

Complaint about Potto parish council's Clerk/RFO

ref '17 Dec 2024'

- 1 I wish to make this Formal Complaint about the Clerk/RFO and Proper Officer at Potto parish council, as well as those members of the council who act to support the status quo.
 - 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 inexperienced and ineffective clerk, needs to be recognised and addressed, as this issue has led directly to persistent, multiple and significant *weaknesses* of Governance, Accountability, Financial Control and Statutory Compliance.
 - 4 These *weaknesses* are recorded in the **SEVENTEEN Recommendations** in the **Auditor's 2022 Public Interest Report (PIR)** and in the **NINE Qualifications** and **SIX 'Other Matters'** in the 2022-23 Audit report.
This is a **devastatingly BAD performance** for the whole council and **especially for the clerk/RFO**, who is paid to be responsible for ensuring this mess cannot occur.
But, it has.....
 - 5 Action is necessary now, both in the Public Interest and to safeguard the rapidly dwindling public money held by Potto council.
I note this Press article; link below:
<http://nyenquirer.uk/potless-potto/>
- This article records that additional audit fees totalling **£59,969.01** have been incurred by Potto council between 2014 and July 2024 (partly paid by SAAA). There are only circa 115 council-tax paying households in the parish, of which mine is one.
- 6 Whilst nobody of sound judgement would quibble or suggest that the fees were not entirely justified and very reasonable for the Auditor's skill and expertise in investigating and reporting upon the vast array of extremely serious Governance and Accountability problems at Potto council, the point at issue is that a properly led and managed council would never incur a penny of these fees.
The clerk and responsible financial officer is, according to her job description, primarily responsible for this catastrophic mess.

Complaint 1 – Data breaches

7 Potto council acted in blatant and persistent defiance of GDPR and DPA 2018 by processing and publishing my personal data on multiple occasions over prolonged periods. Potto council's proper officer refused to acknowledge or address these breaches. My complaint (IC-293418-Z2B3) to the ICO was investigated and fully upheld; see excerpts from the ICO Decision letter dated 19 August 2024 below:

Further points of concern

The following are points [REDACTED] raised with the ICO, please respond accordingly to them:

"I contend that the following elements are pertinent; Potto council has acted in breach of several criteria, including, but not limited to:

i. I, as the data subject, should have been advised by Potto council about its data breach when it first processed my data and sent it to these two charities – I wasn't,

ii. It had 3 days to advise the ICO of this data breach – it didn't.

iii. the data processed to these charities was not accurate – I object, as it was fabricated, malicious and it was intended to cause me distress and harassment (re Article 21(1) GDPR).

iv. Potto council has never once carried out a data-audit, despite being advised to do so each year, by its legal advisers, YLCA,

v. Articles 13 & 14 of GDPR specify my rights – the council's breaches leave it exposed to fines and reputational damage,

vi. The council has acted in breach of s1.4, s1.7, s1.9(1), s1.9(3), s1.9(4) and s1.11 of its website 'General Privacy Notice',

vii. Potto council has failed to comply with the SAR within one month; my genuine efforts to exercise my rights have been ignored,

viii. My right to rectification has been ignored by the council (re Article 16 GDPR) – my data is 'misleading or inaccurate as to any matter of fact' - re DPA 2018,

ix. Potto council has not demonstrated my SAR was manifestly unfounded or excessive,

x. My right to erasure has been breached (re Article 17 GDPR), as my data was processed unlawfully (data Principle one) to the two charities,

xi. My right to restrict the processing of my data (re Article 18 GDPR) is being ignored.

This list is not intended to be exhaustive"

Further action required

The ICO considers there to be further work for the Council to do to improve their data protection practises.

Please provide a response to the outstanding matters within this letter as soon as is possible and in any event within the next **14 calendar days**.

- 8 This 14 day period expired on 04 September 2024 – I am **still waiting** for a response, of any type, well over four months later. Potto council’s clerk’s job description includes ‘ensuring’ that the council operates lawfully and properly; see excerpt below:

Specific Responsibilities

1. To ensure that statutory and other provisions governing or affecting the running of the Council are observed.

The clerk is acting in persistent breach of these ‘Specific Responsibilities’.

