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OUR REF DVM/SMG/ARG5.144
YOUR REF EJFC/KERY001-212

FAO Elaine Campbell
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Edinburgh

BY FAX TO 01314737700

7 September 2016

Dear Sirs

OUR CLIENT: ARGYLL & BUTE COUNCIL
YOUR CLIENT: CALUM MCMILLAN
PETITION FOR JUDICIAL REVIEW (COURT REF: P1357/15)
PETITION UNDER S1 OF THE 1972 ACT (COURT REF: P1084/15)

We refer to the above matters. We understand that your Counsel has been in touch with ours regarding a possible settlement of the outstanding litigations. We have taken instructions and consulted with Counsel. Our response follows.

Our clients are aware of the inevitability, for both parties, of a significant element of irrecoverable expense, regardless of the eventual outcome. Accordingly, we are instructed to set out herein our clients' position regarding possible settlement. In so doing, we are adopting the Calderbank procedure followed in England, under reference to the case of *Calderbank v Calderbank* [1976] Fam. 93. What follows is accordingly our clients' genuine attempt to resolve these proceedings without necessity of proof. This offer is, however, without prejudice save as to expenses – i.e. it may not be relied upon in any proceedings without our clients' consent, although our clients expressly reserve the right to rely on the making and content of this offer on the question of expenses in the end of the day. In particular, in the event of this offer being rejected and not bettered by your client in the ultimate result, we will rely on this letter on the question of expenses – in particular by seeking agent/client expenses, and/or an additional fee.

Our client has been put to considerable expense in investigating the allegations made in the Petition for Judicial Review ("the JR Petition") and in dealing with your client's Petition under s1 of the 1972 Act ("the s1 Petition").

The JR Petition makes very serious allegations of malice and conspiracy. These have been fully investigated and our client is satisfied that the evidence shows these allegations to be unfounded. Our clients are therefore prepared

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to defend their position, and the actions of their harbourmaster, by fully contesting the proceedings if that is truly necessary.

Nevertheless, with a view to avoiding what appears to be considerable unnecessary further expense, our client is prepared to forego an award of judicial expenses if the JR Petition is abandoned and the s1 Petition is disposed of on the same basis. For the avoidance of doubt, if your client is prepared to abandon both Petitions and to consent to the refusal of the prayers thereof, our clients will agree to that disposal on the basis of no expenses being found due to or by any party.

This offer is open for written acceptance for fourteen days from the date of this letter after which time it shall be deemed to have been withdrawn. Our client has instructed us that no further offers will be forthcoming. Accordingly, if this offer is not accepted then your client should proceed on the basis that both petitions will be defended in full.

In closing, and to reiterate the point made at the outset, this offer is made for the purposes of settlement only and is without any admission of liability. It is without prejudice to our client's whole rights and pleas save in relation to questions of expenses. This letter may not be founded upon in these or any other proceedings save at our client's instance or with its express written consent.

Yours faithfully



On behalf of Brodies LLP