

Opinion of Senior Counsel

in re

Investigation into exit packages of former senior officers at Glasgow City Council

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Introduction

1. Further to my initial letter of instruction of 10 December 2024 and subsequent correspondence with Agents, I have been asked to prepare an Opinion addressing various questions arising out of retirement packages given to five former officers of Glasgow City Council (“the Council”).
2. My Opinion proceeds on the basis of an investigation carried out by Messrs Brodies, the findings of which are set out in a report which they have prepared (“the Brodies Report”). I have also had access to a substantial bundle of papers provided to Brodies for the purposes of their investigation and to a small number of statements taken by, or provided to, Brodies. The following analysis and answers to the questions posed proceed on the basis of the material provided to me. Should further significant information emerge, I would, naturally, reserve the right to revise my Opinion.
3. It may be helpful to record at the outset the names and designations of the five officers with whom this Opinion is concerned and to whom reference is made throughout:

Robert Anderson (“RA”)	Head of Human Resources
Anne Connolly (“AC”)	Principal Advisor to the Chief Executive
Carole Forrest (“CF”)	Solicitor to the Council and Director of Governance and Monitoring Officer
Elaine Galletly (“EG”)	Head of Legal and Administration (latterly Director of Legal and Administration)
Annemarie O’Donnell (“AO’D”)	Chief Executive

Background

4. I assume that readers of this Opinion will have read the Brodies Report and therefore do not repeat its factual findings at length. However, a short summary of key facts is provided to put in context the discussion to follow of the questions I have been asked.

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The Proposed Senior Management Restructure Report

5. In early 2021, a meeting was held to discuss restructuring of the Chief Executive's Department. The attendees were RA, CF and EG. RA subsequently produced a report entitled "Proposed Senior Management Restructure Report ("the Restructure Report"). The proposals it contained are described in the Brodies Report. In short:
- The posts of Solicitor to the Council and Director of Governance and Principal Adviser to the Chief Executive, held respectively by CF and AC, should be made redundant.
 - The posts of Head of Human Resources and Head of Legal and Administration, held respectively by RA and EG, should be made subject to "bump redundancy". (This describes the process of moving a potentially redundant employee into another role and dismissing the employee currently performing that role.)
 - The Chief Executive, AO'D, should take early retirement in or around late 2022 on grounds of efficiency.
6. The Restructure Report was not submitted to the full Council or any of its committees. Nor, as far as can be gleaned from the papers provided, was it the subject of any formal process of approval by officials. It was sent to the Executive Director of Finance, Martin Booth ("MB") and the Chief Executive (AO'D). The former expressed support for it in a short email. The Brodies Report found no evidence of explicit approval by the latter or by the Solicitor to the Council and Director of Governance but considered surrounding

correspondence to amount to implicit approval by them. It is also noted that implicit approval of the Head of Human Resources can be assumed, given that he was the author of the Report. Notwithstanding the absence of any formal process of approval, the Restructure Report appears to have been regarded as providing support and justification for the various departures and retirement packages with which this Opinion is concerned.

The departures and retirement packages

7. Communication about the departure of the five individuals in the papers provided is almost entirely by email. It is informal in tone and, for the most part, contains little in the way of discussion, explanation or analysis. Terminology relating to the terms of departure is in places loose and inconsistent. This makes it difficult for an outsider, working largely from the papers, to be sure of what, exactly, was decided and why. Subject to that, it appears from the Brodies Report that the five individuals departed in the following order and on the following terms:

CF. As discussed below, the basis of her departure is the most difficult about which to be confident, but it appears that she left on voluntary separation on 13 April 2021, at which date she was 52 years of age and had 26 years of continuous service. She received a lump sum payment of £95,000 but did not benefit from any payments by the Council to the Local Government Pension Scheme (“LGPS”).

AC left on voluntary redundancy on 31 July 2021, at which date she was 59 years of age and had 35 years of continuous service. She received a redundancy payment of £54,544.22 and unreduced access to her LGPS pension at a cost to the Council of £137,213.14. It is understood that unreduced access means immediate access to the pension upon severance at the same level as if the officer had been at retirement age at the point of departure but without the benefit of added years. The combined cost to the Council of these two elements was therefore £191,767.36.

RA left on voluntary redundancy on 6 January 2023, at which date he was 61 years of age and had 33 years of continuous service. He received a redundancy payment of £58,895.60 and unreduced access to his LGPS pension at a cost to the Council of £88,758.53. The combined cost to the Council of these two elements was therefore £147,654.13.

EG left on voluntary redundancy on 11 September 2023, at which date she was 58 years of age and had 33 years of continuous service. She received a payment described in the papers as a “compensation for loss of office”, but understood to be a redundancy payment, of £59,971 and unreduced access to her LGPS pension at a cost to the Council of £223,065. The combined cost to the Council of these two elements was therefore £283,036.

