you write to the council with your complaints
12 you don't have any answer, so we need to know another body that we can
13 write to if we have any complaints, other than our MP and MSP.

14 KEVIN LEARMONTH: We're dealing essentially with two bodies run by the same
15 individuals: the charitable trust and the council. Quite often there are
16 transactions between the council and the charitable trust, but if the request
17 for information goes to the council, you're told that information is not
18 available; it's at the charitable trust and the charitable trust chooses not to
19 cooperate with the disclosure of documents. So this information disappears
20 the moment it enters the charitable trust, so it's a useful place for councillors
21 to put things that they don't want seen, and even though it's the same
22 people dealing with the information, the information is not available. An
23 example would be – I mean, it was referred to earlier, with the chief
24 executive job, that – I think Tavish Scott said – you know, we're all paying
25 for it and we deserve to know what's happened in our name. Well, a good
26 example of that would be the Viking Energy project. Several million pounds

1 of community money's been spent on it, but we're not allowed to see what's
2 been signed up in our name, because the agreement is now with the
3 charitable trust, so it disappears from public view. And that is the difficulty
4 of the community on knowing where to complain. There is a great
5 reluctance to bring in outside bodies; as an organisation we've made no
6 public complaint – complained to no public body about the conduct of
7 activities in Shetland, because we've such a strong desire to see it sorted
8 out in-house, but if it cannot be sorted out in-house, then that becomes a
9 place of last resort.

10 CHRISTINE MAY: Can I just check, before Vic Thomas comes in, have you used
11 the Freedom of Information Act to seek these as well?

12 KEVIN LEARMONTH: Yes.

13 CHRISTINE MAY: Mr Thomas?

14 VIC THOMAS: I personally have only requested freedom of information from one
15 organisation, and as it wasn't the council, I was refused, because it was the
16 trust. So I can make no further comment on that.

17 CHRISTINE MAY: My other question on this is – and it picks up on what Douglas
18 Sinclair asked – are you all aware of the terms of the council's complaints
19 procedure? You know, how you go about making a complaint, what should
20 happen, the timescales and what your options are if you want further
21 information or you don't like the answer you got?

22 VIC THOMAS: I am, but it still gets ignored.

23 KEVIN LEARMONTH: To be honest I'm not clear, and the implication is, we do
24 wonder if it's worth the bother. Because the people who made the decision
25 and the officers who carried out the decision are the same people. So it's
26 asking people to investigate themselves.

1 DOUGLAS SINCLAIR: I was just going to reassure you that the council's
2 complaints procedure must provide for a provision that if you are
3 dissatisfied with the complaint, that you can go to the Public Services
4 Ombudsman. The Public Services Ombudsman will not consider the
5 complaint until it's gone through all the council processes, but if it's gone
6 through all those processes and you're still dissatisfied, then you've an
7 absolute right of complaint to the Public Services Ombudsman about a
8 matter within the council's competence and for the Public Services
9 Ombudsman to investigate that complaint. Now, the council – I don't know
10 if they do, but they certainly should as good practice – make sure that
11 information and knowledge about their complaints system is readily
12 accessible to members of the Shetland public.

13 VIC THOMAS: That does depend on the question you're asking the council; quite
14 often they will say that it's not in the public domain.

15 CHAIR: This is something we'll ask the council representatives at the last session
16 which just immediately follows you. We will put this point to them and I'm
17 sure they're listening and will have an answer for us. Sorry, you wanted to
18 say something?

19 KATHY GREAVES: Where do we get a copy of this council complaints
20 procedure? Where do we get a copy of that?

21 DOUGLAS SINCLAIR: In the council offices. You should just ask -

22 KATHY GREAVES: I'm sure we could find it there.

23 DOUGLAS SINCLAIR: As a council tax payer you're entitled to get a copy of the
24 council's complaints –

25 KATHY GREAVES: Any dealings I've had with council staff have always been
26 excellent. They've always responded to me, although within their maximum

1 time.

2 CHAIR: Mr Sinclair?

3 LES SINCLAIR: I'm aware of the council complaints procedure; I'm aware of
4 where to find it; I'm aware of what it says, but I would make an educated
5 guess that an awful lot of members of the Shetland public would not be
6 aware of that. But then, if you carry on for the council procedures, if, by
7 some chance you don't get the outcome you want, the next step then for
8 any ordinary member of the public who doesn't have a close interest in that
9 type of thing would be where to go to. You've mentioned the ombudsman.
10 You would go to the ombudsman in certain cases. Why wouldn't you go to
11 the Accounts Commission? Why wouldn't you go to Audit Scotland? Why
12 wouldn't you go to the controller – there are a plethora of bodies there. It is
13 very confusing for people who don't have an interest in this type of thing.
14 It's okay for somebody like me who's got a sad life and has been steeped in
15 this for years, but for ordinary members of the public it is not something
16 which occupies their thoughts very, very heavily.

