

S.R. 99/5

**SHETLAND ISLANDS COUNCIL
TERMINATION OF THE
EMPLOYMENT OF THE CHIEF
EXECUTIVE**

**A REPORT BY THE CONTROLLER OF AUDIT TO THE ACCOUNTS
COMMISSION IN TERMS OF SECTION 102 (2) OF THE LOCAL GOVERNMENT
(SCOTLAND) ACT 1973.**

SHETLAND ISLANDS COUNCIL
TERMINATION OF THE EMPLOYMENT OF THE CHIEF EXECUTIVE

1. INTRODUCTION

- 1.1 On 7 January 1999 Shetland Islands Council agreed to the termination of the contract of employment of the Chief Executive, Mr Nick Reiter. At that time he had been in post for less than eight months and had only actually worked for approximately five months having been put on extended leave from October 1998. His departure was the culmination of action by the Council which had commenced in October 1998. This report describes the circumstances surrounding that decision and the process which led up to it.

2. NATURE AND PURPOSE OF REPORT

- 2.1 The Council's decision resulted in significant public expenditure in the form of compensation paid to the Chief Executive and expenses associated with the action taken by the Council. In total the expenditure amounted to £103,120 of which £78,696 related to compensation and £24,424 to expenses. The Council's action generated considerable local interest and was the subject of two complaints to me. One person claimed to have the support of one thousand signatories.
- 2.2 The primary purpose of my report is to draw to the attention of the authority matters which, in my opinion, constitute shortcomings in the procedures which led to the Council's decision. My report has been prepared under Section 102 (2) of the Local Government (Scotland) 1973.

- 2.3 For the purpose of preparing this report I have undertaken detailed enquiries and examined a wide range of records relating to this matter. I have also interviewed a number of officers of the Council, the Convener of the Council at the time and certain members and former members of the Council, the Council's external legal adviser, the "independent person" appointed to enquire into the matter, the (former) Chief Executive himself and his professional representative. I am indebted to all those who made themselves available for interview and to all other persons who assisted with my enquiries. A list of the people whom I interviewed is contained in Annex 1.
- 2.4 I recognise the Council's authority to act in matters of employment. My report does not in any way seek to challenge the Council's position in such matters. However, as the decision led to the incurrence of a substantial sum of public expenditure, I require to satisfy myself that it was properly informed and that the procedures followed in arriving at the decision were reasonable. My enquiries and this report are solely for this purpose.
- 2.5 The process which led to the termination of the Chief Executive's employment took place over the period October 1998 to January 1999. In the next section I provide a description of the key events which took place during that period. I have confirmed the accuracy and completeness of this information with the Islands Council.

3. RECORD OF KEY EVENTS

- 3.1 Mr Reiter applied for the post of Chief Executive having served since 1989 in senior posts with the former Ross and Cromarty District Council and Highland Regional Council and, latterly, with the new Highland Council. On his application form he disclosed his employment record, including his time with Westminster City Council where he was Head of the Council's Policy Unit from May 1987 until September 1989.
- 3.2 The appointment process was handled by the Council's personnel department. In addition the Council obtained the services of a former senior Regional Council Chief Executive, through a contract with the COSLA Consultancy, for a range of services associated with the recruitment of the new Chief Executive.

