

**PROPOSED REPORT BY THE STANDARDS COMMISSIONER ON THE COMPLAINT AGAINST
COUNCILLOR MICHAEL BRESLIN (LA/AB/1758/JM)**

Witness Statement by Dr C M Mason, MBE

Appendix 3

From: [Dr. Christopher Mason](#)
Sent: Wednesday, November 28, 2012 2:18 PM
To: [Michael Breslin](#)
Cc: [Roderick McCuish](#) ; [Mark Ewing](#) ; [Peter Wilson](#) ; [Gordon Gibb](#)
Subject: Actual Reality Ltd: Debt to Argyll and Bute Council

Michael

I understand that Mr. Hendry is saying that I have claimed that that the officers agreed to cancel this debt in 2010. He is wrong to say that I have ever made that claim. It is true that I have said that Susan Mair told me over the telephone in late February or early March 2010 that she had heard that the Council had decided to cancel the debt, but that is not the same thing, and in the event the officers decided not to, so she must have been misinformed.

Your colleagues may be interested in my account of what happened in 2009 and 2010 and you may if you wish show them this email. I am copying it to the Leader of the Council as I think he has a right to know our account of events.

First I must explain the context, which started with a sequence of events in 2009 regarding the management and maintenance of the fire safety precautions at Castle Toward. We had always had them inspected regularly by an independent contractor and the inspection in autumn 2008 had yielded some recommendations for works; these had been carried out by the end of the year. In April 2009, however, Strathclyde Fire and Rescue Service (SFRS) carried out a full inspection as part of their programme of implementation of the 2005 Act. Their report, which was provided to us as Occupier and the Council as Proprietor, contained a long list of recommendations, some of which were marked for urgent attention.

Actual Reality implemented immediately all the recommendations which did not require major expenditure. At the same time, Peter Wilson started work with the Council's Neil Leckie to draw up an action plan to deal with all the SFRS recommendations. Peter Wilson was supported by one of our Directors, Gordon Gibb, an architect. By July the Fire Action Plan had been completed and SFRS had agreed that if implemented it would satisfy all their recommendations.

It was now necessary to get Council approval for the implementation of this Fire Action Plan as well as agreement on who was to pay for it. As Mr. Hendry was the senior Council officer with responsibility for Castle Toward, Mr. Leckie was required to submit the matter to him. On 3 August 2009 he sent Peter Wilson an email in which he wrote: "I will contact Douglas for direction/instruction".

So far as we know Mr. Leckie received no instructions from Mr. Hendry in August or September 2009 on what action was to be taken to implement the Fire Action Plan which had been approved by SFRS. Peter Wilson wrote to Mr. Leckie asking for a decision on 24 August, 6 September and again on 15 September, but received no replies.

At the end of September I spoke on the telephone to Councillor Walsh about the great urgency of the Council coming to a decision about the implementation of the Fire Action Plan which, I said, could not be implemented without Council approval. He said he would have a word with officers.

I then went on holiday. While I was away, Peter Wilson received an email from Mr. Leckie on 5 October in the following terms: *"Peter, My advice is to hold fire on carrying out any further works until the outcome of Douglas Hendry's report to the council's Executive. I have emailed Douglas and suggested that I write to SFRS informing them that the fire upgrade works will slip in line with a report to the Executive."*

When I returned from holiday on 20 October I was appalled to find that in fact no report had been taken to the Council's Executive Committee by Mr. Hendry and I wrote to Councillor Walsh about the absolute importance of the Council taking a decision as soon as possible. I told him that AR was not looking for the Council to pay for these works and I concluded: *"Because this is a matter involving the safety of children, the Directors wish to make an immediate start on the upgrade of the fire prevention measures, if possible in the coming week. Or does the Council have an alternative plan for upgrading the fire prevention measures? I should be grateful if you could let me know or if a Council officer could convey your advice to Peter Wilson."* Councillor Walsh replied on 3 November in writing that he would discuss the issues with Council officers.

To cut a long story short, following my letter to Councillor Walsh, the Council finally took action and at 4 p.m. on Friday, 13 November 2009, Peter Wilson received a telephone call from Neil Leckie in which he was given a peremptory instruction to cease operations at the Castle forthwith. The Council explained its decisions in terms of its paramount concern for the safety of children and our negligence in failing to maintain the fire safety precautions to a proper standard.

If your colleagues wish to see my contemporary account of these events, Mrs. Loudon can provide them with the paper I sent her and Mr. Hendry in December setting out in full our account of what had occurred. I invited her to tell me if she thought I was wrong in any point of fact, but to this day neither she nor Mr. Hendry have given me any comment or question about my account; indeed, I cannot recall them ever having acknowledged its existence.