17 CHAIR: Thank you. Now, just finally, you may have had an opportunity to see the
18 other written submissions. I wondered if there were any observations you
19 wanted to make on any of those other submissions, either agreeing with
20 them, disagreeing with them or adding information that would be helpful to
21 us.

22 KATHY GREAVES: What struck me, and hearing our MP and MSP is, you know,
23 the fact that they have had dealing with other official bodies. They've had
24 COSLA involved and, I think, reports by Dundas & Wilson, Brodies and so
25 on and so forth, and yourselves up here. This – how much has all this cost
26 us, the council, over the years? Even when we talked about, last year, the

1 trust reform, and it was recommended that the trust reform, our convenor
2 said he would take this to the highest court in the land. Obviously, there
3 would be some court there and obviously he seemed to think it was no
4 problem, you know, payment coming from somewhere. So, really if there's
5 any information coming into the public domain over the next few months, I
6 personally would like to know how much all this has cost the public purse.

7 CHAIR: Yes, I think that would be a question you would put to the council,
8 because it is not something that is in our knowledge at the moment. Is
9 there anything else anyone wishes to say?

10 KEVIN LEARMONTH: I read all the submissions. To be honest, I don't recognise
11 the Shetland described in the submission from the councillors. I would
12 query if the councillors wrote the document. My impression of it is someone
13 wrote it for them and asked them to put their name to it. It's –

14 CHAIR: But nonetheless, they have represented –

15 KEVIN LEARMONTH: They have represented the view –

16 CHAIR: I've had no dissent from the representative group in front of us yesterday,
17 so I think they are taking full responsibility for it.

18 KEVIN LEARMONTH: Mmm-hmm. But, I mean, I think that points back to the
19 position of leadership in this community, in that you look at the document,
20 you don't recognise the community they describe within it, where everyone
21 understands the division between council and charitable trust; everyone's
22 happy with the services – well, everyone is happy with the level of services
23 provided, but with the level of decision-making and the grasp of the role,
24 that is not one that I recognise from councillors. None of them are bad
25 people, but for some of them they are severely overstretched in that role.
26 They are trying to do their best, but sometimes best isn't good enough in

1 that situation. I mean, we're here, principally, because of the council's
2 involvement with Viking Energy, in that they spent £1.7 million of our money
3 and made no attempt to recover that money. For any other operation,
4 officers within the organisation would be saying 'Hold on a minute here, why
5 are you spending this money and not making any attempt to recover it?'
6 But because of the situation here, they got away with it.

7 My fear is that the lack of recourse – the lack of impact from external
8 to Shetland, encourages councillors that 'we got away with it before, nothing
9 happened; we'll get away with it in the future'. The Nick Reiter affair and
10 the Controller of Audit saying 'you have to smarten up your recruitment and
11 disciplinary procedures' – that was 10 years ago. Nothing happened.
12 Continually qualified accounts; councillors declaring non-pecuniary interests
13 and then continuing to take part in meetings – I think when councillors see
14 other people getting away with it they figure that the rules must have
15 changed and it's now okay. I think they've lost sight of what is decent
16 behaviour in public life and what isn't.

17 CHAIR: Thank you and I think, again, they'll have a chance to respond to that if
18 they wish to. Any other points that anyone wishes to make, or are we
19 content? Can I thank each of you for taking the time and the trouble to give
20 us your written submissions and also for coming along here to help us with
21 our hearing. Thank you very much indeed.

22 [Meeting Adjourned]

23 CHAIR: Ladies and Gentlemen can we reconvene please? We welcome three
24 representatives of the council back in what I might call a recall session to
25 give them the opportunity to respond further to the evidence we have heard
26 since they talked to us yesterday morning, and also to give us an

1 opportunity to put other points that have occurred to us to them, by means
2 of clearing them up now. Again, therefore, can I ask them please to
3 introduce themselves by stating their name and position for the record?

4 CLLR CLUNESS: Sandy Cluness, Convenor.

5 HAZEL SUTHERLAND: I'm Hazel Sutherland, Executive Director, Education and
6 Social Care and Deputy Chief Executive.

7 JAN RIISE: I'm Jan Riise, Head of Legal and Administration.

8 DOUGLAS SINCLAIR: Good afternoon. I wonder if I could start with you, Mr
9 Riise. Yesterday I asked you how you dealt as monitoring officer with
10 elected members. In terms of advice that you give as monitoring officer,
11 turning to the issue of the assistant chief executive, as to whether it was
12 competent for the chief executive to disestablish that post or not, what did
13 you see your role as monitoring officer in relation to that particular issue?