- 3.3 Mr Reiter was interviewed on two successive dates, 18 and 19 March 1998. His application was supported by favourable references from the Chief Executive of Highland Council and from the former Chief Executive of Ross and Cromarty District Council. After interview the Council agreed to appoint Mr Reiter as Chief Executive and he took up post in May 1998.
- 3.4 Prior to Mr Reiter's appointment the Council did not have a staff appraisal system in operation. Consequently there was no formal mechanism for setting performance objectives for staff, including the Chief Executive, or for measuring actual performance achieved. In line with the Council's wishes Mr Reiter produced a report on an appraisal mechanism for the Chief Executive. The scheme was approved by the Policy and Resources Committee on 7 October 1998. In the intervening period between his appointment in May 1998 and October 1998, I am advised that Mr Reiter's performance was appraised on an informal basis, mainly through discussions with the Convener of the Council.
- 3.5 In early October the Convener's attention was drawn to matters concerning the extent of Mr Reiter's involvement in a major issue which had occurred during the period of his employment with Westminster City Council ('the Westminster affair'). The matter concerned a policy pursued by Westminster City Council regarding designated house sales and the extension of that policy into what became known as "Building Stable Communities". The policy had been challenged by the District Auditor who had raised a case of surcharge against certain members and officers. This has been a long running case through the courts which is still continuing. At the time of Mr Reiter's interview for the Chief Executive post at Shetland Islands Council, the High Court had found in favour of the District Auditor against certain officers and members of Westminster City Council. Although he had been involved in preparing reports on the policy, Mr Reiter was not one of the officers pursued by the District Auditor on the grounds of wilful misconduct.
- 3.6 As a result of learning of Mr Reiter's involvement in the Westminster affair, the Convener invited three members of the Council on 13 October 1998 to serve as members of an Investigating Group to ascertain whether the matter should be investigated in greater depth and whether an Investigating Committee and an "independent person" should be appointed under the Disciplinary Procedures. On the same date, the Council advised the Employers' Secretary of the Joint

Negotiating Committee (JNC) for Chief Officials. The following morning the Council's Head of Personnel contacted the Employees' Secretary.

- 3.7 The establishment of an Investigating Group was in accordance with the JNC Disciplinary Procedures for Chief Officials which the Council decided to follow for the purpose of progressing the matter.

The role of the Investigating Group is to carry out a preliminary investigation in order to decide whether the matter requires detailed investigation by an Investigating Committee. The Chief Executive has a right to be heard by the Investigating Group and to be represented.

The Chief Executive is entitled to receive not less than 10 days notice of the meeting of the Investigating Committee and full details of the complaints against him. He has a right to be represented at any inquiry by the Committee, to call witnesses and produce documents. The Committee has power to recommend a course of action to the full council. This can cover a range of options from a warning to dismissal. The council is required to consider the recommendation of the Investigating Committee and reach a final decision.

When the Investigating Committee is set up it should agree with the Chief Executive on the appointment of an "independent person". It is the duty of the independent person to prepare a report; this may be before the Investigating Committee hears the evidence or after the Committee has heard the evidence and summing up of both sides, but before they reach any conclusions.

The independent person has discretionary power, at any stage in the proceedings, to recommend that no further disciplinary action should be taken and that any suspension should end and the Chief Executive should be reinstated. The Council is not obliged to accept the recommendations of the independent person.

The Disciplinary Procedures also provide for the JNC Joint Secretaries to act in an impartial conciliation role if required to do so by either party and for any complaint regarding the capability of the Chief Executive (which includes any alleged failure by the Chief Executive to establish and maintain a satisfactory working relationship

with the Council) to be dealt with, in the first instance, by giving the Chief Executive a period of time in which to improve his / her performance.

A copy of the JNC Disciplinary Procedures is attached as Annex 2 to this report.

- 3.8 On 14 October 1998, the Convener gave Mr Reiter a letter advising him that the Investigating Group had been established. In his letter the Convener indicated that his concerns related to the findings of the District Auditor regarding the Westminster affair and the responses which Mr Reiter gave at his interviews for the Chief Executive post. According to Mr Reiter the Convener handed the letter to him at approximately 5.30pm that evening and asked him to meet with the Investigating Group at 9.15am the following morning.
- 3.9 On 15 October 1998, the Investigating Group reported back to the Convener advising him that, in their view, there was an issue that required to be examined in greater detail. Between their appointment on 13 October 1998 and 15 October 1998, the Investigating Group interviewed thirteen members, as well as Mr Reiter and the person engaged to advise the Council on his appointment, considered the District Auditor's report on the Westminster case (which comprised six volumes) and reported back to the Convener.
- 3.10 On 16 October 1998 Mr Reiter appointed Mr William Miles to represent him professionally.
- 3.11 On 21 October 1998, the Depute Chief Executive reported to a special Policy and Resources Committee regarding the appointment of an Investigating Committee, which was the next stage in the Disciplinary Procedures following the Investigating Group.
- 3.12 The special Policy and Resources Committee recommended the appointment of four members to an Investigating Committee and requested Mr Reiter to take leave of absence while matters were investigated. The Council meeting of the same date accepted the recommendations of the special Policy and Resources Committee.
- 3.13 The Council's Depute Chief Executive, acting under delegated authority, and Mr Miles on behalf of Mr Reiter agreed on the appointment of Mr Ken McKay, a

former senior civil servant, as the independent person. The Council gave no specific remit to Mr McKay.

