

FAO: The Members of Orchard Park Community
Council

Our ref CA0198
SAAA ref SB06464

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31 March 2021

Dear Members

Orchard Park Community Council

Public Interest Report: Failure to submit an Annual Governance & Accountability Return (AGAR) for the year ending 31 March 2020

As appointed auditors, we have a duty to consider whether to issue a public interest report when a matter comes to our attention which we believe the authority should consider or about which the public should be made aware.

This letter constitutes a public interest report under Schedule 7 of the Local Audit and Accountability Act 2014 (the Act) about the authority's failure to prepare an AGAR for the year ended 31 March 2020 as required by the Accounts and Audit Regulations 2015, the Accounts and Audit (Coronavirus) (Amendment) Regulations 2020 (SI 2020/404) and associated guidance⁸.

The authority is responsible for the use of funds raised by local taxation and should properly account for how it has used and protected those funds. Orchard Park Community Council is required by law to prepare an AGAR:

- summarising its financial position; and
- giving assurances that it has adequate governance arrangements to protect public funds.

Smaller authorities which meet certain conditions for a given reporting year (including gross income or expenditure which does not exceed £25,000) are eligible to claim exemption from the limited assurance regime and are therefore not required to submit the AGAR to their external auditor. It is possible that Orchard Park Community Council has certified itself exempt, but has failed to submit a copy of the Certificate of Exemption to us. To be exempt from review, the Local Audit (Smaller Authorities) Regulations 2015 require that a smaller authority certifies itself exempt, but also notifies the 'specified person' that they have done so (Regulation 9(6)). The specified person, currently Smaller Authorities' Audit Appointments Ltd (SAAA), has

⁸ Proper practices are set out in *Governance and Accountability for Smaller Authorities in England*, which is approved by the Joint Panel on Accountability and Governance (JPAG) and published jointly by the Society of Local Council Clerks (SLCC), the National Association of Local Councils (NALC), and the Association of Drainage Authorities (ADA).

contractually agreed that instead of SAAA being notified, the appointed auditors will be responsible for receiving notification by way of a completed Certificate of Exemption. As we have not yet received a Certificate of Exemption, we are required to proceed on the basis that Orchard Park Community Council is not exempt and therefore must submit to us an AGAR and supporting documentation for the year ended 31 March 2020.

We issued a statutory recommendation to the authority on 27 November 2020 that it should submit an approved AGAR or Certificate of Exemption (if appropriate) within 42 days of that letter.

As of 31 March 2021 no such return has been submitted to us. As a result, Orchard Park Community Council has failed in its statutory duties to account to its taxpayers for the use and safeguarding of their money.

We have now exhausted all options open to us to obtain an AGAR, and therefore have no option but to move towards certifying completion and bringing to an end our responsibilities as auditor for the year ended 31 March 2020. We have taken this decision reluctantly, as once completion is certified, public rights (such as the rights to inspect the accounting records and associated documents and to ask questions or make objections to the auditor) can no longer be exercised.

The Act requires the authority to consider this public interest report at a public meeting within one month of the date of this letter. The requirements of Schedule 7 are attached, and the authority should ensure that it complies with all requirements regarding publicity of the report, consideration at a meeting and publicity of decisions taken at that meeting.

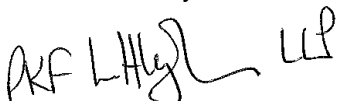
Unless an approved AGAR is received, it is our intention to certify completion and bring our responsibilities to an end in 42 days from the date of this letter, when we will issue our final invoice. This letter gives rise to an additional fee of £600 plus VAT payable by Orchard Park Community Council on conclusion of the review process, for the additional work involved in repeatedly chasing for the required documentation and the production of this report.

If an approved AGAR and associated documentation are received before we have certified completion, we will carry out a limited assurance review of the AGAR at a further cost of £600 plus VAT.

Orchard Park Community Council should also note that, as a result of receiving this public interest report, it will not be eligible to certify itself as exempt from limited assurance review in 2020/21 (if it would otherwise be eligible), as it will have failed one of the qualifying requirements set out in Regulation 9(3) of The Local Audit (Smaller Authorities) Regulations 2015.

We have a duty to send a copy of this report to the Secretary of State and the power to send a copy to anybody we think appropriate.

Yours faithfully

A handwritten signature in black ink, appearing to read 'PKF Littlejohn LLP', is written over a horizontal line.

