

Sandford St Martin Parish Council

External Auditor Consideration of Objection 2017/18

1. As Auditor for Sandford St Martin Parish Council I received a formal objection from Mrs J F Simpson in respect of the 2017/18 Annual Governance and Accountability Return period.
2. She has raised 4 objections to the Auditor under section 27 of the Act. As Auditor I have decided the objection(s) are eligible, and have decided to consider them.
3. Her objections are reviewed and considered in turn below:
4. Objection 1 raised a concern that amounts had not been either fully recorded or reported within the accounts in a specific accounting year.
5. Review:
 - 5.1. Enquiries were made as to timing and method of expenses being recorded. The council confirmed it prepares its accounts using a Receipts and Payments method.
 - 5.2. This is an acceptable method for a Council of this size to use as stated in the Accounts and Audit Regulations 2015, Part 4, Regulation 11(3).
 - 5.3. I have reviewed a summarised cash sheet of the 2017/18 accounts which agrees to the amounts shown on the Annual Governance and Accountability Return (AGAR 2) completed by the Council.
 - 5.4. Receipts and payments based accounts only include amounts physically received and paid by the Council during the period.
 - 5.5. The amounts shown represent amounts paid in and out of the bank account during that financial year and the bank reconciliation agrees to the bank account balance as at 31 March 2018.
 - 5.6. I have also reviewed the cashbook of the Council for the 2018/19 year which shows further payments have been made during 2018/19 in relation to both legal costs and settlement costs which is in line with the accounting policies adopted by the Council.
6. Decision:
 - 6.1. Expenditure reported in the 2017/18 accounts has been appropriately recorded on a receipts and payments basis as declared by Parish Council.



- 6.2. Therefore I can see no basis to make either an application to a court or make a Public Interest Report.

7. Objection 2 raised a concern that amounts pledged to the Council by Parishioners may be on the basis of loans and, if this was the case, would require to be repaid by the council at some point in the future which would represent a significant future cost to the council to be met by the public purse not fully identified and explained to the members of the Parish.

8. Review:
 - 8.1. Enquiries were made as to the nature of the monies pledged to the Council and whether these amounts would require to be repaid. The clerk has confirmed, in writing, that these amounts represent gifts/donations to the Council in support of a legal action undertaken by the Council and do not require to be repaid.

 - 8.2. I understand from the Clerk that £16,000 has been received during the 2018/19 year under the pledges and £10,000 has been paid out in the same period by the Council in settlement of the Court Case.

 - 8.3. This has been supported by the amounts recorded within the accounts for the 2018/19 year which show the income and the expenditure and also on the 2018/19 AGAR.

9. Decision:
 - 9.1. From this information I do not believe a future liability, in the form of repayment of loans, had been incurred by the Council.

 - 9.2. Therefore I can see no basis to make either an application to a court or make a Public Interest Report.

10. Objection 3 raised a concern that the annual process of budget setting for the 2018/19 year did not adequately take into account the legal expenses, known and/or anticipated, at that time, in setting the level of precept.

11. Review:
 - 11.1. Enquiries were made as to the budget process used by the Council in respect of the setting of the Precept for 2018/19. The Councillors have confirmed via the clerk that the budget was set prepared using the estimate of legal costs provided verbally to the Council by their solicitor of between £7,000 & £8,000.

 - 11.2. At that time the budgets were being concluded (around January 2018) the Council had received invoices for advice to date totalling £3,732.

 - 11.3. The Council maintain that their solicitor's advice to them, albeit only provided verbally, was that the Council had a strong chance of success in the case.



- 11.4. The Councillors further explained that had the outcome of the case been in their favour, it would have expected to have had its costs paid by the applicants. Therefore no additional budget was raised for legal costs.
 - 11.5. However, the Council took what it considered at the time to be a very prudent view in considering the possibility of losing the case and a decision was taken to solicit pledges from a number of villagers to assist with those costs should they arise.
 - 11.6. Based on the expected level of the Council's legal fees noted in paragraph 10.1, it was concluded a reasonable estimate of total fees payable would be approximately double the Council's costs.
 - 11.7. That provided a total of £15,000 as a basis to source pledges from villagers.
 - 11.8. The case was heard on 20-21 March 2018, additional submissions were made at the beginning of April and the judgement was made on 20 April 2018.
 - 11.9. The Council have provided that the next amount of legal costs related to advice received in the final period before the hearing, when a substantial amount of documentation was submitted by the applicants which needed to be reviewed by their solicitor.
 - 11.10. During this time (March/April 2018) additional legal fees were raised by the Council's solicitor.
 - 11.11. These fees had not been anticipated whilst the budget was being prepared in January 2018 and therefore were not included within the 2018/19 budget and/or the precept.
 - 11.12. The Council has stated it believed it had taken sufficient steps to assess its own position, as at January 2018.
 - 11.13. It also stated it felt itself to be in a reasonable financial position to defend the legal action having obtained pledges to cover £15,000 of legal costs from the public.
 - 11.14. On reflection of the final outcome of the case and the legal costs incurred, it is clear that the council did not have sufficient reserves, even with the pledges from villagers and was required to increase its precept in 2019/20 to cover the shortfall.
12. Decision:
- 12.1. Based on the information and responses provided, I can see no basis for making an application to the Court.