AO'D left on early retirement on grounds of efficiency on 4 May 2024, at which date she was 59 years of age and had 33 years of continuous service. She did not receive any redundancy payment, but received unreduced access to her LGPS pension at a cost to the Council of £317,417.

Policies, procedures and regulations applicable to redundancy and retirement

Scheme of Delegated Functions

8. In common with other local authorities, the Council has a Scheme of Delegations (“SoD”). The version in force at the beginning of the events with which this Opinion is concerned was that dated February 2020. I am told that the SoD is regularly reviewed and updated, meaning that a number of different versions have been in force since. However, I understand that there have been no substantive changes to the provisions discussed below, although the numbering of some of them has changed. For the sake of simplicity, I refer below to the numbering in the 2020 version.
9. The SoD is a complex document which sets out in great detail which officials are authorised to make which decisions on behalf of the Council. I will not repeat

the detailed discussion of the SoD in the Brodies Report, it being sufficient to note the following points which are of particular importance to the matters under consideration.

10. General delegations to the Chief Executive or any Executive Director included:

- *“To make changes to staffing structures, numbers and gradings in accordance with approved pay, grading and rewards arrangements, and subject to the approval of the Director of Governance and Solicitor to the Council and the Executive Director of Finance. Major departmental restructurings or staffing reviews must, however, be reported to the City Administration Committee for approval.”* (General delegation 4)
- *“To take any decisions necessary regarding employment, retirement, dismissal and training of staff, in terms of the Council's appropriate Schemes of Conditions of Service, subject, where appropriate, to consultation with the Director of Governance and Solicitor to the Council.”* (General delegation 5)

11. Delegations to the Chief Executive included, as delegation 5, authority

“to approve applications from chief officials for early retiral and voluntary severance”.

Curiously, there is no definition of "chief officials" in the SoD, but Brodies have been told by the Council that it means officers at grade 12 and above. I note the reference in the Draft Review of Delegated Authority Arrangements dated November 2024 (discussed in my response to Question 7, below) to this being in line with the Senior Officers Appointments Committee definition. The SoD does not provide for this delegation to be exercised in place of the Chief Executive by any other officer.

12. Other delegations to the Chief Executive included:

- *“To approve, in conjunction with the Executive Director of Finance, applications from employees (except teachers and Chief Officials) for early retiral and voluntary severance”* (delegation 44)
- *“In consultation with the Executive Director of Finance, to deal with requests for the application of any of the discretionary elements contained in the Local Government Pension Scheme (Scotland) Regulations 1998”* (delegation 45).

- *“To approve ex gratia payments to employees where the circumstances of the payments are not covered by the Council’s Conditions of Service” (delegation 46).*

The SoD provided for these powers to be exercisable also by the Director of Governance and Solicitor to the Council and the Executive HR Manager.

13. Accordingly, approval of early retiral and voluntary severance of chief officials was, at all material times, a function delegated to the Chief Executive. Approval for the early retiral and voluntary severance of officers who were not chief officials was a function delegated jointly to the Chief Executive and Executive Director of Finance but, in accordance with the SoD, could be exercised also by the Director of Governance and Solicitor to the Council and the Executive HR Manager.
14. It is also important to note that, in terms of item 4 in the Qualifications of Delegations, the Scheme of Delegations to officers was subject always, among other things:

"to the obligation on an officer, where he/she considers that a matter may be politically controversial even although it has been specifically delegated to him/her, to consult with the appropriate City Convener. If, after consultation, the officer determines that the matter is politically controversial, it must be referred to committee, as appropriate, for approval."

The Local Government Pension Scheme (Scotland) Regulations)

15. Rules governing the conditions on which members of the LGPS have access to their pensions are largely set out in the Local Government Pension Scheme (Scotland) Regulations 2018 (“the 2018 Regulations”). Regulations 29 (entitled “Retirement benefits”) and 63 (entitled “Employer’s further payments”) are of particular relevance to the matters under consideration. Relevant extracts are set out in full in my response to Question 3, below.

Policy Statement on Discretions including Redundancy and Retirement Provisions dated 19 March 2015 (“the 2015 Policy”)

16. The 2015 Policy, which was approved by the City Administration Committee of the Council (“CAC”), is discussed in the Brodies Report. I will not repeat that discussion, it being sufficient to note that its main significance for the purposes of the matters under consideration is its provisions about severance payments. Part 4 addresses the position of early leavers over age 55 years (50 for those who were members as at 5 April 2006) with access to a pension. It provides:

“In circumstances of voluntary redundancy/early retirement or compulsory redundancy/early retirement the Council may award up to 4 years and up to 30 weeks lump sum payment as calculated in appendix B and C respectively.” (emphasis by underlining supplied)

17. Appendix C comprises a table, which sets out the level of payments based on age at date of leaving and years of completed service, rising to a maximum of 30 weeks. This is achieved at age 61 for those with 20 or more years of completed service.
18. The words “may” and “up to” (emphasized by underlining in the passage quoted above) imply that the level of payment is a matter of discretion rather than obligation on the part of the Council. However, as is observed in the Brodies Report, the 2015 Policy states that *“the Council will seek to ensure the use of these discretions are equitable and have consistent application within any scheme to deal with redundancy/voluntary redundancy/early retirement.”* I do not know whether it was the Council’s usual practice to pay the full amount allowable in terms of appendix C. If it was, then I agree that might give rise to a legitimate expectation on the part of officers leaving on redundancy that they would be treated in that way.

