

Report in the public interest

Kirby Muxloe Parish Council

Audit 2011/12



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Introduction

1 I am the auditor jointly appointed with Clement Keys to audit the accounts of Kirby Muxloe Parish Council for the year ended 31 March 2012. I have a duty to report in the public interest about something I believe that the Council should consider or the public should know about. I have decided to issue a report about the Council's governance for the year ended 31 March 2012.

2 The Parish Council must consider the report in public at a Council meeting held within one month of receiving it. At that meeting the Council must decide what action to take in response to my report.

3 I have a power to send a copy of this report to any person I see fit. I am therefore sending copies to:

- a. The objectors and other correspondents;
- b. The Council's internal auditor;
- c. The Chief Executive of Blaby District Council;
- d. The National Association of Local Councils; and
- e. The Leicestershire and Rutland Association of Local Councils.

4 I am also sending a copy to the Council's incoming auditors, Grant Thornton (UK) LLP, so that they can take my report into account in the conduct of their audits.

Background

5 The Council is responsible for the use of public funds raised by compulsory taxation. It is accountable to citizens as taxpayers and users of Council services for how it uses those funds.

6 That accountability is secured in part by the preparation of an Annual Return:

- a. Summarising its financial performance; and
- b. Giving assurances that it has a robust system of internal controls in place to protect public funds.

7 For the year ended 31 March 2012, the Council adopted that Annual Return on 7 June 2012.

8 Accountability also involves an annual external audit by auditors appointed by the Audit Commission. Reflecting the size of the Council, that audit involves limited procedures and does not result in a 'true and fair view' opinion on the Council's accounting statements, as would be given in the case of a larger public body or a company.

9 Local government electors have a right to inspect councils' accounts and to make 'objections', asking auditors to exercise their formal powers. Auditors have a duty in undertaking their audits to take into account information brought to their attention.

10 Seven local government electors exercised their right to object to the Council's accounts. The objections covered a total of 17 areas. The objectors and others also raised other issues with me.

11 My role is not to adjudicate on the wisdom or otherwise of what the Council has done. The Council is a democratically elected body and, within the constraints imposed by the law, has significant freedom of action.

12 But the Council has a duty to conduct its affairs in the right way – so that it complies with the law, complies with its own procedures, accounts for its resources, protects the resources entrusted to it and, vitally, can be seen to have done so.

13 Transparency about governance provides reassurance to citizens. And it protects councillors and officers of the Council from allegations of impropriety.

14 I am concerned that the Council has, in many areas, failed to establish and secure the standards of governance and accountability that citizens have the right to expect.

15 In the remainder of this report, I consider the assurances which the Council gave the public on 7 June 2012 about:

- a. Its accounting statements;
- b. Internal control;
- c. Non-compliance with laws, regulations and codes of practice;
- d. Public rights in the audit process;
- e. Risk management;
- f. Internal audit; and
- g. Trust funds.

16 My findings and conclusions, based on enquiries into the specific matters raised with me, complement but do not replicate the findings of the independent investigation into the running of the Council. This was commissioned by the Council following the outcome of the parish poll of 14 May 2012 and the results were reported to the Council on 29 April 2013.

Accounting statements

17 The Council has a duty to prepare accounting statements in accordance with 'proper practices' and include those in its Annual Return.

18 In the annual governance statement the Council stated that it had approved accounting statements that had been prepared in accordance with proper practices.

19 For parish councils 'proper practices' require simplified accounting statements comprising a one page proforma. The Council can elect to prepare this on either an 'income and expenditure' basis (reflecting income and expenditure relating to the year) or a simpler 'receipts and payments' basis (reflecting money received and paid in the course of the year).

20 The Council cannot demonstrate that it has approved accounting statements prepared in accordance with proper practices:

- a. It elected to move from preparing its accounting statements on an 'income and expenditure' basis for the year ended 31 March 2011 to a 'receipts and payments' basis for the year ended 31 March 2012, even though it maintained its accounting records on an 'income and expenditure' basis. It has not provided evidence to support the adjustments that it made to the numbers from its accounting system in producing its accounting statements. Nor has it in its accounting statements for the year ended 31 March 2012 appropriately restated its financial position at the start of the financial year or its financial performance for the previous year;
- b. A key means of validating the integrity of the Council's accounts is the preparation of a 'bank reconciliation' which explains the difference between the cash recorded in the Council's accounting statements and that reported in its bank statements. Whilst the Council prepared a bank reconciliation and submitted it for audit, it did not respond to the recommendations of its internal auditor relating to the preparation of a bank reconciliation;
- c. The Council does not have a comprehensive asset register to support the fixed assets, including land and buildings, included within the accounting statements and is therefore unable to demonstrate the completeness and accuracy of the figures reported;
- d. The Council reported in its accounting statements that the value of its fixed assets and other long term assets had

remained unchanged in the course of the year despite recording in its accounting records that it had incurred capital expenditure. The Council provided me with explanations about capital expenditure relating to different items to those recorded in the accounting records; and

- e. Whilst the Council's internal auditor was able to provide assurances to the Council about accounting for Value Added Tax (VAT) within its accounting system and to Her Majesty's Revenue and Customs, the Council cannot demonstrate that it has appropriately accounted for VAT within its accounting statements.

