

## Complaint about Potto parish council's Clerk/RFO ref '07 November 2023'

- 1 I wish to make this Formal Complaint about the Clerk/RFO and Proper Officer at Potto parish council.
- 2 The purpose of this complaint is to highlight and bring to the attention of each member of Potto council that the matters complained of here are the responsibility of the clerk and that these longstanding and ongoing *weaknesses* need to be recognised, acknowledged and then properly and openly addressed by members, and Resolved as such by the council.
- 3 The lack of insight and understanding shown by members since 2011, with regard to employing an ineffective clerk, needs to be recognised and addressed, as this issue has led directly to persistent, multiple and significant *weaknesses* of Governance, Accountability and Financial control, as recorded in the **Auditor's 2022 Public Interest Report (PIR)**.  
Action is necessary now, both in the Public Interest and to safeguard the public money held by Potto council.
- 4 Significant damage has been caused to Potto council, in terms of its probity, function and standing; see excerpt from case Tribunal Decision given 07 June 2023, below:



NCN: [2023] UKFTT 00477 (GRC)

Case Reference: EA/2022/0266

### First-tier Tribunal General Regulatory Chamber Information Rights

#### Decision:

1. The appeal is allowed.
2. Decision Notice IC-119123-M4P7 is not in accordance with the law.

#### Substitute Decision Notice

Potto Parish Council was not entitled to refuse M [REDACTED] request for information dated 3 May 2021 on the grounds that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("FOIA").

To ensure compliance with FOIA, Potto Parish Council must issue a fresh response to the Request which does not rely on section 14(1) FOIA within 35 days of the date of this Decision Notice.

- 5 It can be clearly seen that Potto council's persistent and longstanding opinion, that whistle-blowers and complainants are **vexatious** and act to cause harassment, is "*not in accordance with the law*".
- 6 Worryingly, I note an assertion in a Potto council letter dated 12 July 2023 (over a month after the case Tribunal determined the council's opinion was unlawful); copy below:  
***"The parish council consider both the appellant and his requests to be vexatious"***.  
It is clear there is no evidence of any '*structured learning*' by anyone at Potto council.

7 I find it even more worrying that Potto council would publish such a comment, not only just after a Tribunal determined it's opinion was unlawful, but in the face of robust evidence to the contrary, such as in the ICO's Guidance about vexatious matters; see excerpt below:

**2.24 It is important to note that it is the complaint, not the applicant, or the request, that must be frivolous or vexatious.**

I can only conclude that Potto council lacks the collective capacity to understand or comply with any authoritative data that conflicts with its own unsubstantiated opinions.

8 This conclusion is reinforced by the fact that Potto council attempted to 'appeal' the above case Tribunal Decision. The inevitable **Refusal** is dated 02 November 2023; see excerpt below:

Case No. EA/2022/0266



**In the First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

Before: **Judge C Goodman**

Appellant:

Respondent(s): **Information Commissioner and Potto Parish Council**

Upon the application by Potto Parish Council for permission to appeal the decision sent to the parties on 7 June 2023 ("the Decision")

**Permission to appeal is refused**

9 Unfortunately, it is demonstrable that Potto council and each of its members and clerk collectively '*lack the capacity*' to recognise the meaning or implications of the Judge's Decisions. If Potto council is still unable to understand the gravity of these Decisions, I suggest that it should seek appropriate and authoritative advice, such as from YLCA.

10 Nevertheless, noting the above issues, I request that this complaint **be fully, properly and dispassionately investigated** in accordance with the council's Complaints Procedure. I request that this investigation be transparent, fully documented and recorded and that each of the 'background papers' and the investigation Final report be published on the council's website.

11 Noting the above, members are requested to note that a response to this complaint, which consists of describing the complaint and/or the complainant as vexatious or acting to cause harassment, is wholly inappropriate. I suggest that advice should be sought from YLCA or similar if such a response is being considered.

12 Such a response will be without foundation, undermine confidence in the council's accountability to the public, demonstrate non-adherence to the council's complaint handling process, bring Potto council into serious disrepute and hence will not be accepted without corroborating and specific **evidence** from YLCA, or a similar expert and independent legal authority.

I will consider any reiterated response of this nature to be aggressive, confrontational, dismissive and disrespectful and hence **constitute a breach of the Code of member Conduct** for each member who encourages, endorses, aides, abets or agrees to such a response.

- 13 Such a response will indicate the continuance of an ongoing course of **member misconduct** that characterises harassment of a member of the public. Such a response will indicate that the intention of members is to undermine due process and it will be detrimental to proper practice, due process and, ultimately, each party involved in formulating such a response.  
Such a response will simply emphasise that Governance and Accountability at Potto council remains entirely inadequate – as recorded in the **17 Recommendations in the Auditor’s 2022 PIR**.
- 14 Furthermore, I note that para 408 of the ECHR Guide to Article 10, ‘**Protection of Whistle-blowers**’, states that *“the Court considers that whistle-blowing by an applicant regarding alleged unlawful conduct .... requires special protection under Article 10 of the Convention”*.
- 15 Case Law (s38 ii), with regard to the Judge’s Directions in a Court of Appeal following a case Tribunal about multiple allegations of misconduct at a local council involving officers and members, has determined that:  
**“Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated”**.  
S38 iii states **“They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”**.  
Unfortunately, Potto council is yet to recognise the effect of this Direction.
- 16 Indeed, I am also advised that the **Supreme Court of Appeal** has directed that criticism (such as may be perceived as being contained in this complaint), even if subsequently published in the Press and including where it could foreseeably cause distress to an individual, **does NOT provide an arguable case of harassment** ref the 1997 Act:  
  