- 3.14 Mr McKay undertook a detailed investigation into the nature of the questions put to Mr Reiter at both of his interviews, about his employment while at Westminster City Council. For this purpose he interviewed members who were present at Mr Reiter's interviews, the Council's adviser for the appointment, officers of the personnel department, Mr Reiter's representative and Mr Reiter himself.
- 3.15 The Council met on 5 November 1998 and expressed concern about the leaking of information about Mr Reiter's position to the media. The meeting also discussed the desirability of him taking extended leave while his continuing employment with the Council was under investigation and resolved, among other things, that the Depute Chief Executive be given delegated authority to implement the Council's decision to suspend him in the event that he did not accept an extension to his period of leave.
- 3.16 On 20 November 1998 the Divisional Manager (Legal & Property Services) wrote to Mr Craig Connal of McGrigor Donald, Solicitors, confirming his informal engagement of some three weeks previously, and now formally engaging him to act on the Council's behalf. Part of Mr Connal's specific remit was "to advise and assist the Council's Depute Chief Executive in the framing of such complaint against the Chief Executive as may be appropriate". The Council also continued to receive advice from its own officers.
- 3.17 On 23 November 1998, Mr McKay submitted an interim report copies of which were passed to the Council and to Mr Reiter's representative, as had previously been agreed. Based on the evidence he had obtained from the range of interviews which he conducted, Mr McKay concluded that at his first interview for the post of Chief Executive Mr Reiter was asked only one question about his time at Westminster City Council. This was a general question rather than a specific question about the Westminster affair. At the second interview on 19 March 1998, a single question about the Westminster affair was asked but apparently was not probed in depth. There is a consensus that Mr McKay's record of the questions posed at interview is factually accurate.

- 3.18 In his report Mr McKay stated that he was appalled that a number of Westminster City Council officials, including Mr Reiter, had breached the principle that officers should operate in an entirely non-political manner, and that he fully understood the concern of Shetland Islands Council officials and members when they read the District Auditor's report but he went on to say that there was no doubt in his mind that Mr Reiter had been exonerated by the auditor who had investigated and reported on the matter.
- 3.19 Mr McKay's opinion was that Mr Reiter's answers at interview were not designed to mislead the Council about the extent of his involvement in the Westminster affair. He came to the conclusion that the evidence available to him did not support an allegation of misconduct or gross misconduct by Mr Reiter and recommended that disciplinary action against him should not be pursued and that he should return to his duty as soon as possible.
- 3.20 Mr McKay acknowledged that there may be a residual problem because of a possible break-down of trust between the Chief Executive and the Council and indicated that any such problem should be addressed outwith the disciplinary procedures.
- 3.21 The Council met on 2 December 1998 and considered whether Mr McKay's report should be referred to the Investigating Committee or considered by the Council. After detailed discussions the following motions were approved:
- "in light of the McKay report and the discussion to-day, where there is a possible break-down in the relationship of trust between SIC and the Chief Executive, SIC authorises its legal advisers to enter into discussions with Mr Reiter and his representatives to find a way forward and reported (sic) back to the Council within one week.
 - if necessary, those discussions could include the Convener and Vice Convener.
 - that he [Mr Reiter] remain on leave."
- 3.22 On 3 December 1998, Mr Miles wrote to Mr Douglas Sinclair (Employer's Side Secretary for JNC for Chief Officials) advising him that his client did not consider that there was an irretrievable break-down in his relationship with the Council, that he wished to remain as Chief Executive and that if performance or personal relationships were a problem they should be addressed by conciliation, performance

appraisal and, if appropriate, training. He indicated that Mr Reiter wished to trigger the conciliation of the Joint Secretaries.