Introduction of Mechanisms to Support Workforce Reform dated 18 June 2020

19. This policy (“the 2020 Policy”), which was also approved by the CAC, is discussed in the Brodies Report. Again, I will not repeat that discussion. It recommended preserving the redundancy arrangements (per the 2015 Policy) of

up to 66 weeks' pay for those with no access to immediate pension benefits and up to 30 weeks' pay for those with access. The main significance of the 2020 policy for the matters under consideration is that it proposed a pay-back period for each discrete reform or business case of no more than two years. This meant that each exit under these terms required to be supported by a business case which, either individually or as a linked employee group, met the two-year pay-back criteria. In other words, the "cost of strain" on the pension fund plus any redundancy payment cost should be "overtaken" by the associated reduction in employment costs within a two year period.

20. Although mention was made of Scottish Government Guidance setting a cap of £95,000 for severance payments, the 2020 Policy did not actually propose the adoption by the Council of such a cap for any particular form of severance payments to its staff. As is discussed below, it does appear, however, that the author of the Restructure Report and officers involved in the processing of CF's exit package proceeded on the basis that there was a £95,000 cap on severance payments and that that was as a result of the 2020 Policy.

Response to questions

21. I set out below my response to the specific questions I have been asked to address.

Question 1: In each case, were the severance terms which were offered, and which were accepted by the individuals, consistent with the Council Policy which applied at that time?

22. The issue of procedure, including compliance with the SoD, is addressed in my response to Question 4, below. This Question involves consideration of whether
 - the lump sum payments, and
 - so-called "strain" payments by the Council to allow unreduced access to the LGPS pension

were in accordance with the Council policy which applied at the time. I deal with each of the five individuals separately and in turn.

CF

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23. As noted above, it was proposed in the Restructure Report that CF's post be made redundant. However, she ended up leaving on the basis of voluntary separation. The reasons are not entirely clear from the documents provided which contain no severance agreement. When asked by one of his subordinates about the basis on which CF was leaving, RA replied by email of 9 March 2021 that

"it's all been a bit hush hush ... you know, the West Wing. Anyway, she is getting a redundancy but no pension. Unusual? Mais oui. So the figure you need is £95k (i.e. I've applied the cap) ..."

24. CF was the youngest of the departing officers (52 years). The "strain" costs would thus have been substantial. The Brodies Report says that it is understood that, if CF had been made redundant and received access to her pension, the payback period would have been in excess of two years and therefore not in compliance with Council policy. She was therefore paid an agreed sum of £95,000 on her resignation from the Council.
25. It is not clear from the paperwork around the time of CF's departure how the figure of £95,000 was reached. It was in the Restructure Report where it is described as "Redundancy Cost (cap applied)". In fact, the sum CF received was not a redundancy payment since she was not made redundant. Nor does her redundancy appear to have been explicitly characterised as an early retirement.
26. It is noted in the Brodies report that, if CF were treated as an early leaver over age 50 with no access to pension benefits, she would have been entitled, in accordance with the 2015 Policy and its appendix A, to up to 63 weeks' pay on departure, which would have amounted to almost £150,000. Based on examination of email correspondence at the time of CF's departure, the Brodies

Report concludes that those involved in approving and processing CF's departure proceeded on the basis that her payment was calculated in accordance with the 2015 and 2020 Policies and that the effect of the latter was to apply a cap of £95,000. As noted above, that does not appear to be strictly correct.

27. I agree with the finding in the Brodies Report that it is not clear whether the severance payment to CF was in accordance with Council policies. In fairness, it might be added that the cost of CF's departure to the Council was, by some distance, the lowest of the five and that she agreed to leave on the basis of the severance payment of £95,000.

AC

28. As noted above, AC received a redundancy payment of £54,544.22 and unreduced access to her pension at a cost to the Council of £137,213.14. For reasons explained in response to Question 3, below, I consider that the pension arrangements were in conformity with the 2018 Regulations.
29. Application of the 2015 Policy and Appendix C thereof meant that she was entitled to a lump sum redundancy payment of up to 29 weeks' pay. The Brodies Report concludes that that would have amounted to marginally more than the figure she actually received. The discrepancy is of no moment. I have observed above that the 2015 Policy appears to allow, rather than oblige, the Council to pay up to the maximum figure calculated in terms thereof. In any event, the figure paid to AC was within the limits established by Council policy. It also appears that the pay-back period was within the two year period approved in terms of the 2020 Policy.
30. In summary, it appears that the severance terms given to AC were consistent with Council policy which applied at the time.