34. The 1997 Act has not rendered such conduct unlawful. In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment.
- 17 If the council issues threats to the complainant, such as by citing the ‘Protection from Harassment Act 1997’ or by referencing internal council procedures, which are simply working guidance documents (not Statutory Instruments) and hence have no standing in Law, these threats will NOT be accepted without corroborating advice from YLCA or a similar legal authority.
- 18 Potto council has confirmed in writing that it does not hold any such corroborating support for these threats, which I contend is because no such competent legal body would ever support such threats, which are *‘not in accordance with the law’* and comprise **malice, bullying and intimidation**. Such conduct would serve to indicate only that the council’s Governance and Accountability has not improved a jot post the 2022 PIR.
- 19 Potto council is reminded that such a record is **not a substitute** for carrying out a proper investigation, in compliance with its Complaints Procedure, and it will initiate further action. Further, members are reminded that they are each jointly and severally liable for the actions of the council, including the requirement to adhere to its policies and procedures.

## **Complaint - Part 1**

20 The Clerk's **job description** states the Clerk "*is under a statutory duty to carry out all the functions... required by law*", and is "*to advise on... the authority's activities... for making effective decisions*"; be "*accountable to the council for the effective management of all its resources*" and for "*the careful administration of its finances*", so as "*To ensure statutory compliance for all the council's business*".

21 However, the 2022 **Public Interest Report** determined that there were significant *weaknesses* across 17 heads, due to multiple failings of Governance, Accountability and Financial matters, as well as persistent non-compliance with proper procedures, Laws and Regulations.  
The Clerk has clearly **failed to discharge her core duties**, as specified in the job description.

22 These failings are again exposed by the following item of expenditure in the 2022-23 accounts:

Cleveland Corrosion (Road Sign Repairs)		1,988.00	15/02/2023
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Firstly, it should be noted that the declared sum does not even match the sum on the invoice.

23 Any contract for these repairs must be considered and carried out in accordance with Potto council's **Standing Orders** and **Financial Regulations**, so as to ensure proper practice is engaged to properly safeguard public money.

A number of serious and material *weaknesses* are exposed; see examples below:

24 S19(b) of Potto council's **Standing Orders** state:

- b All payments by the council shall be authorised, approved and paid in accordance with the law, proper practices and the council's financial regulations.

However, this road sign payment was NOT in accordance with the '*law*' (S137 LGA 1972 was breached), it was not in accordance with '*proper practices*' (as specified in the JPAG Practitioners' Guide) and multiple Sections of the council's **Financial Regulations** were breached – see below:

25 S1(1) of Potto council's Financial Regulations state:

- 1. The Responsible Financial Officer (RFO), under the policy direction of the Council, shall be responsible for the proper administration of the Council's affairs.

However, the council's affairs indicate serious and material *weaknesses* of Governance (ref the 2022 PIR) and it is quite unequivocal that the council's Clerk/RFO, Ms Joanne K Wilde (daughter of the chair, Mr Andrew Wilde), **is responsible** for these serious *weaknesses* with the '*council's administrative affairs*'.

26 S9(2) of the council's Financial Regulations state:

- 2. Approved work orders shall be recorded in the minutes.

There are **no 'work orders'** in any meeting minutes, including for this road-sign repair (as verified by a FOIA request).

27 S9(3) of the council's Financial Regulations state:

- 3. All members and Officers are responsible for obtaining value for money at all times.

The council paid between **500% -1,000%** of the genuine or reasonable cost for this road-sign repair in February 2023 and 2018; it is demonstrable that value-for-money was **NOT** obtained.

28 S9(3) of the council's Financial Regulations also state that there shall be:

- three or more quotations or estimates from appropriate suppliers**

However, only **one supplier** was contacted about the repair to this road-sign.

