

The Members of Groby Parish Council
c/o Parish Clerk/RFO

DDI:
+44 (0)20 7516 2200

Email:
sba@pkf-l.com

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Groby Parish Council: audit of accounts for the years ended 31 March 2020, 2021 & 2022 – Public Interest Report

Dear Members

Background

Under section 17 of the Local Audit and Accountability Act 2014 (the 2014 Act), we have been appointed as auditor of the Council's accounts for the years ended 31 March 2020, 2021 and 2022.

Under paragraph 1(1) of Schedule 7 of the 2014 Act, we have a duty to consider whether to make a public interest report on any matter coming to our notice during an audit and relating to the Council or an entity connected with the Council, so that the matter can be considered by the Council or brought to the public's attention.

Under section 27 of the 2014 Act, local government electors have the right to make objections concerning a matter in respect of which we could issue a public interest report.

Under paragraph 1 of Schedule 6 of the 2014 Act, the Comptroller and Auditor General has a duty to prepare a Code of Audit Practice prescribing the way in which we discharge our functions under the 2014 Act. In exercise of that duty, the Comptroller and Auditor General issued a Code of Audit Practice in April 2020 that is applicable to the audit of the Council. In particular:

- paragraph 5.3 of the Code provides that where any representations are made to the us or information is provided that is relevant to the audit, or relevant matters otherwise come to our attention, we should consider whether the matter needs investigation and action under these additional powers and duties;
- paragraph 6.7 of that Code provides that, in considering whether to exercise any of our additional powers, we should have regard in particular to the principle of proportionality, unless we have significant concerns about the way the Council is being managed or led, or we judge that the exercise of additional powers would be in the public interest.

PKF Littlejohn LLP
15 Westferry Circus,
Canary Wharf, London
E14 4HD

T: +44 (0)20 7516 2200
www.pkf-l.com

Local government electors for the Council's area have:

- made two objections to the Council's accounts for the year ended 31 March 2021 that we have accepted for consideration; and
- raised certain other matters with us in relation to the years ended 31 March 2020, 2021 and 2022. We identified those such matters that warranted further enquiries on our part.

Given that a number of the issues are interconnected, we formed the view that it was most appropriate to consider them together.

As a result of our consideration of the objections and the other matters, we have identified weaknesses in the arrangements in place for the governance of the Council in relation to some of the matters raised with us. We have determined that:

- taken together those matters are of sufficient significance to warrant us making a public interest report so that the matters can be considered by the Council and brought to the public's attention; and
- the making of a public interest report is a proportionate response and in the public interest.

This report details our concerns in six areas and makes recommendations for improvement for consideration by the Council.

We are sending a copy of this report to:

- the Secretary of State, as required by paragraph 3 of Schedule 7 of the 2014 Act;
- Groby Community Interest Company, as permitted by paragraph 4(6) of Schedule 7 of the 2014 Act
- the local government elector who objected to the Council's accounts, as permitted by paragraph 4(6) of Schedule 7 of the 2014 Act;
- the Monitoring Officer for Hinckley and Bosworth Borough Council, as permitted by paragraph 4(6) of Schedule 7 of the 2014 Act; and
- Smaller Authorities' Audit Appointments Ltd (SAAA), as permitted by paragraph 4(6) of Schedule 7 of the 2014 Act.

Publication of minutes and details of decisions made under delegated authority

Local authorities are publicly accountable for their decisions. The Council has a duty to publish:

- minutes of the meetings of the Council and its Committees (in accordance with the Model Publication Scheme); and
- details of decisions made by officers under delegated authority (in accordance with Regulation 8 of the Openness of Local Government Bodies Regulations 2014).

We are concerned that:

- from 2016 to 2022, the Council did not publish minutes of its committees with no delegated authority; and
- the Council did not publish details of decisions made by its Clerk under delegated authority in 2020, despite explicit delegation to the Clerk in March 2020 at the outset of the Covid-19 emergency.