14 JAN RIISE: Well, I think the position is common place across most of Scotland,
15 most local authorities in Scotland, that the monitoring officer is also the
16 head person responsible for giving legal advice; he's generally the head of
17 legal or the director of law and I see the principle responsibility of monitoring
18 officer to ensure that the council, before it takes any decision has had the
19 benefit of legal advice. If we come across a situation where the council,
20 having taken legal advice, then ignores that advice, then there may be a
21 role for the monitoring officer to come in and make some sort of conclusion
22 as to whether or not it is still acting lawfully and in terms of the legislation
23 then to produce a report to the council and perhaps stay their hand, at least
24 until such time as they've considered that report. So that is the statutory
25 backdrop to it.

26 In relation to the event you're speaking about, Mr Sinclair, I was

1 asked for legal advice but not specifically; I was copied in on
2 correspondence that was issued to the head of human resources and to
3 the head of organisational development and I checked to make sure that
4 one or the other was supplying advice in terms of, you know, the authorities
5 that were in place and satisfied that they were, and also having had sight of
6 the advice that they were producing, I did not produce separate legal
7 advice. I didn't need to because it accorded with the council's position in
8 terms of delegated authority. And in terms of what you've heard today, I'm
9 able to advise that there was in place delegated authority and actually
10 contrary to the report issued by the chief investigating officer there actually
11 is a delegated authority to the chief executive to invoke structure change
12 that exists.

13 DOUGLAS SINCLAIR: And did you offer that advice to the council?

14 JAN RIISE: Only in the context that subsequent to the events that's caused the
15 consternation, the resolution of that was in the form of reports that the
16 council received in October and again in December, and my legal team
17 contributed legal advice to those reports, yes, in terms of resolving the
18 difficulties.

19 DOUGLAS SINCLAIR: If that was your view, that the issue was competently
20 delegated to the chief executive, did you not feel it appropriate to advise the
21 convenor of that? Because on record, by Mr Shannon, was a conversation
22 with the convenor to the effect that the convenor had the view that what the
23 chief executive did, he did not have the authority to do. Did you not see fit
24 that that was, given the senior post that you had, to pass on that information
25 to the convenor?

26 JAN RIISE: It was never a discussion between myself and the assistant chief

1 executive or the convenor. I was never involved in those exchanges. I
2 wasn't aware of the view being expressed by either party. What happened
3 immediately after the meeting of the 24th of August – which I – I wasn't
4 aware the meeting was going to happen and I was out of Shetland at the
5 time, so I had no part to play in that meeting. But soon after the meeting we
6 received correspondence from Mr Shannon's solicitor and he had been
7 afforded a period of time away from the council to take that advice and to
8 consider his position and come back and determine whether he was going
9 to accept the offers that had been made to him. He then referred the matter
10 to law and the chief executive asked if we would handle it in-house or if we
11 would get external legal representation and I said that essentially I was
12 assessing the quality of the legal advice that Mr Shannon was pursuing and
13 I said it would be better to get specialist legal advice in this field, and that's
14 what we did. We instructed external legal advice that day and after that the
15 correspondence was very much between lawyers.

16 CHRISTINE MAY: Mr Riise, could I just check something with you please? We
17 have throughout this understood that the chief investigating officer, in a
18 report to the Standards Commission, said that the policies and procedures
19 were not followed correctly in relation to the assistant chief executive's post.
20 Did I just understand you to say that that's not the case – that the delegated
21 authority was in fact there?

22 JAN RIISE: The delegated authority stemmed from a report in 2002, which gave
23 authority to the chief executive to deal with structure changes on certain
24 conditions being applied; one, that there was budget savings to be achieved
25 from it; that there was no diminishing of service, as a result of any structure
26 change, and in those circumstances he was entitled to carry out that activity

1 without reference back to the council. So the delegated authority was in
2 place.

3 Now that delegated authority was augmented by the former chief
4 executive, Mr Goodlad, in 2003 by an additional personal commitment that
5 he would not invoke that delegated authority unless there had also been
6 consultation with the unions. So that's the extra component that was added
7 to that delegated authority. I do not understand why the investigating officer
8 said that because the delegated authority was contained in a dated report
9 he therefore doubted its existence. We've had a considerable number of
10 structure changes across the council. I've two in my own area that I'm
11 going through at the moment based on that very delegated authority, so it
12 exists and it's live.

13 CHRISTINE MAY: So just to be clear, your contention is that that element of the
14 Standard's Commission is wrong.

15 JAN RIISE: I don't want to take issue with the Standards Commission report. I
16 think you'll also find in that report that the investigating officer qualifies what
17 he says but saying even if that authority was in place... So I don't think he's
18 come to a concluded decision on it either.

19 DOUGLAS SINCLAIR: Let me come back to the point then that you had the view
20 that the chief executive's actions were appropriate; that he had the
21 delegated authority to do it. Were you aware of the meeting that was to
22 take place between Mr Shannon and the convenor in September?