Internal control

21 The Council is responsible for establishing and maintaining an effective system of internal control. Such a system comprises procedures and checks to ensure that the Council conducts its business to secure its objectives, comply with its obligations, safeguard its assets and prevent and detect fraud and corruption. The Council has a duty to undertake an annual review of the effectiveness of the system it has established.

22 In its annual governance statement the Council stated that it had an effective system of internal control and had undertaken a review of its effectiveness.

23 However, in my view the Council was not in a position to make this statement because:

- a. It did not operate adequate systems of control over the maintenance of its accounting records and preparation of its accounting statements;
- b. It did not operate a formal system to match invoices received to orders raised;
- c. It did not have appropriate arrangements to deal with non-routine transactions such as recovery of salary overpayments;
- d. It did not have effective mechanisms to specify projects or control the volume of additional work awarded to existing contractors; and
- e. It did not have a process for weighing the benefits against costs for major commitments.

Non-compliance with laws, regulations and codes of practice

24 The Council is established by statute. It must comply with the law and have regard to applicable codes of practice.

25 In its annual governance statement the Council stated that it had taken reasonable steps to satisfy itself that there had been no instances of non-compliance with laws, regulations or codes of practice that could have a significant effect on the ability of the Council to conduct its business or its finances.

26 However, in my view the Council was not in a position to make this statement. There is no evidence that the Council conducted a thorough review.

27 Moreover, I have identified instances of actual or potential non-compliance:

- a. The Council did not comply with the requirements of the Freedom of Information Act 2000 relating to the provision of information to members of the public. As a result it received a decision notice from the Information Commissioner upholding a complaint against it (and indeed has subsequently received three further such notices);
- b. In a number of instances the minutes of the Council or its Committees do not record explicit agreement to incur expenditure or make payments;
- c. There is insufficient evidence to demonstrate that the Council passed the necessary resolutions to exclude members of the public from meetings of committees;
- d. The Council entered into a major financial commitment without an explicit reference on the agenda that such a proposal was to be considered; and
- e. The Council made a grant under the mistaken impression that it could only rely on section 137 of the Local Government Act 1972 which allowed the Council to incur expenditure for which it otherwise did not have powers up to a specified ceiling. As the Council subsequently established, it could not rely on this power as it had another power on which it could rely which did not set a limit on the expenditure that could be incurred.

28 To provide a framework for its financial administration the Council adopts a set of Financial Regulations with which it and its staff must comply.

However, I am concerned that these have not been appropriately maintained and enforced:

- a. In response to my enquiries the Council was not able to demonstrate unambiguously what Financial Regulations were in force at what date and at which meeting of the Council they were adopted. It subsequently advised me that the Financial Regulations posted on the Council's website in March 2013 were not the correct version; and
- b. The Council did not enforce its own Financial Regulations in relation to a contract which prohibited sub-contracting without specific consent.

Public rights in the audit process

29 The Council is legally obliged to give members of the public the right to inspect its accounts and supporting records on reasonable notice during a 20 working day period specified by the auditor.

30 In its annual governance statement the Council stated that it had provided such an opportunity.

31 However, the Council in practice constrained the periods of time allowed to inspect the accounts to one hour or less per individual. Some of my correspondents believed that they were, as a result, not allowed to exercise their rights effectively.

32 I recognise that there was an unusual number of requests for access to the accounts and supporting information during the inspection period and that placed additional demands on the Council. Whilst ultimately only the courts could adjudicate as to the lawfulness of the Council's actions, in my view the Council may not have complied with its statutory duties. The Council has a duty to be accountable – and to be seen to be accountable. Limiting the time for inspection in the way that it did was inconsistent with the principles of public accountability.

Risk management

33 Central to good governance is the identification, assessment, mitigation and monitoring of risks.

34 The Council stated in its annual governance statement that it had carried out an assessment of risks and had taken appropriate steps to mitigate those risks.

35 However, the Council's internal auditor reported in the same Annual Return that the Council had not assessed significant risks or reviewed the adequacy of arrangements to manage those risks.

36 I am concerned that there is no evidence of either a comprehensive assessment of risks or of consideration of the contradiction between the internal auditor's report and the Council's annual governance statement. The findings of my work, detailed elsewhere in this report, lead me to conclude that the Council's arrangements for identification, assessment, mitigation and monitoring of risks were not sufficiently developed.

Internal audit

37 The Council has a statutory duty to arrange for an internal audit of the Council. Such a review of the Council's systems and procedures is an essential part of the system of internal control. Appropriate consideration of the internal auditor's findings and recommendations is one of the means by which the Council demonstrates its commitment to good governance.

38 In its annual governance statement the Council stated that it took appropriate action on all matters raised in the internal auditor's reports.