RA

31. As noted above, RA received a redundancy payment of £56,895.60 and unreduced access to his pension at a cost to the Council of £88,758.53. For reasons explained in response to Question 3, below, I consider that the pension arrangements were in conformity with the 2018 Regulations.

32. Application of the 2015 Policy and Appendix C thereof meant that he was entitled to a lump sum redundancy payment of up to 30 weeks' pay. The Brodies Report concludes that – as in the case of AC – that would have amounted to marginally more than the figure he actually received. Again, the discrepancy is of no moment. I have observed above that the 2015 Policy appears to allow, rather than oblige, the Council to pay up to the maximum figure calculated in terms thereof. In any event, the figure paid to RA was within the limits established by Council policy. It also appears that the pay-back period was well within the two years approved in terms of the 2020 Policy.
33. In summary, it appears that the severance terms given to RA were consistent with Council policy which applied at the time.

EG

34. As noted above, EG received a redundancy payment of £59,970.84 and unreduced access to her pension at a cost to the Council of £223,065. For reasons explained in response to Question 3, below, I consider that the pension arrangements were in conformity with the 2018 Regulations.
35. Application of the 2015 Policy and Appendix C thereof meant that she was entitled to a lump sum redundancy payment of up to 28.5 weeks' pay. Once again, the Brodies Report concludes that that would have amounted to marginally more than the figure she actually received and, once again, the discrepancy is of no moment. I have observed above that the 2015 Policy appears to allow, rather than oblige, the Council to pay up to the maximum figure calculated in terms thereof. In any event, the figure paid to EG was within the

limits established by Council policy. It also appears that the pay-back period was within the two years approved in terms of the 2020 Policy.

36. In summary, it appears that the severance terms given to EG were consistent with Council policy which applied at the time.

AO'D

37. As noted above, AO'D did not receive a redundancy payment, but did receive unreduced access to her pension at a cost to the Council of £317,417. For reasons explained below, I am of the view that her departure was not approved in accordance with the SoD. However, early retirement on grounds of efficiency would, in terms of the 2018 Regulations, have entitled her to the pension arrangements from which she benefitted.
38. As is observed in the Brodies Report, it was only possible to arrive at the pay-back period of 1.38 years for AO'D's departure by setting it off against the savings resulting from the earlier deletion of the post of Executive Director of Development and Regeneration Services ("DRS"). For reasons discussed in my response to Question 2, below, the justification for that linkage is dubious. I note, however, the finding in the Brodies Report that, even if the deletion of the post of Executive Director of DRS were left out of account, the payback period for the entire package (involving the departure of the five officers) would have been 1.59 years, which would still fall within the Council policy of a payback period of two years.

Question 2: Do you feel able to express a view on all or any of the proposals set out in Mr Anderson's Report which are understood to be the justification for the terminations and associated payments?

39. Mr Anderson's Report is the Restructure Report. It is brief, running to less than three pages. The main focus is costings. The drivers prompting consideration within the Chief Executive's Department are said to be the need to make significant savings and:

“A pressing need to address the demographics of the senior team and put in place robust succession planning arrangements.”

The issues arising from the demographics of the senior team are not explored; nor is it explained what is meant in this context by “robust succession planning arrangements.” I assume that the author, and possibly others, carried out investigations and analysis which led to the conclusion not only that the sums added up, so to speak, but that the deletion of certain posts and reallocation of duties would be organizationally effective and in the Council’s interest. If any of that analysis was put in writing, it is not in the bundle of papers on which Brodies’ investigation proceeded; nor has information been provided about when, exactly, the posts involved in the “bump redundancies” were deleted or how the changes have worked in practice.

40. In order to form a view about the overall merits of the proposals in the Restructure Report – as opposed to whether the departures and exit packages were in conformity with policies and procedures - it would be necessary to carry out a much wider investigation. There could be no guarantee that it would reach clear conclusions. Brodies have understandably taken the view that reviewing the organisational merits of the proposed restructure would be outside their current remit. Accordingly, for the most part, the short answer to Question 2 is no: I do not feel able on the basis of the material provided to express a view on the proposals set out in the Restructure Report.
41. I do consider, however, that some comment is called for in relation to the proposal that the Chief Executive should take early retirement in or around late 2022 on grounds of efficiency. In contrast to the other four departures, there was no question of her post being subject to an actual or “bump” redundancy. The revised version of the Restructure Report deals with the Chief Executive’s proposed departure in three sentences:

“It is further proposed that in late 2022 the Chief Executive Officer will take early retirement on the grounds of efficiency. This presents a cost of £349,095. However, it is further proposed that the current vacant

post of Executive Director of DRS is deleted providing a saving of £191,292.”