3.23 Mr Sinclair forwarded a copy of the letter to the Depute Chief Executive of the Islands Council on 4 December 1998, suggesting a meeting in Edinburgh, offering alternative dates when he would be available and inviting him to contact his office to arrange a time for the meeting.

3.24 The reply to Mr Sinclair's letter was from Mr Connal, the Council's legal adviser, also on 4 December 1998. In his letter Mr Connal expressed puzzlement to see correspondence regarding conciliation and asked for information regarding the procedure to be followed in the event that conciliation was appropriate.

3.25 A meeting took place on 8 December 1998 between Mr Connal, Mr Reiter and Mr Miles. From a briefing note of the meeting it appears that, amongst other things, discussions took place on the possible terms of a negotiated settlement but without reaching any conclusions.

3.26 There was a further meeting in Edinburgh on 10 December 1998. This was one of the dates offered by Mr Sinclair when he would be available to attend a conciliation meeting in Edinburgh. Whilst the meeting took place Mr Sinclair was not invited. The Council was represented by Councillor Lewis Smith (the Convener), Councillor Flaws and Mr Connal. Mr Reiter and Mr Miles were in attendance.

According to Mr Reiter it was made clear to him that the meeting was not for the purpose of discussing conciliation; he was offered a package and given half an hour in which to consider it. Mr Reiter indicated that this preference was still to return to his post but, if this was not acceptable to the Council, he would reluctantly be prepared to consider a negotiated settlement. The meeting concluded without any agreement being reached.

Mr Reiter's desire to resolve the matter by way of conciliation was not reported to the Council and the conciliation route was not pursued.

3.27 Mr Miles wrote to Mr Connal on 14 December 1998 setting out the terms on which Mr Reiter would be prepared, reluctantly, for his employment to terminate.

- 3.28 On 16 December 1998, the Council met to consider how to progress the situation. The Convener reported that, following the meeting on 10 December 1998, there had been no absolute agreement but that Mr Reiter had agreed the best way forward was that he should leave the employment of the Council and wished to negotiate a package to enable that to take place. On being asked whether Mr Reiter had requested to leave the employment of the Council or whether this had been put to him as the only option, the Convener advised that the written offer from Mr Miles to the Council was on the basis of a termination under agreement.
- 3.29 While the meeting was still in session the Convener read to members the terms of a letter from Mr Miles which had just been handed in . In the letter Mr Miles indicated that Mr Reiter's position was that he wished to remain as Chief Executive but that if that was not acceptable to the Council he would reluctantly be prepared for his employment to cease subject to and in accordance with the terms set out in his (Mr Miles's) faxed letter of 14 December.
- 3.30 In the ensuing discussions some members expressed concerns about the manner in which the Council had dealt with the matter, including the fact that Mr Reiter had not been given the chance to state his case. The Convener assured members that the procedures set out had been followed to the letter. By a majority decision the Council approved a motion "that the Council accepts Mr Miles's suggestion with regard to Mr Reiter's termination of employment and that the Council authorises its legal representatives, and Councillors, if necessary, to negotiate a termination package that is agreeable to both parties and legally and financially acceptable to the Auditors".
- 3.31 After a number of exchanges of correspondence between Mr Connal and Mr Miles , the terms of a possible agreement became more focused in letters of 6 and 7 January 1999. Mr Miles continued to indicate that Mr Reiter's preference was to return to his post but that if that was unacceptable he was prepared for his employment to cease subject to a series of conditions. Broadly, the terms agreed were that Mr Reiter's employment would be terminated in the interests of the efficient exercise of the Council's functions and that he would receive payment under the Discretionary Payments Regulations and payment in lieu of notice. These amounted

to the equivalent of 62 weeks salary and, together with reimbursement for untaken annual leave, totalled £78,696.