23 JAN RIISE: No.

24 DOUGLAS SINCLAIR: No. If you had been aware of that meeting, would you
25 have felt it appropriate for you in your role as an adviser to the council to
26 have made the convenor aware of your views prior to that meeting, in terms

1 of the smooth running of the council?

2 JAN RIISE: I'm not entirely sure about the timing of this meeting taking place; I
3 think that if I was -

4 DOUGLAS SINCLAIR: Well, we'll leave aside the exact timing _

5 JAN RIISE: Okay.

6 DOUGLAS SINCLAIR: I'm asking you the question: let's suppose you had been
7 aware; let's assume you'd been aware of the meeting; that you knew the
8 convenor was going to meet Mr Shannon. You had knowledge in your –
9 you know, you were quite clear in your mind what the position was in terms
10 of the delegated authority of the chief executive. If you'd known about the
11 meeting I put it to you, would you have seen it as an appropriate discharge
12 of your job to have advised the convenor so that he didn't go into that
13 meeting naked, if I can put it like that.

14 JAN RIISE: I would have advised him not to go into the meeting at all.

15 DOUGLAS SINCLAIR: Yesterday you touched on your role as monitoring officer
16 in terms of conflicts of interest. Could I ask you how you see your role in
17 terms of advice to members in terms of potential breaches of the code of
18 conduct? What do you see as your role and how do you exercise that role?

19 JAN RIISE: I think that's fairly similar to the question you asked me yesterday,
20 and I think the answer is fairly similar. I take it as a proactive role, but I only
21 usually need to intervene in circumstances where I form my own view or my
22 opinion that the council has done or is about to do something which is
23 illegal, in which case I would step in. Now you can manage that role
24 proactively by taking a hand in complaints procedures. I'm also the
25 council's data controller; I also have responsibility through my department
26 for health and safety, so we audit and monitor health and safety across the

1 council. We have responsibility for freedom of information requests, for
2 example, so there are lots of different ways in which myself and my
3 managers act as gatekeepers, and anything that looks like an illegality then
4 gets drawn to my attention just through the normal lines of communication.

5 Taking the proactive role, I take on board what I would call the
6 council's Section 6 of the Ethical Standards Act responsibility, you know,
7 the duty placed on the local authority to make sure that the council
8 observes high standards in terms of the members' observance of the code
9 of conduct. So, for example, I would be the person arranging induction
10 training for members, follow-up training, which we are in the process of
11 doing at the moment. And whenever I do see the possibility of a problem
12 arising in a report, that's separate from maybe the giving of legal advice, but
13 just need to put in a cautionary word about members being cautious, or
14 concerned, you know, that there could be code of conduct issues, then I will
15 either put that through my legal team, so that it supplements their legal
16 advice, or I will sometimes put in my own comment as monitoring officer. I
17 have had circumstances where an officer has been reporting on the fact
18 that they've discovered a problem – a legality or something that the council
19 has done wrong, or that they might be just about to do inappropriately, and
20 they've come to me as monitoring officer and actually asked for me to place
21 a monitoring officer quote in their report, you know, just to ensure that
22 there's an appropriate level of regularity that goes into that report, and I will
23 do that for them as well. So I do take the role proactively.

24 DOUGLAS SINCLAIR: Let me just tease it out in terms of, say, a reactive
25 situation. Suppose you came across an instance where you believe that a
26 councillor had breached the code of conduct. Right? Let me just say,

1 perhaps in relation to making public criticism of an officer, which you were
2 quite clear in your own mind was a breach of the code. What would you do
3 in that situation?

4 JAN RIISE: I would generally contact the councillor directly or, depending on the
5 seriousness, or whether it's been repetitive or not, would take action as I did
6 last year when I initially obtained legal advice for the council in terms of
7 what I looked at and thought was a breach of the code, but where there
8 were other issues about the council's responsibility and its duty of care as
9 employer, and where there were other issues; allegations about defamation
10 – possible defamation and impacts on a range of staff. And in that instance
11 I obtained first of all, advice for the council, because I thought it was getting
12 into complex areas, where there is an interaction between the breach of the
13 code and a need for the council to defend staff, and if they didn't defend
14 staff, then perhaps, you know, have to defend itself from potential claims.
15 So, you know, quite a complex one, but we got legal advice on that and
16 after we got the legal advice, then I was party to a meeting with the
17 convenor and Vice-Convenor as to what action might be taken as a result of
18 the advice we'd received.