42. The linkage between the retirement of the Chief Executive and the deletion of the post of Executive Director of DRS, which did not appear in the initial version of the Restructure Report, is puzzling. It is discussed in the Brodies Report. The conclusion, in short, is that it is unconvincing and that the abolition of the post of Executive Director of DRS was not logically connected to the retirement of the Chief Executive. Based on the material I have seen, I agree. Moreover, there is no attempt in the Restructure Report to explain how the early retirement of the Chief Executive would promote efficiency.
43. The Brodies Report notes that brief reference is made in emails to the incoming administration being able to appoint its own Chief Executive and that, if AO'D were to depart several months after the local authority elections, the incoming Chief Executive could have a transition period of several months with AO'D still in post. As matters turned out, AO'D did not leave until May 2024, long after the elections. No findings are made as to the envisaged transition period with the incoming Chief Executive. Be that as it may, I agree with the observations in the Brodies Report which question the basis of this justification. Chief Executives and other senior officers are public servants, rather than political appointees, who do not attain or leave office upon change in political control of the local authority. I therefore find this justification unconvincing in the absence of further explanation.
44. In summary, I agree with the finding of the Brodies Report that the Restructure Report did not set out a proper justification for the early retirement of the Chief Executive. It is unsatisfactory that the departure of the Chief Executive on terms that were to cost the Council in excess of £300,000 should be proposed, and ultimately approved, on such an apparently flimsy basis.

Question 3: In each case where the severance terms included a strain on the fund payment by the Council to the SPF, do you consider that payment to have been mandatory or discretionary within the LGPS Regulations?

45. The key provision is regulation 29(8) of the 2018 Regulations:

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“Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of—

(a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers; and

(b) any other retirement pension relating to that active membership payable under these Regulations, without reduction.”

46. The four officers in respect of whom costs for pension benefits were incurred by the Council were all active members of the LGPS. AO'D's employment was terminated by mutual consent on grounds of business efficiency. AC, RA and EG were made redundant. Whether the expression “dismissed from an employment by reason of redundancy” was apt to describe their departures gave me pause for thought, but no distinction is drawn between compulsory and voluntary redundancy. In any event, if it were to be found that they were not “dismissed from employment by reason of redundancy”, the alternative analysis would seem to me to be that their employment was terminated by mutual consent on grounds of business efficiency which falls to be dealt with in the same way.

47. As far as can be gleaned from the papers, sub-paragraph (a) is of no relevance to the matters at hand. In terms of sub-paragraph (b), each of the departing officers “[was] entitled to and [had to] take immediate payment of [the] pension ... payable under these Regulations, without reduction.”

48. In circumstances of early retirement, regulation 63, entitled “Employer’s further payments”, comes into play. Sub-paragraph (2) provides:

“An administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member under regulation 29(6) (early retirement) or under regulation 29(7) (flexible retirement) or (8) (early leavers on grounds of redundancy or business efficiency) ...”

49. Although I have not seen correspondence between the Council and the pension authority, I understand that what are referred to in the papers as “strain payments” were required in terms of regulation 63(2). In view of the analysis in the foregoing paragraphs, such payments were, in my view, mandatory given the basis on which the four staff members departed.

Question 4: Did the process for each termination comply with the Council’s internal rules and governance, including the applicable scheme of delegation?

50. The question whether the severance *terms* complied with the Council’s internal rules and governance is addressed in response to Question 1, above. As for *process*, the only relevant internal rules to which I have been referred are those in the SoD. As far as I am able to determine from the Brodies Report and the associated papers, there were at the time of the various departures no specific rules or policies setting out the process which ought to be followed in relation to exit packages. That may have been a weakness and is a matter to which I return in responding to Question 7, below.
51. As noted above, the Restructure Report appears to have been regarded as providing support and justification for the various departures and retirement packages with which this Opinion is concerned. A question arises as to whether the senior management restructure which it proposed amounted to a “major departmental restructure or staffing review”. If it did, then it ought to have been reported to the CAC for approval in accordance with the SoD. This matter is discussed in the Brodies Report where it is noted, among other things, that the number of individuals proposed for early retirement or severance were small.

Brodies considered that there was justification for considering that the senior management restructure was not the sort of restructure or review that required to be approved by the CAC. In the absence of any definition in the SoD of “major departmental restructure or staffing review”, that seems to me a reasonable conclusion.

52. There is more than a hint in the findings of the Brodies Report and the associated papers that Council officers, including those processing the exit of the five departing officers, regarded the Restructure Report as meaning that the decisions about the departures had already been taken. It was, in effect, a “done deal” and all that remained to be done was the relative formality of processing some paperwork and checking figures. If they did proceed on that basis, they were, in my view, wrong to do so. I do not consider that the Restructure Report amounted to prospective approval of the five departures obviating the need for decisions to be taken in respect of each individual when the time came for their departures. That is all the more so given the fact that it had not approved by any Council committee or even formally approved by officials. Moreover, circumstances which were thought to justify proposals in February 2021 might have changed by the time the various departures actually took place. It therefore remained necessary for each departure to be approved in accordance with the SoD and for those making the decisions to apply their minds to the circumstances pertaining at that time.

