

email No 29

From: lormac1053@aol.com

To: IEC1053@aol.com

Subject: Fwd:

Date: Thu, 14 May 2009 12:20

Attachments: Letter_of_instruction_to_Craig_Thomson.DOC (52K)

can uoi print please

Laurie,

Thanks again for making the trip to Edinburgh yesterday. I hope you and Irene managed to visit one or two shops before heading back up the road!

As discussed, I attach a copy of my letter of instruction to Craig Thomson - hopefully my summary of the dispute will be of use to you in finalising the complaint letter to Dundee City Council. I have reviewed the draft complaint letter you sent last week - I haven't revised it, because you will probably have your own changes to make after yesterday's meeting - but I would make the following comments:-

1. On the last page, you write that you have had to pay off staff because of the damage caused to your reputation by the Council's actions. Perhaps you could be more specific about how the damage to your reputation has affected your finances and why you have had to pay off the staff (ie you cannot apply for other grants etc).

2. You might want to be more specific about the basis for the Council's complaint - ie. the 'child protection' issue concerning the boy, and the 'recruitment and selection' issue concerning related workers. I think you have a solid defence to both allegations and therefore it does you no harm to mention them. In relation to the former, the employee clearly breached your policies and was dismissed as soon as you knew what happened. While the incident was regrettable, there was nothing you could have done to prevent it and the way you dealt with the matter cannot be faulted. In relation to the latter, EAU has always been completely open about its recruitment and selection procedure - which was largely devised from the Council's own procedures. Not only that, OSCR has investigated (presumably in response to a tip-off) and is satisfied that it has no concerns.

3. Is it worth mentioning the period of time in which you were not given a Lead Officer? (The Service Level Agreement does state that a Lead Officer will be provided "for the purpose of liaison in relation to the Agreement"). Perhaps some of what happened could have been avoided if you had a more consistent point of contact in the Council?

4. Perhaps you could also make the point that the Council's approach has been inconsistent and confusing - for example, the recent letter from Peter Allan contradicts the letter from John MacDonald which was sent one day earlier.

5. Most importantly, I would stress that the way the Council has handled this dispute strongly suggests that their decision-making process has been improper. Yesterday Craig Thomson mentioned the legal remedy of Judicial Review. For the reasons he explained yesterday, the Council's decision to withdraw the funding is not one that can be subject to Judicial Review. However, for the purposes of your complaint letter, it may be worthwhile noting that one of the grounds for Judicial Review is "procedural impropriety". This is where "there is a failure to observe the appropriate procedural norms. It includes the duty to act according to common law rules of natural justice and procedural fairness. Natural justice means acting fairly between the parties, allowing all sides to be heard and taking a decision impartially. Acting fairly between the parties means allowing both sides the opportunity of presenting their case. Procedural fairness encompasses a number of specific principles including the right to a hearing and the rule against bias, the principle of equality and consistent treatment, the right to reasons for a decision, and duty to carry out proper consultations." Although I am not suggesting that you threaten the Council with Judicial Review, it might be worthwhile highlighting the notion of procedural fairness/natural justice in your letter.

6. There is probably no point enclosing a copy of the correspondence (between EAU, DCC and MacRoberts) along with the complaint, although if you eventually escalate the complaint to the Public Services Ombudsman I would strongly suggest that you do. In my view, the standard of the Council's correspondence (or lack of!) does them no favours whatsoever.

I hope this is helpful. If I can be of any further assistance in relation to the complaint, please do not hesitate to get in touch. In the meantime, I will put together a response to Mr MacDonald's most recent letter.

Kind regards,

Laura

**Laura Gow
Solicitor
MacRoberts LLP**

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152 Bath St, Glasgow G2 4TB

-----Original Message-----

From: Laura Gow <laura.gow@macroberts.com>

To: lormac1053@aol.com
CC: iec1053@aol.com
Sent: Thu, 14 May 2009 11:30

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Laura

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