19 So that's an example of proactive work, but I've also issued
20 cautionary emails to councillors and said, 'I think you're treading into
21 dangerous water here', and I'll explain why I hold that view. I mean,
22 ultimately, it's a matter for them and if I thought it was serious enough and,
23 in particular, if I thought that it impacted on the council's role – I mean, I'm
24 quite careful here, I'm not going to fire off complaints to the Standards
25 Commission at every turn – my principle concern is to ensure that aligned to
26 the council's duties of care that there isn't an additional responsibility that's

1 falling on the local authority as a result of the breach of the code. You
2 might be aware yourself that some breaches of the code can give rise also
3 to an illegality in terms of decision making and I think if there was a
4 combination of the two then I would take action, as monitoring officer, in
5 lodging a complaint.

6 DOUGLAS SINCLAIR: Just to be absolutely clear what you're saying, that if you
7 felt the breach of the code was a very serious one, you would engage in
8 discussion, probably with the convenor, and decide whether that complaint
9 should be referred to the Standards Commission or not. In that process
10 would you, as a matter of courtesy, involve the councillor who you had
11 thought had breached the code of the fact that it was your intention, subject
12 to the conversation with the convenor, to refer that matter to the Standards
13 Commission? Or alternatively would you raise the matter with the councillor
14 and say, 'Look, I consider this a pretty serious breach, can I have an
15 assurance from you that you will not do this again'. If he gave you that
16 assurance, would that influence your judgment as to whether you'd refer the
17 matter to the Standards Commission or alternatively, equally if he didn't
18 give you that assurance would that inform your view?

19 JAN RIISE: I can say yes to that, but I'd have to also acknowledge that it's
20 theoretical, because we've not had – that situation hasn't arisen. If I can
21 think back on a few examples with the former chief executive, where I had
22 questions over whether or not the conduct of a councillor was appropriate,
23 in those circumstances I thought it very much a matter for the chief
24 executive and convenor in discussion as to how they took, I suppose the
25 disciplining of that councillor, forward. And there were a number of
26 instances of that. And, indeed, in the time of our recently departed chief

1 executive one such occasion arose and the matter was resolved between
2 himself and the convenor and that councillor and I didn't directly take, I
3 would suggest, a more threatening approach of sitting in on that
4 conversation on the basis that if the councillor didn't repent then therefore I
5 might take it forward as a monitoring officer. I don't see that as my role. So
6 I'd have to say that it's quite theoretical, the situation you've described has
7 never actually happened. Usually I've referred it to the chief executive or
8 the convenor and in the instance I've just referred to where I actually did
9 make a referral – and it's the only one I've ever made to the Standards
10 Commission- in that instance the chief executive was present when I was
11 having the discussion with the convenor. But not the councillor concerned.

12 CHRISTINE MAY: I have four questions, all for Cllr Cluness, and the first one is a
13 follow up from the previous discussion. In terms of that legal advice that
14 was obtained and, I think if I paraphrase, 'certain actions should stop' and
15 we know you wrote or emailed all members – wrote, I think, to all members,
16 to tell them and shared that with the chief executive. What else did you do,
17 or what else did you consider doing and why did you do it or not?

18 CLLR CLUNESS: I may have missed that. The day is wearing on. But you were
19 referring to...?

20 CHRISTINE MAY: I'm referring to the – in November, when the chief executive
21 raised concerns about public criticisms and legal advice was obtained and
22 as a result of that you communicated with all councillors by – in writing, as I
23 understand it.

24 CLLR CLUNESS: Yes, I think that's right.

25 CHRISTINE MAY: Did you do anything else in terms of meeting with councillors,
26 asking them to come in and discuss their concerns with you, for example?

1 CLLR CLUNESS: No, I didn't ask them to come in and discuss terms with me, but
2 a number of them did, yes, and I indicated why we'd taken the steps we did.

3 CHRISTINE MAY: Thank you. If I can move on to the nature of the arrangements
4 for meetings with the chief executive, and how you structured those in terms
5 of notes of meetings, how they were disseminated to your senior council
6 colleagues and in turn how the chief executive disseminated that to his
7 senior team, can you describe that process?

8 CLLR CLUNESS: I can although, because of the circumstances, we never got
9 into a really structured – my previous relationship with the previous chief
10 executive was on a regular basis and so on, but there were so many
11 interruptions in this particular case that I couldn't tell you for certain how
12 many there were, but I met him as often as I could and certainly shared a
13 coffee with him and listened to what he had to say and gave him what
14 advice I could. But they were not structured in the sense – I certainly didn't
15 take notes of these meetings. I just assumed that it was my role to liaise
16 with the chief executive as I had done with his predecessor. And then
17 where necessary, as I say, I shared any information I need to with the
18 relevant – usually with the relevant chair or vice chair of that particular area.
19 But as I say, it turned out that there were very few meetings after a certain
20 period.

21 CHRISTINE MAY: I have two more very brief questions for you. One: in terms of
22 the complaints by the members, if you apply this wonderful 20:20 vision of
23 hindsight, would you have dealt – would you deal with it differently and
24 more speedily?