53. The process which was followed in relation to each of the five departing officials is described in some detail in the Brodies Report and need not be rehearsed in detail. In short:

CF held a Grade 13 post and thus fell within what is understood to be the Council’s definition of “chief official” for the purposes of the SoD. Approval for her voluntary severance therefore was required from the Chief Executive. As is noted in the Brodies Report, the Chief Executive accepted CF’s “request to leave under the agreed redundancy policy.” Some confusion arises from the fact that

CF actually left on the basis of voluntary severance rather than redundancy. However, it seems clear enough from the papers that the Chief Executive was aware of the terms on which CF was leaving. The paperwork is untidy, but I agree with Brodies' finding that CF's departure was validly approved in terms of the SoD.

AC held a Grade 11 post and hence was not a "chief official". In terms of the SoD, approval for her redundancy retirement could have been provided by the Director of Governance and Solicitor to the Council and the Executive HR Manager, but that does not appear to have happened. Although Brodies saw no direct evidence of approval of AC's application by the Chief Executive, they note evidence that the application came from the Chief Executive's Department and was stated as being "approved". On that basis, and taking account also of the Chief Executive's (inferred) approval of the Restructure Report, the Brodies Report concludes, on the balance of probabilities, that the Chief Executive did approve AC's departure. The paperwork is unsatisfactory but, with some hesitation, I accept that that is a reasonable conclusion. On that basis, AC's departure was validly approved in terms of the SoD.

RA held a Grade 11 post and hence was not a "chief official". His application for redundancy retirement was approved by both the Chief Executive and the Executive Director of Finance. I therefore agree with Brodies' finding that his departure was validly approved in terms of the SoD.

EG held a Grade 12 post and thus was a "chief official" whose departure on voluntary redundancy therefore required approval from the Chief Executive. Brodies' investigation did not discover any email from the Chief Executive approving EG's departure but did note that her name was printed on the signature of the authorization form, in lieu of a signature. The Brodies Report thus concluded, on the balance of probabilities, that EG's departure was approved by the Chief Executive. Again, the paperwork is unsatisfactory but,

with some hesitation, I accept that that is a reasonable conclusion. On that basis, EG's departure was validly approved in terms of the SoD.

AO'D held a Grade 15 post. In correspondence submitted to Brodies in connection with their investigation, she contended that she did not qualify as a "chief official" within the SoD. That would produce the result that the departure of the Chief Executive could be approved at a lower level than that of chief officials who, of course, sit below the Chief Executive in the hierarchy. It seems unlikely that that was the intention of the SoD. I agree with the conclusion in the Brodies report that the Chief Executive falls to be regarded as a chief official. While that would, ostensibly, bring her within the scope of delegation 5, the Chief Executive could hardly approve her own retirement, nor did she purport to do so. The SoD does not allow the Chief Executive to delegate her authority under delegation 5 to any other officer.

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As is set out in the Brodies Report, AO'D's departure was ostensibly approved by MB and Christine Brown (who was by then Head of Human Resources), but they were not empowered to take that decision in terms of the SoD. It might be added that, as the Brodies Report records, neither of them appears to have thought that that was what they were doing. In any event, in common with the Brodies Report, I consider that the process followed in the approval of AO'D's departure did not comply with the SoD.

A question arises as to what procedure should have been followed. In absence of a specific delegation dealing with the Chief Executive (or a more general delegation which clearly encompassed her role, and did not place her in a conflict of interest), the Brodies Report concludes that her application for early retirement could only lawfully be approved by the CAC. I agree.

Question 5: Is there any evidence that any recipient of a severance package, or any other officer, acted unlawfully, in breach of contract, contrary to the Council's Code of Conduct or otherwise improperly in relation to that severance package?

54. This question breaks down into four elements, namely whether any officers acted:

- unlawfully;
- in breach of contract;
- contrary to the Council's Code of Conduct, or
- otherwise improperly.

55. I am not entirely sure what is meant by "unlawfully" in this context. If it is directed to the question of possible criminality, the Brodies' investigation found no evidence of bad faith, fraud or malfeasance. There is nothing in the Brodies Report or the associated papers which leads me to think that any criminal offence was committed. As is noted elsewhere in this Opinion, there were occasions on which staff failed, or may have failed, to act in accordance with applicable procedures, most notably the SoD. As best can be judged from the unsatisfactory audit trail (on which see my response to Question 7, below), such failings were as a result of confusion and/or lack of attention to detail rather than anything more culpable. Based on the Brodies Report and the documents I have seen, I am not able to say that any officer acted unlawfully.

56. The reference to "breach of contract" is presumably to contracts of employment. I have not seen any contracts of employment but have no reason to doubt the conclusion of the Brodies Report that it is unlikely that any officers have acted in breach of their contracts of employment.

