

**Request for an investigation by internal audit into the possible misuse of council funds  
by council officers in defending the claim made against the council by Mr Calum McMillan.**

**Subject and scope**

Mr Calum McMillan, a customer of the council's at Rothesay Harbour, claims he was the subject of a vendetta by a member of the council's staff at the harbour which forced him to take legal action against the council. The council defended this action.

This request for an investigation is focussed specifically on 3 issues:

- 1 A meeting in early May 2014 in Helensburgh between council staff (Mr Hendry, Mrs Milne, Mrs Mair) and Mr McMillan who was there with his solicitor Sir Adrian Shinwell. Mr McMillan and Sir Adrian Shinwell maintain that an offer to settle Mr McMillan's claim was outlined that day, that it was accepted that day and that council staff subsequently denied there was any such settlement.
- 2 The efforts made by a number of councillors after that date encouraging and advising mediation and arbitration rather than using the court process. These efforts were made to try and save the inevitably high legal costs that would be incurred by court action.
- 3 The information gained by councillors in January 2017 that the council had spent a minimum of £145k plus VAT on external legal costs in defending the court case which was eventually settled by mutual agreement prior to going to a proof. That agreement, initiated by the council, was to settle the matter before going to proof with no side being the victor and with both parties agreeing to meet their own legal costs.

At the meeting in May 2014, Mr McMillan and Sir Adrian Shinwell say that they offered to settle the claim (at that time of £150k) by offering to

- a) accept a cash payment of £50k
- b) waive £50k of the claim
- c) to put another £50k of the claim as future credits towards berthing fees at Rothesay.

The issue here is a simple one. If the investigation accepts that the offer was made in May 2014, then the cash cost to the council in May 2014 would have been £50k. This then needs to be compared to the external legal costs subsequently incurred in fighting this case which were £145k.

**Taking staff time into account would probably double this sum to around £300k. However, as a minimum we know that £145k was spent and that suggests that at least £95k of council funds were disbursed without proper justification.**

**The investigation needs to establish which officers took the relevant decisions, or offered advice, that incurred these costs. The investigation also needs to establish why mediation or arbitration were rejected. We are aware that Mrs Loudon, Mr Hendry and Mrs Milne were all involved but there may be others.**

**The following councillors support this request: Gordon Blair, Michael Breslin, Vivien Dance, Bruce Marshall, Robert E Macintyre, Isobel Strong.**