We recommend that the Council ensures that it complies fully with its obligations on publication of minutes and details of decisions taken under delegated authority.

Consideration of the Annual Governance and Accountability Return

Annually the Council is required to consider and approve an Annual Governance and Accountability Return (AGAR) that is subsequently published. The AGAR is a key means by which the Council demonstrates its accountability for public funds and deserves appropriate scrutiny prior to approval.

The Council's Standing Orders require the circulation of the draft AGAR at least 14 days before the meeting at which it is to be considered.

The Council's AGAR for the year ended 31 March 2020 was considered at the meeting of the Council on 27 August 2020. However, the draft AGAR was only circulated to members of the Council three days prior to the meeting, rather than the required 14 days. We are concerned that the Council proceeded to approve the AGAR in any event rather than defer approval of the AGAR to a subsequent meeting.

We recommend that the Council ensures that it consistently complies with the specified period for circulation of the draft AGAR to members before approval of the AGAR.

Appointment of officers

Section 112 of the Local Government Act 1972 empowers the Council to appoint officers for the discharge of its functions. These officers include the Council's Clerk and Responsible Finance Officer (RFO).

Section 101 of the Local Government Act 1972 empowers the Council to delegate its functions to a Committee or an officer but not to an individual member or members of the Council.

We are concerned that the Council did not properly appoint officers of the Council:

- the Council purported to appoint a Data Protection Officer at an informal meeting attended by the Council's Clerk and certain members held on 17 June 2020. However, this meeting was not a properly constituted meeting of the Council or of a Committee acting under delegated authority nor was there any written decision of the Clerk acting under delegated authority. No action was subsequently taken for the Council to approve the appointment retrospectively;
- the Council purported to appoint the Data Protection Officer as Acting Clerk/RFO. We are advised that the decision was taken by two councillors acting other than through a Council or a Committee meeting. This decision was not taken by the Council or a Committee acting under delegated authority. No action was subsequently taken for the Council to approve the appointment retrospectively;
- the Council purported to appoint a Clerk/RFO from 24 August 2020. However, this appears to have been based on a decision made by individual members acting other than through a Council or a Committee meeting. This decision was not taken by the Council or a Committee acting under delegated authority. The Council subsequently ratified the temporary appointment at its meeting on 14 September 2020.

We recognise the exceptional circumstances of Covid-19 and the Council's urgent need to address the issues it was facing; however:

- we are concerned that the Council failed to avail itself of the option for members to attend meetings virtually. The Council highlighted concerns about the security of its chosen video conferencing platform. Given the availability of multiple video conferencing platforms, we do not find this a convincing explanation; and
- we are concerned about the failure to regularise appointments on a timely basis.

We recommend that the Council ensures that:

- **all decisions are made by the Council, a Committee acting with delegated authority or an officer acting with delegated authority; and**
- **in the event of identification of failure to secure the required authority of the Council, a Committee or an officer, prompt retrospective approval is sought.**

Entering into compromise agreements with former employees

The Council has a power to enter into agreements with third parties to settle any actual or potential claims against it.

Prior to 2019, the Council identified overpayments to former members of staff and in January 2019 instructed solicitors to seek recovery from them. In February 2019, the Council received legal advice casting doubt on the success of any action to seek recovery. In March 2020, the Council's solicitors sent letters to two former members of staff seeking recovery.

The two former members of staff alleged that the Council had breached a statutory requirement and indicated that they intended to take legal action against the Council. In June 2020, the Council agreed to enter into compromise agreements with the two former members of staff as a result of which neither the Council nor the two former members of staff would pursue the claims.

In our view, the overpayments being sought by the Council were relatively small in the context of the uncertainty surrounding recovery and the potential legal costs that the Council might incur in seeking recovery and resisting any claim by the two former employees. In our view, the decision to compromise the claims against the Council by agreeing not to seek recovery was capable of being a lawful decision.