25 CLLR CLUNESS: This is the complaint by -

26 CHRISTINE MAY: Well, all complaints by members, all issues raised by -

1 CLLR CLUNESS: All complaints by members, yes. Well, the first complaint I was
2 concerned about was the complaint by Cllr Wills in relation to comments
3 which he said had been made to him by the chief executive. In that case I
4 instituted the normal hearings procedure the following day. I was advised, I
5 think, that in that particular situation I had to remain neutral having taken
6 that action and therefore other members other than I went through this
7 process and came to the relevant conclusions.

8 In relation to the complaint by the six members, as I explained, I
9 think, yesterday, I was concerned that, not having considered it, the matter
10 was already in the public domain. What I did was, I did the next day send a
11 copy to Jan Riise and I also contacted Murray McCall, our solicitor, sent him
12 a copy. His advice was that, in his view it did not constitute – there wasn't
13 enough evidence in it to allow me to proceed to a formal complaint in that
14 case. I took that advice but I retained, I suppose, the complaint in case
15 things developed further in future. As it happened, part of the agreement
16 with the chief executive, which ended in the settlement we've heard about,
17 required that our previous disciplinary action should be suspended so that
18 was the end of that complaint.

19 CHRISTINE MAY: Thank you. My final question refers to the council meeting of
20 19th of February and we did hear yesterday from some of those who
21 attended that meeting, from some elected members, that they were not
22 clear, at the end of that meeting what had been decided, whether
23 something was to come back to them for future decision. Can you describe
24 your recollection of the process and what steps you took to make sure all
25 members clearly understood what had been decided? The minute is, as is
26 the norm for these things, relatively short.

1 CLLR CLUNESS: Well, that's right, but, of course, I chose that occasion to allow
2 Rory Mair, our lawyer, to point out exactly what they were proposing and
3 they did so in great detail. What I did do was try to ensure that, if there
4 were members who wished to take alternative action, that they had the
5 opportunity to do so. I did take quite a long time on this meeting and, at the
6 end, my view was that we had given instructions to Mr McCall and Rory
7 Mair to conclude this bargain on the lines that they had proposed. I do
8 recall that a number of members – some members at that time were so
9 anxious about this that they suggested that our representatives should try
10 and contact the former chief executive's solicitors that afternoon to see
11 whether that matter could be concluded then, so I do not share this view
12 that it was necessary for the matter to come back to the council. And I think
13 this is what Mr Mair has said, also.

14 BILL MCQUEEN: I think I've just got one follow-up question to complete my
15 understanding of what we heard from Mr McCall and Mr Mair this afternoon.
16 It may be for Mr Riise just to confirm. It is to do with the business of tax and
17 insurance claims and the indemnity. Did I understand correctly that all
18 members understood on the 19th of February or perhaps even earlier at the
19 meeting on the 4th of February that the deal would be structured so that the
20 council indemnified the employee against any subsequent claims and that
21 that would be built into whatever was the final, signed-off arrangements?

22 JAN RIISE: Yes, I think somewhere within the minute there was a postulation as
23 to what the cost would be and it was part of that assessment. Can I just ask
24 you in relation to the question that's come from Ms May – is that there was
25 reference to it being a short minute, but my recollection is that it's actually
26 quite a long minute for the 19th, though you will notice that we have two

1 formal minutes. We have the A minute which is the public minute, which
2 will only be a couple of paragraphs, acknowledging that the
3 recommendations were accepted, but there's a much more detailed minute
4 that is very close to a verbatim, if you have that as well.

5 CHAIR: Yes, we've seen that, yes.

6 JAN RIISE: Okay, well the answer, I think, lies within that; that the tax
7 consideration was taken into account.

8 GRAHAM SHARP: Just one question for the convenor. It was suggested to us
9 yesterday that the same individual performing both the role of political
10 leader and of civic leader was not ideal and I'd like your view as to whether
11 the dual role is an advantage or a disadvantage?

12 CLLR CLUNESS: Well, as this is a non-party-political council, it's difficult, I think,
13 to divorce the roles. Although this has been done in the Western Isles it's
14 not yet been done in Orkney. There are areas where you have
15 independence, where actually parties are able to enter into coalitions and
16 then I think, as in Inverness, and then I think it is important that the ruling
17 group would have the leader of the council and the convenor would be the
18 chair. I have no objection to such a system if this is what is required. I think
19 I've said that on a number of occasions. If Shetland Islands Council wish to
20 go down this route, then I'm quite happy to go along with it and see that as
21 a report to the council, which councillors could either agree to or not. I have
22 not necessarily – I think the reason why these divisions have come in place
23 is they are essentially in – well, usually in larger areas, but mainly where
24 there is, even if they are independents, they function as a party and then
25 there is a, perhaps a minority, actual political party and then it makes sense.