- 12.2. I have also considered the possibility of making a Public Interest Report in relation to this matter, but am not minded to do so. This is because the majority of facts are already in the public domain having been raised in a court of law.
 - 12.3. The fact that the final legal fees and related costs were considerably more than those initially budgeted due to the final outcome of the case, does not itself evidence that proper budgeting processes were not followed.
 - 12.4. However, the Council relied solely on verbal statements from its solicitor in relation to both the costs estimates and the likelihood of outcome for the case. At no time was either of these provided to the Council in writing.
 - 12.5. Neither did the Council set out in writing its understanding of the position to the Solicitor requesting a written reply confirming /correcting their understanding.
 - 12.6. I am therefore raising the following recommendations under Part 5, Schedule 27(6) of the Local Audit and Accountability Act 2014.
 - 12.7. Where the Council's Financial Regulations require cost estimates to be provided or the Council has requested a cost estimate be provided, the Council should ensure such estimates are provided in writing.
 - 12.8. Any such written cost estimate should explicitly set out the basis for the charges being estimated.
 - 12.9. These should be regularly reviewed against work done and charges levied to date to ensure budgets are controlled and any changes/additional costs can be identified as early as possible.
 - 12.10. Any and all legal or similar advice provided to the Council should in future be provided in writing, as far as possible.
 - 12.11. Where such advice has not been provided in writing, the Council should provide a written copy of its understanding of the advice back to the provider for confirmation or correction before relying on it.
13. Objection 4 raised a concern that the council did not appear follow proper process for the authorisation of expenditure and acted outside its powers in incurring 'significant costs' defending the legal action.



14. Review:

- 14.1. Enquiries were made as to the initial decision made to defend the legal action and into the method and recording of the approval of the expenditure relating to it.
- 14.2. Where the Council meeting went into private session minutes were not taken although discussions were had and decisions were taken.
- 14.3. Extracts from minutes provided were found to not to report the necessary outcomes and actions for the Council following these private sessions.
- 14.4. There was a lack of detail within the minutes recording where pre-authorisation of any expenditure had occurred.
- 14.5. All expenditure should be formally authorised at a meeting, even where that necessary permission has been sought and granted outside of the meeting itself and the money then spent.
- 14.6. This provides for the expense to be recorded in the minutes as necessary to ensure it was clear that an active decision to both incur and approve expenses had been made.
- 14.7. Minute extracts provide that payments for approval are listed prior to the meeting in a paper. Additional invoices are listed within the minutes as requiring payment, together with the resolution passing them to be paid.
- 14.8. It has been raised that, in one specific case, these additional payments were not clearly heard to have been verbally discussed within the meeting before the authority to make payment was given.
- 14.9. On further inquiry to the Council regarding their procedures, it was provided that where an item of previously unauthorised expense was identified as being likely to be incurred before the next Council meeting, email correspondence between the Clerk and the Councillors made the necessary requests and authority for the expenditure was sought.
- 14.10. A specific example of an email string between Councillors and the Clerk was provided identifying that pre-authorisation to incur an amount of travel, accommodation and subsistence costs was sought and obtained.
- 14.11. It was clear from the string of emails the approximate amount of that expense and the basis for incurring the costs were explained to the Councillors. It was also clear that all of the Councillors approved the payment prior to its being incurred.



- 14.12. However, on review of the relevant minute from the next Council Meeting, the record merely showed the payment being recorded as being made without any reference to the email confirmation, further explanations, discussion or validation.
- 14.13. Similarly the minutes were very brief in summarising matters of the Council.
- 14.14. This would suggest to me that whilst a procedure for authorising payments exists and appears to be being followed there is inadequate recording/reporting of the facts within the minutes, making it difficult for the public to follow the process through to action.
15. Decision:
- 15.1. Based on the information and responses provided, I can see no basis for making an application to the Court as the costs appear to relate to matters the Council was entitled to consider for the public benefit following the legal advice received.
- 15.2. I have also considered the possibility of making a Public Interest Report in relation to this matter, but am not minded to do so as the main failing of the Council appears to be in relation to the minutes reporting the decisions made rather than the decision making process itself.
- 15.3. I am raising the following recommendations under Part 5, Schedule 27(6) of the Local Audit and Accountability Act 2014.
- 15.4. The minutes taken need to be sufficiently detailed to adequately reflect the topics under discussion, key points raised and the outcomes for/decisions taken by the council.
- 15.5. The Council should ensure that any and all decisions made/expenditure authorisations required by the council between meetings, for practical reasons, must be brought to the next meeting and formally ratified so that those decisions are fully included in the public record.
- 15.6. Where this process requires approval or authorisation of expenses not previously listed for payment, the Council should ensure that it does follow its protocols in ratifying last minute invoices.



Material information used in forming these decisions

- Summary accounts of the Council 2017/18; public document
- Summary accounts of the Council 2018/19; public document
- Email confirmation (extracts) from the Council confirming payments made post 1/4/19; Attachment 1
- Email confirmation from the Council confirming pledged amounts received are not repayable; Attachment 2
- Email responses from the Council relating to budgeting process for the estimated levels of legal fees at each point and the timings of fee invoices received; Attachment 3
- Email correspondence between the Clerk and Councilors requesting and obtaining authorization between meetings for costs to be met by the Council; Attachment 4
- Minutes of various Council meetings where matters and expenses were discussed and authorised; public documents

I would draw you attention to Schedule 11 of the Local Audit and Accountability Act 2014, a copy of which I can provide. Information relating to this matter is provided solely for the purposes of my audit and for no other purpose. It should not be disclosed to a third party, other than a legal representative, without my consent, or otherwise permitted by Schedule 11.

Moore

9/1/2020