Potto council is in persistent and ongoing breach of GDPR/DPA, it is refusing to address these data breaches and **it is acting in DEFIANCE of the Commissioner’s Directions.**

This ongoing failure raises serious concerns about how Potto council is managed and led - ref s27(4) LAAA 2014.

Complaint 2 – External Auditor

- 9 With regard to the data breaches and refusal to comply with the Commissioner’s Directions, External Auditor PKF Littlejohn LLP issued the following details:



- 10 The Auditor’s request in this email dated 21 August 2024 has NOT been properly addressed; there is no evidence this correspondence has been shared with councillors and it has never been an item of council business – a breach of s4(7) Financial Regulations; excerpt below:

7. The RFO shall, as soon as practicable, bring to the attention of all councillors any correspondence or report from the Internal or External Auditor, unless the correspondence is of a purely administrative matter.

The clerk’s failure to comply with the council’s Financial Regulations is yet another damning example of such failures, which extend throughout the last decade.

The council’s statutory explanatory ‘Note’ remains entirely inadequate.

Complaint 3 - Trustees

- 11 Potto council has published the names of three people as ‘trustees’ of Potto Village Hall (charity 700596) for over a decade, despite not one of them being a trustee. The Charity Commission (CC) website, see excerpt below in December 2024, still shows these three invalid names and the one recent addition of a valid name:

4 Trustee(s)

| Name | Role | Date of appointment | Other trusteeships |
|--------------------|---------|---------------------|--------------------|
| Elizabeth Hepple | Trustee | 07 November 2024 | None on record |
| Philip John Harper | Trustee | 07 March 2014 | None on record |
| Andrew Wilde | Trustee | 16 August 2012 | None on record |
| JOANNE STOREY | Trustee | 16 January 2012 | None on record |

12 The identity of the trustees was correctly recorded at Qualification 1b in the 30 May 2024 External Audit Report.

Despite this independent verification of the valid trustees, Potto council has wittingly refused to remove the falsified names, which remain published on the CC website.

This ongoing failure raises serious concerns about how Potto council is managed and led - ref s27(4) LAAA 2014.

Complaint 4 – censored meeting minutes

13 Potto council made a series of absurd decisions about appeals during 2023 and up to April 2024. It then submitted these appeals to the FtT and UT; each attempted appeal was quite farcical and doomed to failure – see below.

Not one of these ‘council’ decisions was an item of business on an agenda, not one decision is recorded in the meeting minutes – a witting and systemic series of unlawful acts.

14 Another failed attempt to appeal was Struck Out by the Judge in December 2022, but the council’s failure was also hidden from councillors and public alike.

The Annual Return Notes published in September 2024 record an appeal was “*struck off*”, but there is no appeal number, no date and no explanation – this record is so vague as to be meaningless.

Indeed, this record (below) is also factually incorrect – there was no “*ICO appeal*”. The appeal was made by the council to the Tribunal and the ICO was not involved.

Note 6 Assertion 3, responded No as minutes did not record the ICO Appeal being struck off.

15 The clerk is responsible for producing accurate meeting minutes and members are responsible for approving minutes as being a complete and accurate record.

The current and ongoing practice is a total shambles and contrary to Law.

These ongoing failures raises serious concerns about how Potto council is managed and led - ref s27(4) LAAA 2014.

Complaint 5 – fundamental misunderstandings

- 16 Significant damage has been caused to Potto council, in terms of its probity, function and standing; see excerpt below from a Tribunal Decision given 05 January 2024, about Potto council's farcical attempts to appeal:



UA-2023-001873-GIA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2023-001873-GIA

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Applicant: Potto Parish Council
1st Respondent: The Information Commissioner

NOTICE OF DETERMINATION OF APPLICATION FOR PERMISSION TO APPEAL

I refuse the Parish Council's application for permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal.

Upper Tribunal Judge Wikeley stated in his Decision Notice; see excerpts below:

the FTT in effect overturned the Commissioner's findings and reasoning

The grounds of appeal are simply not arguable.