- 3.32 The final Council meeting to discuss Mr Reiter's position was held on 7 January 1999. The meeting discussed at some length the reasons for the termination of Mr Reiter's employment and the terms thereof. Some members were of the view that there had been a break-down of trust between Mr Reiter and the Council as a result, initially, of his failure to disclose fully at interview the extent of his involvement in the Westminster affair and, subsequently, because of the alleged leaking to the media, by Mr Reiter or his representative, of information regarding the action which the Council was pursuing. The view of these members was that the break-down of trust was irrevocable and that Mr Reiter's employment should be terminated in the interests of the efficient exercise of the Council's functions.

Other members were opposed to the termination of Mr Reiter's employment. They questioned the relevance of events which had taken place 10 years ago and whether there was any proof that Mr Reiter or his representative had leaked information to the media. Some members claimed that they still did not know what Mr Reiter was supposed to have done that had led to action being taken against him.

During the course of the meeting the Director of Finance's opinion was sought regarding what view the external auditors might take. He advised the Council that the auditors might wish to see evidence that the Council had exercised its discretion in a reasonable fashion.

In his summing up Councillor Flaws stated that:

- "he believed the Council got it wrong in appointing this individual, as he did not think he answered the question put to him in an honest manner but this had not been effectively dealt with at the interview
- he believed Mr Reiter had led the Council down the garden path at interview, to which there was an element of trust involved.
- the Council was allowed to pay him [Mr Reiter] for the reasons that the Council no longer trusted Mr Reiter and, for the benefit of Shetland and no one else, his employment should be terminated."

Councillor Flaws moved that the Council proceed (to agree to the termination of Mr Reiter's employment) as per Mr Connal's recommendations, including payment for untaken annual leave. Councillor Grains moved as an amendment that Mr Reiter return to his work. Fifteen members voted for the motion and nine members for the amendment.

- 3.33 On 7 January 1999 Mr Miles sent two letters, by fax, to Mr Connal. In his first letter he again indicated that Mr Reiter's wish was to return to work but that if that was not acceptable to the Council he was reluctantly prepared for his employment to cease subject to certain specified conditions. In response to a letter from Mr Connal agreeing to additional terms Mr Miles sent a second letter confirming that the revised terms had been accepted by Mr Reiter.

Mr Reiter's employment with the Council terminated on 8 January 1999.

4 CONCLUSIONS

- 4.1 In considering this matter I have concentrated on two aspects:
- whether the decision to terminate the Chief Executive's employment was properly informed
 - whether the procedures followed in arriving at the decision were reasonable.
- 4.2 In the course of dealing with this matter the Council had a number of opportunities to obtain factual information. The first such opportunity was when Mr Reiter was interviewed for the post of Chief Executive on 18 and 19 March 1998. It was evident from his application form that he had been employed by Westminster City Council at the time of the Westminster affair. This matter had an extremely high profile both within and beyond local government and its significance would have been known by senior officers and some members of the council. The Council had the opportunity at interview to question Mr Reiter in depth about his involvement in this matter but it is clear from the report of the independent person that, at his first interview on 18 March, only a single general question about Westminster City Council was put to him. At his second interview on 19 March Mr Reiter was asked one question about the Westminster affair. He answered the question and no further

questions were put to him on that topic. In his report Mr McKay (the independent person) stated that he did “not think that the answers [Mr Reiter] gave at his interviews were designed to mislead the Council about the extent of his involvement in the Westminster affair.”

- 4.3 The JNC Disciplinary Procedures provide a mechanism which is designed to enable a complaint against the Chief Executive to be investigated fully and objectively so that the Council can arrive at a decision which is properly informed. The first stage in the procedure requires an Investigating Group to be established. There was a further opportunity to explore the nature of Mr Reiter’s involvement in the Westminster affair when he was interviewed by the Investigating Group on 15 October 1998. The request to attend for interview was received by Mr Reiter on 14 October 1998, according to him late that day. According to him the interview took place the following morning at 9.15am and lasted approximately 15 minutes. The complaint against him was expressed in general rather than specific terms.
- 4.4 The role of the Investigating Group was critical in that it had to assess whether the enquiries should terminate at that point or whether they should proceed to a more detailed investigation. There was not a specific complaint made against Mr Reiter. The short period of notice given to him made it difficult for him to prepare for the interview or to arrange for professional advice or representation (as he was entitled to do). The interview itself was very brief.
- 4.5 In the course of considering how to progress Mr McKay’s report the Council received advice from the Divisional Manager (Administrative Services) that the report included a recommendation which, in its effect, would interfere with the process which would allow the Investigating Committee to continue with the remit which it had been given by the Council. At the Council meeting on 2 December 1999 the Convener advised the Council that Mr McKay had already suggested a course of action and reached a conclusion although it was not his (Mr McKay’s) place to do so. As the JNC disciplinary procedures empower the independent person, at his discretion, to recommend a wide range of actions at any stage in the proceedings, both the Divisional Manager’s advice and the Convener’s advice were, in my opinion, erroneous.