We are, however, concerned by the decision making process:

- there is no evidence that the Council considered the legal advice from February 2019 prior to the dispatch of letters by its solicitors to the two former employees;
- the Council did not obtain legal advice before deciding to enter into compromise agreements;
- there is no recorded decision of the Council or the Council's Clerk acting under delegated authority to authorise entering into the agreements;
- given the availability of alternative video conferencing platforms for meetings of the Council, the Council's expressed concerns about the security of its chosen video conferencing platform are not a convincing reason for not convening a Council meeting to consider the proposed compromise with the two former members of staff; and
- subsequently there was insufficient urgency in convening a meeting to approve the compromise of the claims by the two former members of staff.

We recommend that the Council ensures that it follows appropriate processes for considering any compromise agreements including:

- **seeking, considering and acting on appropriate legal advice; and**
- **ensuring appropriate decisions by the Council, a Committee with delegated authority or an officer with delegated authority.**

Payment to Ratby Co-operative Band

Council members are expected to demonstrate the highest standards in public life. Those standards include ensuring that private interests do not impinge on - and are not seen to impinge on - decisions when acting as a member of the Council. These principles are reflected in provisions relating to disclosure of pecuniary interests and participation in decisions in which there is a pecuniary interest contained in sections 30 and 31 of the Localism Act 2011 (the 2011 Act).

At its meeting on 6 January 2020, the Council approved an invoice from Ratby Co-operative Band in respect of a 'Carols Around the Tree' event held at the Stamford Arms, of which Councillor Rigby was the landlord. The Council's minutes record:

- no declaration of an interest on the part of Councillor Rigby; and
- that the payment was approved unanimously.

In our view, Councillor Rigby had a pecuniary interest in relation to the payment to Ratby Co-operative Band. Section 31 of the 2011 Act obliged him to disclose that interest and not participate in the vote on the payment. We recognise that this might have been an innocent oversight.

We recommend that the Council provides training to members on their responsibilities in declaring interests and the action required in response to declared interests.

Groby Community Interest Company (Groby CIC)

In 2013, a community interest company, Groby CIC, was established to manage land acquired by the Council. The Council agreed to transfer the title to the land to Groby CIC and to retain a shareholding in the company.

We are concerned that:

- the transfer of the title to the land agreed by the Council and Groby CIC has yet to take place. This exposes the Council to the risk of claims in respect of the land; and
- the record keeping in respect of the Council's interest in Groby CIC has been weak.

We recommend that the Council:

- **expedite the transfer of the legal title to the land to Groby CIC; and**
- **ensure that it maintains accurate records of its interest in Groby CIC.**

Next steps

In accordance with paragraph 4 of Schedule 7 of the 2014 Act, the Council must:

- as soon as practicable after receipt of this report, publish on its website the report and a notice detailing the subject matter of the report and stating where and when a member of the public may inspect and make copies of the report;
- as soon as practicable after receipt of this report, supply a copy to each member of the Council;
- ensure that any member of the public may inspect the report, make a copy of it or be supplied with a copy on payment of a reasonable sum;
- consider the report at a meeting within one month beginning from today unless we determine that the period of one month should be extended;
- publish on its website at least eight days before the meeting a notice specifying the time and place of the meeting at which this report will be considered; stating that the meeting will be held for the purpose of considering this report; describing the subject matter of this report;
- supply a copy of this report with the agenda for the meeting;

- not treat the report as exempt information; and
- as soon as possible after the meeting at which this report is considered, notify us of the decisions made and publish on its website a notice, approved by us, detailing the decisions made.

Yours sincerely

Handwritten signature in black ink, appearing to read "PKF Littlejohn" followed by a stylized flourish.

PKF Littlejohn LLP

cc DLUHC – Secretary of State
Groby Community Interest Company
The Objector
Monitoring Officer - Hinckley and Bosworth Borough Council
SAAA