PKF Littlejohn LLP

cc Clerk -Orchard Park Community Council, Secretary of State, National Audit Office, Smaller Authorities' Audit Appointments Ltd, Monitoring Officer of local authority (local councils only)

Extracts of Schedule 7 of the Local Audit and Accountability Act 2014:

Public interest reports

- 1 (1) A local auditor of the accounts of a relevant authority must consider whether, in the public interest, the auditor should make a report on any matter coming to the auditor's notice during the audit and relating to the authority or an entity connected with the authority, so it can be considered in accordance with this Schedule or brought to the public's attention.
- (2) A report under sub-paragraph (1) is referred to in this Act as a public interest report.
- (3) A public interest report may be made during or after the end of an audit.
- (4) A local auditor must notify a relevant authority's auditor panel (if it has one) as soon as is reasonably practicable after making a public interest report relating to the authority or an entity connected with it.
- (5) A local auditor may recover from a relevant authority—
- (a) the reasonable costs of determining whether to make a public interest report relating to the authority or an entity connected with it, and
 - (b) the reasonable costs of making a public interest report relating to the authority or an entity connected with it.
- (6) Sub-paragraph (5)(a) applies regardless of whether the report is in fact made.

Supply of public interest reports

- 3 (1) If a local auditor makes a public interest report arising out of the audit of the accounts of a relevant authority, the auditor must send the report to—
- (a) the authority, and
 - (b) where the report relates to an entity connected with the authority, to that entity and to any other relevant authority with which the entity is connected.
- (2) The local auditor must also send the report—
- (a) to the Secretary of State,
 - (b) where the relevant authority is itself a connected entity, to its related authority or authorities,
- ...
- (3) A report required to be sent under sub-paragraph (1) or (2) must be sent as soon as is reasonably practicable after it is made.
- ...
- (5) If paragraph 5 applies to a relevant authority to which a report is sent under this paragraph, it must, if required by that paragraph to do so, take the report into consideration in accordance with that paragraph.
- ...

Publicity for public interest reports

- 4 (1) This paragraph applies to a relevant authority if a local auditor has made a public interest report relating to the authority or an entity connected with it.
- (2) As soon as is practicable after receiving the report, the relevant authority must publish the report and a notice that—
- (a) identifies the subject matter of the report, and
 - (b) unless the authority is a health service body, states that any member of the public may inspect the report and make a copy of it or any part of it between the times and at the place or places specified in the notice.
- (3) As soon as is practicable after receiving the report, the relevant authority must supply a copy of the report to—
- (a) each of its members (if it has members), and
 - (b) its auditor panel (if it has one).
- (4) Sub-paragraph (3)(a) does not apply in relation to a parish meeting.
- (5) From the time when the report is received, the relevant authority, unless it is a health service body, must ensure that any member of the public may—
- (a) inspect the report at all reasonable times without payment,
 - (b) make a copy of it, or any part of it, and
 - (c) be supplied with a copy of it, or any part of it, on payment of a reasonable sum.

- (6) The local auditor may—
- (a) notify any person the auditor thinks fit of the fact that the auditor has made the report, and
 - (b) supply a copy of it or any part of it to any person the auditor thinks fit.
- (7) A notice or report required to be published under this paragraph must be published—
- (a) if the authority has a website, on its website;
 - (b) otherwise, in accordance with sub-paragraph (8).
- (8) A relevant authority publishes a notice or report in accordance with this subparagraph if—
- (a) in the case of an authority other than a health service body, it publishes the notice or report in such manner as it thinks is likely to bring the notice or report to the attention of persons who live in its area;
- ...
- (9) Nothing in this paragraph affects the operation of paragraph 9.

Consideration of report or recommendation

- 5 (1) Subject to sub-paragraphs (2) and (4), this paragraph applies to a relevant authority if—
- (a) a local auditor has made a public interest report relating to the authority or an entity connected with it, or
 - (b) a local auditor has made a recommendation relating to the authority or an entity connected with it.
- ...
- (5) The relevant authority must consider the report or recommendation at a meeting held before the end of the period of one month beginning with the day on which it was sent to the authority.
- (6) At that meeting the relevant authority must decide—
- (a) whether the report requires the authority to take any action or whether the recommendation is to be accepted, and
 - (b) what, if any, action to take in response to the report or recommendation.
- ...
- (8) If the local auditor is satisfied that it is reasonable to allow more time for the relevant authority to comply with sub-paragraph (5) or (7), the auditor may extend or further extend the period of one month mentioned in that subparagraph.
- (9) This paragraph does not affect any duties (so far as they relate to the subject matter of a report or recommendation sent to a relevant authority) which are imposed by or under—
- (a) this Act,
 - (b) sections 114 to 116 of the Local Government Finance Act 1988 (functions and reports of finance officers),
 - (c) section 5 of the Local Government and Housing Act 1989 (functions of monitoring officers), or
 - (d) any other enactment.
- (10) The Secretary of State may by regulations provide for this paragraph to apply with modifications in relation to a relevant authority specified, or of a description specified, in the regulations.
- (11) The Secretary of State may by regulations provide for any provisions of the following that do not otherwise apply to a meeting of a relevant authority under this paragraph to apply (with or without modifications) to such a meeting—
- (a) the Public Bodies (Admission to Meetings) Act 1960;
 - (b) Part 5A of the Local Government Act 1972 (access to meetings and documents);
 - (c) Schedule 12 to that Act (meetings and proceedings of local authorities).
- ...