Following the closure of Castle Toward there was, of course, a considerable correspondence and a series of meetings between ourselves and Council officers about what fire safety work had to be done to allow us to resume our educational work in the Castle. Our position was that the Fire Action Plan which had been approved by SFRS had to be implemented and we secured the services of a leading independent fire safety consulting engineer to advise us. We also said that Actual Reality would meet the cost of implementation. The consultation process culminated in a meeting at Kilmory on 22 January 2010 at which full agreement was reached on a course of action which allowed us to reopen Castle Toward on 1 March that year. The matter of the company's debt to the Council came up in the course of that meeting at Kilmory.

After it had been agreed that we should do all the fire safety work at our own expense, and after we had given our word not to try to reclaim the cost from the Council at a later date, we said that, because our cash position would be very tight until we were able to resume trading in Castle Toward, we should have to *suspend* our monthly payments of £2,000 in settlement of the debt. The Council officers agreed to that. Mr. Logan then surprised us by volunteering the suggestion that the Council might be willing to write off the debt. We had not asked for that, or even mentioned cancellation, but we responded that it would be very nice if the Council did decide to do that. We did not ask why the officers were making that suggestion and they did not offer us an explanation.

I do not remember Mr. Hendry contributing to this discussion but I am very clear that Mrs. Loudon said that the decision was not within the delegated authority of officers and that she would have to take guidance from elected members. I said I understood that perfectly, and the matter was left like that. I think I also said that if the Council was going to write off the debt, it would be helpful if it did so before the end of our financial year on 28 February.

I assumed that the officers had had a pre-meeting and that they had agreed that Mr. Logan should make this suggestion if the matter of the debt came up. I also assumed that when they submitted the matter to elected members, they would recommend approval of the suggestion Mr. Logan had made. And I assumed that he would not have made the suggestion at all if they did not expect Councillor Walsh approve it. I made these assumptions because in my experience (as a former civil servant and as a local authority councillor with 27 years' service) that is how public servants normally behave.

In the event, after a number of telephone calls from me to Susan Mair, we were told in February or March 2010 that "the Council" had decided not to take any action at this time but I could raise the matter at a later date if I wished to.

When the Castle re-opened in March 2010, we decided not to resume the monthly payments until the Council asked us to do so (cash was still very tight because not only had we paid for the cost of the fire safety works – a sum we had agreed not to reclaim from the Council – but we had also lost more than £80,000 in fee income because we had been forced to cancel courses.) Since March 2010 we have never received a request from the Council to resume payments nor has the Council ever initiated any correspondence with us on the subject. The subject did not come back onto our agenda with the Council until earlier this year, when I wrote to Mrs. Loudon to take up the suggestion she had made in 2010 that we could return to the subject at a later date. My letter was written in the context of our impending departure from Castle Toward.

The matter came up again at a meeting in Inveraray on 30 August to discuss the sale of Ardentiny attended by Mr. Hendry, Mr. Logan and Mr. Kelly for the Council and by me, Peter Wilson, Gordon Gibb and Mark Ewing (T C Young) for Actual Reality. Mr. Hendry told us that he was the Executive Director with responsibility for getting this matter settled. I offered to meet him to discuss the issue as a matter apart from the sale of Ardentiny. He agreed to this suggestion and said he would send me some dates when we could meet. Since then I have heard nothing further from him on this subject.

So far as I know (at two o' clock on Wednesday 28 November) the matter rests there and I am waiting to hear from Mr. Hendry when it would be convenient for me to meet him.

There is an interesting postscript to this tale. Earlier this year we learnt that the cancellation of this debt in 2010 was within the delegated powers of officers. If that is true, Sally Loudon was mistaken when she told me at Kilmory that she would have to consult elected members before Mr. Logan's suggestion could be acted upon. We understand that she discovered the true position before the decision was made that "the Council" would not write off the debt at that time. Mrs. Loudon did not, however, tell us in 2010 that she had made a mistake about this at Kilmory.

You will understand that it looks to us as though the officers made the suggestion that the debt might (not would) be written off, in a context which led us to believe that this probably would happen; and then, when we had carried out all the works to the Castle, they decided not to do it after all. If they have a different account of why they made the suggestion and then decided not to do it, I should be interested to know what it is.

So now you have the whole story.

with best wishes

Christopher Mason

PS If you are wondering whether I have any evidence to support my account, the answer is that I do, on every point. Unfortunately we cannot ask Neil Leckie for his account because he died of a heart attack on Sunday 15 November 2009