- 29 S9(4) of the council's Financial Regulations state:
4. The RFO shall verify the lawful nature of any proposed purchase before the issue of any order, and in the case of new or infrequent purchases or payments, the RFO shall ensure that the statutory authority shall be reported to the meeting at which the order is approved so that the Minutes can record the power being used.
- However, the RFO failed to:
- i) "verify the lawful nature" of this road-sign repair cost (it was a breach of S137 LGA 1972),
  - ii) "report the statutory authority to the council meeting" (there is no such statutory authority),
  - iii) ensure that the minutes "record the power being used" (there is no such 'power'),
  - iv) include this road sign repair, even vaguely, in any council budget.
- 30 S10(1)(a) of the council's Financial Regulations state **"NO EXCEPTIONS"** :
1. Procedures as to contracts are laid down as follows:
    - (a) Every contract shall comply with these financial regulations, and no exceptions
- The contract with Cleveland Corrosion did NOT "comply with these financial regulations".
- 31 S10(1)(b) of the council's Financial Regulations state:
- (b) Where it is intended to enter into a contract exceeding [£500] in value for the supply of goods or materials or for the execution of works or specialist services other than such goods, materials, works or specialist services as are excepted as set out in paragraph (a) the Clerk shall invite tenders from at least three firms to be taken from the appropriate approved list.
- Whilst the contracts for the road-sign repair exceeded £500, the Clerk did NOT "invite tenders from at least three firms". Furthermore, there is no "appropriate approved list".
- 32 The evidence to support the allegations in this complaint has been corroborated by Potto council in a number of documents, including in this publicly **accessible FOI request** - [https://www.whatdotheyknow.com/request/road\\_sign\\_costs\\_potto\\_council\\_we#incoming-2396729](https://www.whatdotheyknow.com/request/road_sign_costs_potto_council_we#incoming-2396729)
- 33 The Clerk/RFO's multiple and persistent breaches of all the above safeguarding steps (itself a non-compliance with 'proper procedure' as specified in S1.14 of JPAG **Practitioners' Guide** and hence affecting **Assertion 2** of the council's 2022-23 **Annual Governance Statement**) facilitated an extraordinary waste of several £1,000's of Potto tax-payers' money.
- 34 I have seen copies of recent and independent **quotations** for this road-sign repair which indicate that Potto council paid well in excess of 500% of the fair or going rate for these contracts. This is extremely worrying, especially after the damning 2022 PIR.
- Further details are published here - <http://nyenquirer.uk/potto-where-money-pt-5/>
- 35 Furthermore, this 2023 failure is not unique; it is just one of a **pattern of identical failings**. Potto council spent **£3,600** on repairs to this same road-sign in November 2018, despite it NOT even being owned by Potto council.
- And Potto council spent **£10,180** repairing a bridleway it doesn't own in 2021, where competitive tendering would likely have produced quotes of about £2k or so.
- 36 The result of this significant, persistent, ongoing and material *weakness* to safeguard public money is that a **financial loss** equal to more **than double the council's annual precept** income has been incurred on only these two items.
- The clerk is primarily responsible for these *weaknesses*, but there is not a scrap of evidence of any 'structured learning'; the clerk's performance remains **deficient** and wholly **inadequate**.

## Complaint - Part 2

37 The clerk has acted with wilful defiance to regularly breach the **DPA/GDPR**, by publishing my personal details, with the intention to antagonise, intimidate and cause harassment. Unlawful assertions of my vexatious behaviour and actions have been written and published regularly and have become a matter of routine. For example, in 2015, over 8 years ago, the clerk was drafting and sending wholly unsubstantiated and baseless comments about '*vexatious complaints*':

1. This objection is the latest in an on-going series of vexatious complaints from M [REDACTED] against Potto Parish Council and its individual members.

38 On 09 October 2023 I sent Potto council a detailed breakdown of breaches of DPA/GDPR, including some in the draft September 2023 meeting minutes. Unfortunately, it ignored entirely this evidence and these **breaches were subsequently published** as the final accurate version of the September 2023 minutes, without any suitable amendments to the text containing my personal information, as identified. Furthermore, the same text (including my personal information), was copied into the draft minutes for the October 2023 meeting.

39 I contend that Potto council continues to **refuse to discharge its duty** to comply with DPA/GDPR.

## Complaint - Part 3

40 Despite the fact the council has not a scrap of supportive information (ref element 7 of a FOI request in 2021 with ICO ref IC-119123-M4P7) about its torrent of vexatious allegations, the **clerk continues to draft** and publish these falsehoods.

I note that Potto council's assertions of my alleged "vexatious" activity were unanimously found by a Tribunal and by Tribunal Judge C L Goodman to be "**not in accordance with the law**" in June 2023, which concurs with the ICO guidance on this matter.

41 Unfortunately, the clerk appears to lack the capacity to understand either the ICO guidance or Judge Goodman's Decision. The clerk wrote (12 July 2023) an entirely inappropriate and shockingly defective letter of appeal to the Information Commissioner/Judge; stating "**The parish council consider both the appellant and his requests to be vexatious**".

42 However, Potto council's web-site 'Bullying and Harassment Statement' states:

**We treat everyone with courtesy and respect and ask for the same in return.**

It is quite clear that the council and its clerk are **failing to abide** by the council's own policies.

43 Unfortunately for Potto's oppressed residents, Potto council's members and clerk still refuse to recognise their ever growing list of serious and material shortcomings, which serves only to emphasise their lack of capacity to execute their roles to any recognisable or acceptable professional standard. Nevertheless, the clerk, as Proper Officer, remains responsible for these '*weaknesses*'.

44 Please ensure this complaint is published as a background paper to the next council meeting and that the matter is adequately described on the meeting agenda.

A copy has been provided to Ms Sheena Spence (YLCA) and to PKF Littlejohn LLP.

45 Please provide me, in due course, with a copy of the council's **detailed Final Report** for each of the three Parts of this complaint. Thank you