Bar on delegation of functions relating to meetings

- 7 ... (2) If a relevant authority is a local authority within the meaning of section 101 of the Local Government Act 1972 (arrangements for discharge of functions), that section does not apply to its functions under paragraph 5.
- (3) The functions of a parish meeting under paragraph 5 are to be exercised by the parish meeting itself (and not by its chairman on behalf of the parish meeting).
- ...

Publicity for meetings

- 8 (1) If a relevant authority is required to hold a meeting under paragraph 5, it must publish a notice in compliance with sub-paragraphs (2) to (4).

(2) The notice must be published—

- (a) if the relevant authority has a website, on its website;
- (b) otherwise, in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.

(3) The notice must—

- (a) state the time and place of the meeting,
- (b) indicate that the meeting is to be held to consider a local auditor's report or recommendation (as the case may be),
- (c) if the meeting is to be held to consider a report, describe the subject matter of the report, and
- (d) if the meeting is to be held to consider a recommendation, set out the recommendation or, where this is not reasonably practicable, describe its subject matter.

(4) The notice must be published before the beginning of the period of 8 days ending with the day of the meeting.

(5) The agenda supplied to the members of the relevant authority for the meeting must be accompanied by a copy of the report or recommendation (as the case may be).

(6) Sub-paragraph (5) does not apply in relation to a parish meeting.

...

(9) This paragraph applies in addition to any provision made in relation to the relevant authority in question by or under the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 or any other enactment.

Access to meetings and documents

9 (1) Where a public interest report or a recommendation is to be considered under paragraph 5 by a relevant authority to which the Public Bodies (Admission to Meetings) Act 1960 applies, the report or recommendation is not to be excluded from the matter supplied under section 1(4)(b) of that Act (supply of agenda etc to newspapers).

...

(3) Sub-paragraphs (4) to (6) apply in relation to the consideration under paragraph 5 or 6 of a public interest report or a recommendation by a relevant authority to which Part 5A (access to meetings and documents) of the Local Government Act 1972 applies.

(4) Information contained in the report or recommendation is not to be treated as exempt information for the purposes of that Part.

(5) The report or recommendation is not to be excluded—

- (a) from the documents open to inspection under section 100B(1) of that Act (public access to agenda and reports before meetings), or
- (b) from the matter supplied under section 100B(7) of that Act (supply of agenda etc to newspapers).

(6) Part 5A of the Local Government Act 1972 has effect in relation to the report or recommendation as if section 100C(1)(d) of that Act (public access to copies of reports for six years after meeting) were not limited to so much of the report or recommendation as relates to an item during which the meeting was open to the public.

(7) Information contained in a public interest report or a recommendation is not to be treated as exempt information for the purposes of any Act or instrument made under an Act that applies in relation to exempt information within the meaning of Part 5A of the Local Government Act 1972.

(8) References in this paragraph to a public interest report or a recommendation include any report on the report or recommendation.

Publicity for decisions under paragraph 5 or 6

10 (1) As soon as is practicable after making decisions under paragraph 5(6) or (7) or 6(6), a relevant authority must—

- (a) notify the authority's local auditor of those decisions, and
- (b) publish a notice containing a summary of those decisions which has been approved by the auditor.

(2) The notice under sub-paragraph (1)(b) must be published—

- (a) if the relevant authority has a website, on its website;

(b) otherwise, in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.

(3) The notice required by sub-paragraph (1)(b) in relation to a meeting need not summarise any decision made while the public were excluded from the meeting—

(a) as the result of a resolution under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (protection of public interest),

(b) under section 100A(2) of the Local Government Act 1972 (confidential matters), or

(c) as the result of a resolution under section 100A(4) of that Act (exempt information).

(4) If sections 100C and 100D of the Local Government Act 1972 (availability for inspection after meetings of minutes etc) apply in relation to a meeting under paragraph 5 or 6, the notice required by sub-paragraph (1)(b) must indicate the documents in relation to the meeting that are open for inspection in accordance with those paragraphs.

(5) This paragraph applies in addition to any provision made in relation to the relevant authority by or under the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 or any other enactment.