57. The Council's Code of Conduct raises more difficult issues. As the Brodies Report makes clear, the main potential problem here is conflict of interest. Both the Council's Corporate HR Code of Conduct for Employees ("the Code of Conduct") and its Employee Handbook incorporate the seven Nolan Principles of Public Life, including "Selflessness" and "Objectivity". Within both the Code of Conduct and the Employee Handbook, selflessness is defined as follows:

"Employees should not take decisions, which result in any financial or other benefit to themselves, their family, or their friends. Decisions should be based solely on the Council's best interests."

Objectivity is defined as follows:

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"Any decisions, which employees take in the course of their work with the Council, including making appointments, awarding contracts, or recommending individuals for rewards or benefits, must be based solely on merit."

Under the heading "Conflicts of Interest", the Code of Conduct provides:

"Council employees have an obligation to act in the best interest of the Council and to avoid situations where there may be a potential conflict of interest.

Conflict of interest may arise when an individual's personal or family interests and/or loyalties conflict with those of the Council.

Interests can be financial or non-financial ... "

It is also worth recalling that the Scheme of Delegations to officers is subject always:

"to the obligation on an officer, where he/she considers that a matter may be politically controversial even although it has been specifically delegated to him/her, to consult with the appropriate City Convener ... "

58. The Restructure Report proposed a scheme from which five senior officers stood to benefit substantially. The author was one of the five. The small number of others who had input into its contents or "approved" it included, as far as can be gleaned from the papers, three of the others. The only person from outside the group of five to "approve" the Restructure Report was the Executive Director of Finance (MB). Approval of the departures, when they came about, again involved members of the five, particularly the Chief Executive.

59. There was no substantial oversight of any of this at the political level. I use the formulation "no substantial oversight" advisedly in light of a possible factual dispute noted in the Brodies Report. In short, the former Chief Executive has said that the Leader of the Council and unspecified Committee conveners were

made aware of the retirement of particular officers and service reforms “at the appropriate time”. It seems inevitable that, by the time of the departure of the five officers, the Leader of the Council and other elected members would have been aware of the fact that they were leaving. But that is not the same thing as knowing and approving the terms on which they were leaving. The Leader and Treasurer of the Council have stated that they were not aware of the terms on which individuals were made redundant or retired, were not involved in the approval of those arrangements, and were not aware of the scope or scale of the proposals made in the Restructure Report.

60. The former Chief Executive has provided little in the way of specification as to, for example, who (other than the Leader) was told, what they were told and when they were told. The Brodies Report has discovered no evidence that elected members were asked to approve the Restructure Report or individual applications for severance or early retirement.
61. Even if the motivation of all of those involved was entirely selfless and proper (which it may have been), that this whole process gave rise to an appearance of conflict of interest should surely have been obvious. It is surprising that none of the senior officers involved seems to have recognised it.
62. The Brodies Report concludes that there was a potential breach of the Code of Conduct on the part of the former Chief Executive, former Director of Governance and Solicitor to the Council and former Head of Human Resources. I agree. I also agree that a course of action which would have avoided the appearance of a conflict of interest and possible failure to act selflessly and objectively would have been to put the Restructure Report to the relevant Council committee for approval.
63. As for whether anyone acted “improperly”, the only impropriety I am able to identify is that already mentioned in §62, above, namely potential failure to comply with the Code of Conduct.

Question 6: Is there any legal basis for the recovery of any sums which were paid as part of any severance package? If so, what procedure would require to be followed and what are the prospects of recovery based on the available evidence?

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64. Notwithstanding a very unsatisfactory audit trail, it has been concluded above that the departures of three of the five officers were approved in accordance with the SoD and that the severance payments and pension benefits which they received were in accordance with Council policies. Accordingly, no question of any recovery of sums paid arises in relation to them.
65. The basis on which the severance payment was made to CF is not clear. Nevertheless, her exit package was approved by the Chief Executive in accordance with the SoD. She left on the basis that she was to receive the lump sum paid to her. I find it difficult to conceive of a basis on which the Council could seek recovery of the severance payment, especially after the lapse of almost four years.
66. As for the Chief Executive, it has been concluded above that her departure was not in accordance with the SoD. Nevertheless, as a matter of fact, her employment was terminated by mutual consent on grounds of business efficiency. The papers provided to Brodies include a copy of a Document entitled “Confirmation of Agreement Early Retirement” signed by AO’D but not by anyone on behalf of the Council. If a signed version exists, it was not produced in the papers provided to Brodies. Be that as it may, AO’D left and was entitled to immediate payment of her pension payable under the 2018 Regulations without reduction and has, I assume, been drawing her pension since her departure. The “strain” payment to allow that to happen was made not to AO’D but to the pension scheme.
67. Any attempt to recover that payment from the pension scheme would be fraught with difficulty. If asked to return it, I would expect the pension authority to refuse to do so on the basis that it was made in respect of the charge on the fund

resulting from AO'D's early retirement on grounds of business efficiency. In terms of the 2018 Regulations, she is entitled to payment of her pension without reduction, at least while her retirement stands. That would have to be undone as a precursor to any attempt to recover the strain payment.