- 4.6 The JNC disciplinary procedures provide for the independent person's report to be considered by the Investigating Committee, for the Investigating Committee to hear the evidence and summing up of both sides and to recommend a course of action to the full council or to a committee with a power of final decision. Despite the fact that it had adopted the JNC procedures, the independent person's report was not submitted to the Investigating Committee. The Committee's role was suspended and, never having met, it played no part in the proceedings.
- 4.7 The purpose of the Investigating Committee is to ensure that the person under investigation is given full details of the complaints against him or her and that both parties have an opportunity to present their case at a hearing and within a framework which safeguards their respective rights and ensures equity of treatment. By not utilising the Investigating Committee the Council denied Mr Reiter the opportunity to present his side of the story while continuing to promulgate action against him and, as a result, the Committee failed to explore fully the facts.
- 4.8 The remit given to the external legal adviser by the Council in his letter of appointment included the framing of such complaint against the Chief Executive as may be appropriate and appearing on behalf of the Council at any hearing. In the event the Council did not request its legal adviser to draw up complaints. Consequently no specific complaints were ever put to the Chief Executive to explain the nature of the allegations against him. Also no formal hearing ever took place, either within or outwith the JNC procedures.
- 4.9 Apart from denying the Chief Executive the rights afforded to him by the JNC disciplinary procedures, in my opinion, the absence of any specific complaints against Mr Reiter contributed to a lack of clarity in the minds of some members about the issues on which they were being asked to take a decision. This is evident from the minutes of Council meetings.
- 4.10 Despite my extensive enquiries I have been unable to form a clear view regarding the precise complaint which led to the termination of Mr Reiter's employment. I therefore find it difficult to understand how Council members could properly reach a decision as to whether the case against Mr Reiter was well founded.

- 4.11 The JNC disciplinary procedures include provision for the Joint Secretaries to be available to act in an impartial conciliation role if required to do so by either party. Mr Miles advised the Employer's Side Secretary of the JNC that Mr Reiter wished any problems to be addressed by conciliation, performance appraisal and training. That request was forwarded by the Employer's Joint Secretary to the Depute Chief Executive of the Council. It appears that the request was never formally reported to members of the Council and conciliation was not pursued.
- 4.12 The JNC disciplinary procedures also include provision where the complaint against the Chief Executive is in relation to his "capability". Within the disciplinary procedures capability is defined as including any alleged failures to establish and maintain a satisfactory working relationship with the council. The Council's concerns regarding Mr Reiter appear to have included an issue of trust and, throughout the minutes, there are recurring references by certain members as to whether they can work with him. As trust relates to the relationship between two parties these circumstances would appear to fall within the definition of capability and, therefore, to bring the matter within the JNC procedures. These provide for the Chief Executive to be given a period of time in which to improve his performance and, thereafter, if there is no improvement, for referral of the matter to an Investigating Committee. Neither of these events occurred. In my opinion the Council should not have terminated Mr Reiter's employment without first attempting to resolve any difficulties by following the steps laid down in the JNC disciplinary procedures.
- 4.13 In his report Mr McKay recommended that disciplinary action against Mr Reiter should not be pursued and that he should return to duty as soon as possible. The Council acted upon Mr McKay's recommendations in a selective manner. It suspended the disciplinary procedures but continued to take action which, in my opinion, had the objective of the termination of Mr Reiter's employment with the Council. The Council explained its action by referring to the reference in Mr McKay's report that there may be a residual problem because of a possible breakdown of trust between the parties and indicating that they regarded this as an impediment to Mr Reiter's reinstatement.
- 4.14 I am of the view that on any reasonable interpretation Mr McKay's recommendations were intended to be taken as a whole, that is to say the dropping