39 For the year ended 31 March 2012 the internal auditor produced two reports – the short pro forma report included in the Annual Return and a longer report identifying and categorising risks.

40 The longer report, identifying and categorising weaknesses in control, was vital evidence to assist Council members in adopting the accounting statements and approving the annual governance statement. The Council has confirmed that this report, although received, was not made available to Council members at that time, impeding their ability to discharge those important governance responsibilities.

41 I am concerned that, although the Council has asserted that it considered the report and implemented an action plan in response to the findings, there is no evidence from the minutes that the Council as a body endorsed the proposed actions or monitored their implementation.

Trust funds

42 Many councils act as sole managing trustees, especially of charities established for recreational purposes. Acting as sole trustees they are bound by charity law and the terms of charitable trusts. They therefore need to distinguish trust property from other local authority property and decision making as trustee from decision making as a local authority.

43 In its accounting statements and annual governance statement the Council stated that it did not serve as a trustee. However, these statements were inaccurate.

44 Moreover, I am not satisfied that the Council has discharged its responsibilities as sole trustee. I have established that:

- a. The Council is sole trustee of the Recreation Ground charity;
- b. It did not maintain separate accounts for the charity; and
- c. It did not in consequence consider whether an audit or independent examination of the charity was required.

Conclusion

45 Parish councils are relatively small organisations operating in a complex environment. Things do not always work perfectly and it is unreasonable to expect them to.

46 However, I have identified a number of significant weaknesses in the Council's governance across the broad range of areas covered by the Council's annual governance statement. In respect of each of those areas the Council needs to agree corrective action and monitor its implementation.

47 My greatest concern is not that there were weaknesses but that the Council made important assertions to the public that there were none. It did so without sufficient enquiries and in instances in the face of evidence to the contrary.

48 The annual governance statement is a key means by which the Council is accountable to the public. But making inaccurate statements without appropriate enquiry undermines that accountability.

49 Some councillors have told me that they feel that the actions of some members of the public undermine their ability to conduct the business of the Council. I am concerned that the representations received from the Council have similarly focussed on the conduct of individuals. In many cases the representations did not address the substantive governance responsibilities of the Council or the specific questions that I posed.

50 In an environment characterised by challenge and conflict it is even more important for the Council to conduct its business in the right way and to take seriously its ability to demonstrate to the public that it has done so.

Recommendations

51 I therefore make the following recommendations to the Council:

Accounting statements

- R1** Strengthen arrangements for maintenance of accounting records and preparation of accounting statements, considering the need for external support.
- R2** Agree a programme for the preparation of the annual accounting statements (including the preparation of a bank reconciliation and, as necessary, making adjustments in respect of opening balances and comparative figures) and monitor its implementation.
- R3** Prepare and keep up to date a comprehensive asset register linking fixed assets to supporting title documents.

Internal control

- R4** Match invoices to orders prior to payment.
- R5** Review arrangements for scoping projects and controlling the volumes of additional work awarded to contractors.
- R6** Introduce formal evaluation of the benefits and costs of proposals for significant proposed expenditure.

Non-compliance with laws, regulations and codes of practice

- R7** Review arrangements for compliance with the Freedom of Information Act 2000.
- R8** Review arrangements for preparation of agendas and minutes so that:
 - proposals to incur expenditure are clearly identified;
 - decisions to incur expenditure are recorded; and
 - resolutions to exclude the public are minuted.
- R9** Review arrangements for seeking external advice, including on the powers on which the Council is relying when making decisions.
- R10** Establish robust arrangements for maintaining, promulgating and monitoring compliance with the Council's Financial Regulations.

Public rights in the audit process

- R11** Establish revised arrangements for allowing the exercise of public rights to inspect the Council's accounts.

Risk management

R12 Introduce a formal process for risk identification, assessment, mitigation and monitoring.

Internal audit

R13 Consider all findings of the Council's internal auditor before approving the annual governance statement included in the Annual Return.

R14 Agree actions for implementation of internal audit recommendations and monitor their implementation.

Trust funds

R15 Clearly identify in agendas, minutes and accounting records when the Council is acting in its capacity as sole trustee.

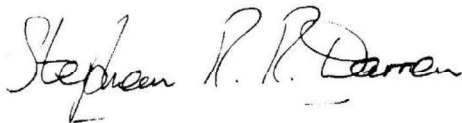
R16 Make accurate returns to the Charity Commission in respect of the Recreation Ground charity including, if necessary, accounts including the report of an auditor or independent examiner.

General

R17 Establish a formal process for the Council as a body to consider all relevant information to support the annual governance statement included in the Annual Return prior to its adoption.

R18 Establish the training needs for councillors and officers to discharge their governance responsibilities and allocate appropriate resources to allow these to be met.

R19 Agree an action plan in response to the recommendations in this report and in the report prepared following the independent investigation and monitor its implementation at each meeting of the Council.



Stephen Warren
District Auditor

1 May 2013