There is no basis on which that further application could succeed

20. The long(er) answer is that the grounds for this latter suspension application betray some fundamental misunderstandings on the part of the Parish Council of both the FOIA regime and the FTT process.

- 17 The clerk has failed to ensure the council complies with the FOIA and the FTT Process. Nothing whatsoever has been done to acknowledge or address **Potto council's fundamental misunderstandings of the FOIA regime** – which likely explains the two dozen ICO DNs issued over the last decade.
The clerk is persistently and routinely failing to discharge core duties.

Complaint 6 – safeguarding failures

- 18 Potto council received a £12.8k statutory fee, which “*must be paid and is due immediately on receipt of invoice*” (ie, on 30 May 2024), see excerpt below:

TOTAL PAYABLE

£12,797.70

THIS IS A STATUTORY FEE WHICH MUST BE PAID. PAYMENT IS DUE ON RECEIPT OF INVOICE

- 19 Shockingly, this fee or invoice was not even noted on the next council agenda dated 03 July 2024, nor on the meeting minutes.
However, judging by the recent bank balances published in the 2024 minutes, it would appear that this invoice has still NOT been paid - over six months later.
The clerk has failed to act to safeguard public money – a statutory duty.

Next steps

- 20 Nevertheless, noting the above issues, I request that this complaint **be fully, properly and dispassionately investigated** in FULL 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.
- 21 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.
- 22 Such a response will be wholly without foundation, ill-founded, undermine confidence in the council’s accountability to the public, demonstrate ongoing 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 Potto council Code of member Conduct** for each member who encourages, endorses, aides, abets, accepts or agrees to such a response.

- 23 Such a response will indicate the continuance of an ongoing course of **member misconduct** that characterises the harassment of a member of the public.
Such a response will indicate that the intention of members is to undermine due process (a very clear **breach of the Nolan Principles** and a breach of the Potto council Code of member Conduct) and it will be detrimental to proper practice, due process and, ultimately, to each councillor 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**.
- 24 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”*.
- 25 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 the Judge’s Directions.
- 26 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.
- 27 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 from a similar legal authority.

- 28 Potto council has confirmed in writing (ref a FOI request) that it does not hold any such corroborating data to support 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 which 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.
- 29 Potto council is reminded that any such a record is **not a substitute** for carrying out a proper investigation, in compliance with its Complaints Procedure.
Any such inappropriate record will initiate further action.
- 30 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.

07 November 2023 complaint

- 31 My preceding complaint dated 07 November 2023 has not yet been handled or addressed in accordance with the Potto council complaint procedure and as such it remains outstanding. Nevertheless, evidence in the 2023-24 Annual Return Notes, see excerpt below, verifies that the allegations in the complaint are each justified, accurate and robust.
I look forward to receipt of the council's detailed report about this 2023 complaint.

- Note 1 Potto Parish Council is cognisant of the fact that during the 2022 – 2023 accounting period the Parish Council were the recipients of a Public Interest report from the external auditors.

The Public Interest Report prepared by PKF Littlejohn dated 21st July 2022 contained 17 recommendations, based on these recommendations an action plan was developed and agreed during the public meeting for the PIR.

Potto Parish Council implemented the Action Plan following the PIR public meeting, all the actions in the PIR Action Plan have now been implemented.
- Note 2 Assertion 2, responded No as the Annual Meeting was not properly called and minuted.
- Note 3 Assertion 2, responded No as the financial regulations were not followed for the expenditure for the repairs to the road sign.
- Note 4 Assertion 2, responded No as PPC's registration under the PAYE scheme had lapsed.
- Note 5 Assertion 3, responded No as PPC has breached a number of regulations during the accounting period.
- Note 6 Assertion 3, responded No as minutes did not record the ICO Appeal being struck off.
- Note 7 Assertion 3, responded No as External Auditors final report for 2018/19 has an incorrect link on website.
- Note 8 Potto Parish Council is currently aware that an individual has raised an objection to the 2022-23 Annual Return, PPC is committed to resolving these objections with PKF Littlejohn.