26 DOUGLAS SINCLAIR: convenor, can I ask two questions in one: would you

1 agree that it seems there are two key issues facing the council? Firstly,
2 how do you establish constructive working relationships amongst
3 members? It was suggested to us yesterday that one idea might be a truth
4 and reconciliation session, perhaps aided by a facilitator. I'd be interested
5 in your view as to the role you might play in relation to that. And secondly,
6 and arguably, equally importantly, how do you build the reputation of the
7 council with the Shetland community?

8 CLLR CLUNESS: Well, yes, I've no objection to some kind of reconciliation
9 meeting at all, so, whatever. And I would play that same role, the same part
10 in that as any other individual councillor who was taking place. In regard to
11 the rebuilding of confidence in this particular council I do not accept that the
12 situation is a grave as has been pointed out by, for instance, our MP and
13 others. I say that because, unlike some other commentators, my family
14 have been here for generations; I have been in public life for a very long
15 time. My number is in the phonebooks; I am in the town every day, so I am
16 well aware, I think, of what the public think or just as able to check what the
17 public think as anyone else. I share the, I think it was described as outrage
18 at the extent of the funding that we used to end the chief executive's
19 appointment, but as you will be aware, I think has been said, as part of the
20 agreement on that day we were bound by terms of secrecy not to reveal
21 anything of that so I had to withstand considerable criticism, from not only
22 people outwith the local authority community but elsewhere and that was
23 considerable. We had people marching on the town hall, although I notice
24 that some of them were concerned about the withdrawal of musical tuition
25 and so on and so I'm well aware of it and that's why, as I said yesterday, I
26 welcomed this opportunity, because this is the first time we have been able

1 to allow Mr Mair and our legal advisor to explain exactly what the terms of
2 this settlement were and why we went down where we went down this route
3 and I have no doubt that the Shetland public will continue to be angry about
4 this for quite a long time, and we will have to do our best to ensure, as other
5 people have said, that we continue to provide the level of service which
6 hardly exists elsewhere and I have every confidence in all the members of
7 this particular council that they can do that.

8 I think this is the sixth council I have been on, and although the MSP
9 has indicated that every one is considered the worst, I have been happy
10 over all the years that I've been to be part of councils, because I know that
11 every single council member I've ever known has had a total commitment to
12 make life better for Shetlanders, and this particular council is no different. I
13 can understand also the difficulty of accepting, for instance, the changes in
14 decisions we've taken over the years, particularly recently in relation to the
15 high school and elsewhere and I understand why people are equally
16 concerned about that. I would like, however, to assure them that the
17 economy of Shetland is worth something like £700 million a year, then
18 upwards of £200 million is generated by this particular council. Directly or
19 indirectly, 4000 people are employed by this particular council. It is a huge
20 contribution to how this community works and in addition to the criticism,
21 I've had many letters, cards and phone calls of support in what has been a
22 very difficult time for us.

23 CHAIR: Thank you very much for that, and in a moment I'm going to ask you if
24 you've any final closing remarks you wish to make. You've obviously gone
25 into that just now a bit, but in specific response to what you've heard over
26 the last two days. There's one specific point I just wanted to raise with you

1 and it comes from the previous evidence session where it was put to us that
2 there has been quite a lot of concern from those four witnesses, or at least
3 some of them, about what appears to be a lack of response to question and
4 information, and also, perhaps a suggestion that the charitable trust was
5 being used as a guard against giving information, or, at least, that's what I
6 inferred from it and maybe I've overstated that. Can I just put that to you
7 just now for a direct response and also tack it on to something that was said
8 yesterday about the need for better communication. I'm not taking a view
9 on that just now, but I'd be interested in your view on that.

10 CLLR CLUNESS: I guess either of the two people on my left can comment on
11 whether we have the right process in place for complaints. I'm perfectly
12 certain we do; I see the complaints forms downstairs where I come in, but
13 maybe we're not doing enough in that area. I understand – I am a lawyer,
14 although I haven't been in practice for a while – that the trust need not
15 answer Freedom of Information Act requests, but I know from both the
16 chairman and the chief executive that they do so wherever possible, I think.
17 There is considerable public concern about the size of the Viking Energy
18 project, which is a very large one and I understand, as I say, why
19 Sustainable Shetland should be so concerned about that area, but I'd like to
20 think that if people wish to complain they get the right advice. Was there
21 something else, sorry?

22 CHAIR: Well, yes, there was a point raised -

23 CLLR CLUNESS: About the communication –

24 CHAIR: About communication – I just wondered if you had a view on whether
25 more was needed?

26 CLLR CLUNESS: That could always be better. Interestingly, we have historically

1 steadfastly refused to appoint public relations officers to this particular
2 council. I know a number of members argue very strenuously that that
3 should be so. Up until now it's been resisted, and, as I say, so each
4 councillor is really on his own in response. I have to respond to the queries
5 every day and try to do so as best I can, but I'm sure it's an area we could
6 improve on.