68. The possibility of judicial review is considered at some length in the Brodies Report. Suffice it to say that the Council can hardly judicially review itself. As for the possibility of a third party bringing a judicial review to challenge the decision or decisions leading to AO'D's retirement, I agree with the Brodies Report that any such attempt would face multiple obstacles. Even if a third party could establish standing, the three-month statutory time limit has long since expired. I doubt that the Court would be prepared to grant an extension of time so long after the events.
69. In the unlikely event of decision(s) leading to AO'D's retirement being reduced, a question would arise as to what the Council would do next. It would have to reconsider the decision(s). If it were to decide to approve her retirement on grounds of business efficiency in accordance with proper procedure, it would be back where it started. If it were to decide not to terminate her employment, what would it do with her, given that her replacement has been appointed and been in post for the better part of a year?
70. If the Council were unilaterally to purport to cancel AO'D's retirement, I do not know how the pension authority would react, but it could by no means be taken for granted that it would accede to a request for return of the "strain" payment. AO'D would almost inevitably challenge any unilateral purported reversal of her retirement. The Council would have to rely upon the argument that the approval of her retirement was *ultra vires* in resisting such a challenge. The case of *Gibb v Maidstone and Turnbridge Wells NHS Trust* [2010] EWCA 678 stands as a salutary warning of the risks which a public authority will face if it adopts the unusual position of relying upon its own allegedly *ultra vires* actions in seeking to escape the coils of commitments it has made. The Council would have, as

Lord Justice Laws put it, a very steep hill to climb. In my view, AO'D would have good prospects of success. The sharp criticism by members of the Court Appeal of the position adopted by the respondents in Gibb serves as a reminder of the reputational risks that might arise if the Council were to become engaged in litigation with AO'D, and possibly also the pension authority.

71. In summary, based on the available evidence, I consider there to be poor prospects of recovery of any of the sums paid as part of the severance packages.

Question 7: In relation to the process for approving terminations of the type which this review has been asked to scrutinise, are there any changes in procedure or other recommendations which you would make?

72. I am in general agreement with what is said in the Brodies Report in response to this question. It appears from a document entitled "Draft Review of Delegated Authority Arrangements" dated November 2024 ("the Draft Review") that work is already being undertaken to address some of the weaknesses identified. The following observations and recommendations are pitched at a relatively high level, on the view that the detail of changes is better left to those with more intimate knowledge of the working of the Council.
73. It is plainly desirable that the SoD be revised to make specific provision for approval of severance or early retirement of the Chief Executive. As to how this be done, the main options would appear to be vesting authority in the CAC or a combination of senior officers.
74. It would be worth the Council considering whether a committee of the Council should require to approve any early retirement or severance arrangements in respect of officers over a particular grade.
75. A striking aspect of the papers I have perused is the informal and, if I may say so, casual approach to processes which led to the departure of five senior officials at considerable cost to the Council, albeit a cost which, it seems, was expected

to be recouped within two years. Those involved seem not always to have understood who was authorised to make the decisions. The basis on which proposals were made and decisions taken was rarely clearly articulated. Inconsistent and loose use of terminology added to the uncertainty.

76. I was struck by the following passage in the Draft Review at §3.1.6:

“It is therefore vitally important to ensure that service reform initiatives which include a dependency on staff leaving on enhanced terms are properly scrutinised to ensure that the enhanced terms are incidental to the reform, or underpin the reform, rather than the opposite; that the reform is designed to allow staff to leave on enhanced terms.”

77. The Brodies Report does not conclude, nor do I, that the reform under review was designed to allow staff to leave on enhanced terms rather than the enhanced terms being incidental to reform which was in the interests of the Council. However, the absence of a proper approval process of the Restructure Report combined with the inadequate documentation surrounding the actual departures makes it impossible for outside scrutiny to conclude with confidence that this was not what happened.

78. A more thorough and formal approach is called for in which advice to decision makers, and decisions taken based thereon, are recorded clearly in writing so that there is a properly documented audit trail. Given the extent to which the process followed in respect of these departures fell short of that standard, it would seem in order for written guidance to be issued setting out what is required in the approval of exit packages.

Question 8: Are there any other actions or steps which you consider the Council should take in light of your findings?

79. I have nothing to add to the observations made in response to Question 7, above.

I should be happy to discuss any matters arising with those instructing me.

Douglas Ross KC

Advocates' Library
Edinburgh
5 March 2025

Opinion of Senior Counsel

in re

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**Investigation into exit packages of former
senior officers at Glasgow City Council**

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Brodies LLP
110 Queen Street
Glasgow
G1 3BX