of disciplinary action and the reinstatement of the Chief Executive should happen in tandem. In view of the importance of this matter I sought clarification from Mr McKay on this point. He confirmed that it was his intention that these two elements of his recommendation should be applied simultaneously. By continuing to pursue the termination of his employment outwith the formal disciplinary procedures the Council denied Mr Reiter the safeguards afforded to him. In addition the Council failed to avail itself of the mechanisms within the disciplinary procedures which would have enabled it to establish the full facts. In my opinion the selective manner in which the Council applied Mr McKay's recommendations was at variance with the intention of the independent person's recommendations.

- 4.15 One of the issues which lies at the heart of this matter is whether the Mr Reiter misled the Council at interview about his behaviour in the Westminster affair. Mr Reiter's employment at Westminster City Council was some 10-12 years before he was appointed as Chief Executive of Shetland Islands Council. In the intervening period he had held senior posts at the former Ross and Cromarty District Council and Highland Regional Council and, latterly, at Highland Council. Mr McKay's report records that Mr Reiter had an excellent track record at these authorities. I understand that his application for the Chief Executive's post was supported by favourable references from the Chief Executives of his former authorities. The professional adviser engaged by the Council to assist them in the Chief Executive's appointment advised Mr McKay that he did not think it necessary to enquire into Mr Reiter's time at Westminster City Council. A senior member of staff within the Islands Council's personnel department took a similar view. Mr McKay was of the opinion that it was unreasonable to expect Mr Reiter to go into detail about his employment while at Westminster City Council, especially when he was not pressed on the matter at interview.

Setting aside whether Mr Reiter adequately disclosed the nature of his involvement in the Westminster affair at interview, there was a strong body of professional opinion which took the view that his performance in the posts which he held after he left Westminster City Council was a more relevant consideration rather than events that had occurred 10-12 years previously. I would concur with this view. I consider that the Council should not have been so heavily influenced by Mr Reiter's behaviour while at Westminster City Council and should not have had so little regard for his conduct and performance in his subsequent posts.

- 4.16 The Council's view that there had been a breakdown of trust between Mr Reiter and the Council appears to rest heavily on alleged leaks of information to the media, by him or Mr Miles. The allegations appeared to focus initially on the leaking of Mr McKay's report and, later in the process, to the use of the media by Mr Reiter to defend himself against the action being pursued by the Council.
- 4.17 From my enquiries I have formed the view that, in relation to the leaking of Mr McKay's report, the Council did not have proof to support their allegations but rather that they had deduced that the leaks must have come from Mr Reiter or his representative.
- 4.18 The Council's allegations concerning the release of information to the media later in the process appear to centre on the claim that Mr Reiter and his representative attempted to use the media to answer the case against him. There are two points I would make in regard to these allegations. Firstly they did not form part of the Council's initial concerns. Secondly, if the events occurred they did so, in my opinion, as a result of the Council having created a sense of injustice in the mind of the Chief Executive by suspending the formal disciplinary procedures and denying him an opportunity of answering the complaints against him. In these circumstances it is easy to understand how the Chief Executive might have regarded the media as the only remaining avenue available to answer the case against him and protect his professional reputation.
- 4.19 In alleging that there was a breakdown of trust occasioned by the Chief Executive's use of the media in the early stages of the process the Council, in my opinion, did not have a sufficient degree of proof to sustain this allegation. To the extent that the allegation may have been true in regard to the latter stages of the process, in my opinion, the Council contributed substantially to that situation by denying the Chief Executive access to the disciplinary procedures to which he was entitled.
- 4.20 When the Council departed from the formal disciplinary procedures they put no alternative process in place which would have enabled the full facts of the matter to have been explored but instead commenced a process of "negotiation" with Mr Reiter. This was restricted to an exchange, by way of telephone and letter, and two meetings. The first meeting involved only the Council's external legal adviser and

at the second meeting the Convener and one other member were also present. By proceeding in this way the Council provided no opportunity for a wider grouping of members to hear the Chief Executive's side of the story within a procedural framework that would have allowed a full exploration of the issues.