7 CHAIR: So, if I can just then go on to perhaps any final closing remarks you or
8 your colleagues wish to make? The floor is yours, sir.

9 CLLR CLUNESS: If you could deal with the complaints, then I'll make my...

10 HAZEL SUTHERLAND: Could I just deal with the factual issue around the
11 complaints procedure –

12 CHAIR: Yes, yes, please.

13 HAZEL SUTHERLAND: That was raised previously. I'd just like to provide
14 reassurance that we have a robust complaints procedure in place. We've
15 leaflets and documents on how to complain in all our council offices, as well
16 as on the website, and a commitment, certainly from the management
17 team, to respond within the given timescales. I'm personally vexed to hear
18 if that's not in place and would like today as a backstop just to contact the
19 chief executive's office, if anybody was having any difficulty with receiving
20 any information from us that is in connection with council business. I do
21 understand that the discussion from the previous session may be into
22 business of the trust's and Viking Energy and so on, so that would be with
23 my gift to provide that reassurance to you and while we're not able to
24 respond to somebody's query or complaint or so on, we will try our best our
25 best to explain why we can't do so, so just to provide reassurance that
26 there's a system in place.

1 CHAIR: Yes, I suppose part of the point that was being made with the previous
2 session was that the trust was actually being used as a guard against
3 information being given?

4 JAN RIISE: Yes, thank you. I am aware of a couple of exchanges of
5 correspondence on this very topic, and it is actually to do with the Freedom
6 of Information Act, where the public is aware that we have a service level
7 agreement with the charitable trust to run their committee services,
8 essentially; you know, agendas and minutes, and we will hold the copies,
9 the formal business documents for the trust. But we don't hold it as a local
10 authority and by definition under the Act and it wouldn't be our information
11 to supply, and what we do in those circumstances is refer the members of
12 the public to the charitable trust to see if the charitable trust is happy for us
13 to disclose the information, and I believe – my officer's over there, but it's
14 okay, I won't ask her – I believe that we have, on occasion, when the
15 charitable trust have indicated they're happy for the information to be
16 released, operated that for them. But, this is another indication of the clear
17 separation between the council's business and the charitable trust's
18 business; we run the charitable trust activity under a service level
19 agreement and it is not our information to supply.

20 CHAIR: Thank you. And then, Cllr Cluness, your final remarks?

21 CLLR CLUNESS: The final word. Well, I have to say that, although it's painful for
22 us, we do welcome what Audit Scotland has done. I would like to be able to
23 say that we could get rid of that final qualification. I have discussed this for
24 some years with individuals and I think no one is too concerned about it. I
25 know it doesn't have any impact on the public, as such, but if we can find
26 some way of getting rid of that that qualification, we will do the best we can

1 and we will cooperate with Audit Scotland in doing that. You would expect
2 me, I think, to say that I have a view on these comments on disquiet in the
3 community, whether it comes from Audit Scotland or anyone else. I mean,
4 as it happens, because of the fortunate appointment of the new chief
5 executive, I've had to watch your proceedings on a number of occasions
6 from downstairs, which – and it's been pretty good, but I've been in morning
7 and afternoon, and although there are a number of chairs there and an
8 excellent screen, there has never been a member of the public in it. So I
9 come to the conclusion that the members of the public who are vitally
10 interested in this matter are sitting at the back of the hall and are far
11 outnumbered by the people who are here because we have to be here.
12 And though that doesn't in any way diminish, as I say, the anxiety of the
13 public in relation to a number of the things we do, I think to a certain extent
14 that indicates that there are probably many more out here who are very
15 happy with the services we provide and will continue to do so. So, equally I
16 am grateful that at long last – having withstood a good deal of criticism and
17 slightly harsher treatment from people on the main street and so on, which
18 is very uncomfortable for someone like myself – at least at long last, thanks
19 to your visit the full picture of the settlement is now in the public domain,
20 and that is my view, thank you.

21 CHAIR: Thank you very much indeed. We will now adjourn and we'll reconvene
22 later to consider our findings. We hope to be able to announce those in the
23 next several weeks. So, it remains for me in concluding the evidence
24 session to thank some people that I really would want to thank on behalf of
25 the Commission. Firstly, can I thank all witnesses who've assisted us in
26 giving us their evidence? Secondly can I thank the staff at the town hall

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here, in particular Anne Cogle and Bill Sandilands for their considerable help in making the arrangements for this hearing; thank you very much. And finally, ladies and gentlemen, can I thank the members of the public and the media representatives who've shown an interest in the Commission proceedings today and yesterday. We are interested in Best Value being delivered to the people of Shetland. This hearing is now adjourned, thank you.

[The Inquiry Adjourned]