- 4.21 Despite the recommendation in Mr McKay's report the Council continued to take what, in my view, was tantamount to disciplinary action against the Chief Executive. In such circumstances the Council should have followed the Disciplinary Procedures. These would have required Mr Reiter to have been given full details of the complaints against him and both the Council and Mr Reiter would have been heard by the Investigating Committee within the procedural framework laid down. It would also have enabled the Investigating Committee to have considered the independent person's report before making recommendations to the Council.

As well as providing safeguards for the Chief Executive, adherence to the disciplinary procedures would have enabled the Council to have explored the matter fully before reaching a decision. This may have avoided the Council incurring payments of £78,696 to Mr Reiter and the disruption to the running of the Council as a result of his extended paid leave of absence and subsequent departure. In my opinion, the process by which the Council arrived at the decision to terminate the employment of Mr Reiter was flawed in that it did not provide members with adequate information upon which to make a properly informed decision. As a result, in my opinion, payment of £78,696 to the Chief Executive on the termination of his employment was based on procedures which were unreasonable and a decision which was not properly informed.

- 4.22 The chief executive of a council is head of the paid service with important statutory duties to perform. The chief executive has also to maintain a politically neutral position between the group of councillors which forms the administration and other groups of councillors which make up the council. The post stands apart from other posts within the Council and the chief executive should be able to discharge his duties without the prospect of unreasonable termination of employment. Equally a local authority must retain the right, ultimately, to part company with its chief executive where serious issues of incompatibility or incompetence arise. However this should occur only after all reasonable steps have been taken and proper

procedures followed. The JNC Disciplinary Procedures for Chief Executives are designed to ensure that this happens.

Mr Reiter had been working for the Council for only five months when he was requested to go on extended leave while complaints against him were investigated. He was never advised what the complaints were and I remain unclear as to their nature. Also the Council made no effort to resolve any problems there were by conciliation and gave Mr Reiter no opportunity to improve his performance. The JNC Disciplinary Procedures provide for both courses of action. In view of the fact that he had worked for a relatively short period for the Council it would have been more appropriate, in my view, for the Council to have set performance objectives for Mr Reiter and given him an opportunity to demonstrate whether he could meet their expectations.

By not doing so and by not adhering to the disciplinary procedures the Council's handling of this matter, in my opinion, fell short of the procedural standards appropriate to an issue of this importance.

- 4.23 Finally, I would suggest that there should be a review of the disciplinary procedures for Chief Executives and, as part of that review, a consideration of the role of the independent person and any report or recommendations made by that person.



Robert W Black
Controller of Audit
26 July 1999

SR 99/5
Shetland Islands Council
Termination of the Employment of the Chief Executive

List of Persons Interviewed

Canon L S Smith, (former) Convener

Mr M L Flaws, (former) Councillor

Councillor F B Grains

Councillor W N Stove

Mr W Bennett, Interim Chief Executive

Captain G H Sutherland, Depute Chief Executive

Mr A Cooper, Divisional Manager (Strategic Services and Resources)

Mrs M Gordon, Personnel Officer

Mr A J Matthews, Director of Finance and Housing

Mr J R Riise, Divisional Manager (Administrative Services)

Mr W Shannon, Corporate Solicitor

Mr G Spall, Director of Environmental Services, Planning, Roads and Transport

Mr A Windsor, Chief Internal Auditor

Mr R C Connal (McGrigor Donald, Council's legal adviser)

Mr N K Reiter, (former) Chief Executive

Mr W Miles (Mr Reiter's professional representative)

Mr K McKay (the "independent person")

Annex 2 is unavailable in electronic format.

If you would like a paper copy of Annex 2 to be posted to you please e-mail publications@scot-ac.gov.uk with your address or telephone 0131 477 1234.