



Report in the Public Interest

**concerning the Parish Council's governance and
ultra-vires payments**

April 2004 – July 2015

19 April 2021

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SUMMARY

The losses from within the Council caused by ultra-vires payments are summarised in the following pages. It should be noted that the list is not exhaustive.

The Parish Council were offered a settlement by the Insurers. On balance and after detailed discussions this was accepted.

It was noted whilst further investigation could have continued it was deemed that in the best interests of the Council and its electorate the settlement offer should be accepted.

Those who benefitted from the ultra vires* payments

Organisations/Individuals (in no particular order)

1. Smallford Residents Association
2. Scout and Guide Association
3. Charles Morris Hall
4. Treasure Tots
5. Neighbourhood Plan Project Manager
6. Colney Heath Village Hall
7. Colney Heath Football Club

Auditor

1. Auditing Solutions

Staff

1. **Former Clerk/RFO** – self-employed consultant from 2003 and employed from 2004 - 2015
2. **Former Deputy Clerk/Assistant Clerk** – employed from 2003-2015

Financial Loss

When investigations stopped the total loss to date was just over £250,000.

The sum of £45,900 was accepted from Zurich insurance company in full and final settlement of the claim made.

* Ultra vires is a Latin phrase used in law to describe an act which requires legal authority but is done without it. Its opposite, an act done under proper authority, is intra vires. Acts that are intra vires may equivalently be termed "valid", and those that are ultra vires termed "invalid"

OVERVIEW OF ULTRA VIRES PAYMENTS MADE

Payments listed were made ultra-vires for one of the following reasons:

- The payment was not approved by Council or an appropriately delegated Committee or by delegation to the Clerk
- The Parish Council had no legal power to spend the public funds under the 1972 Local Government Act or other relevant legislation

ORGANISATIONS/INDIVIDUALS

Smallford Residents Association

Ultra-vires payments made included:

- To fund the association insurance with Tennyson Insurance
- To fund the filming of the Smallford Station project in 2012 by a video service company

Scout & Guide Association

Ultra-vires payments made included:

- Purchases made through the Parish Council to avoid VAT
- Grants awarded for works by the Parish Council including for installation of a disabled toilet. There is no evidence the work was completed.

Charles Morris Hall

- Purchases made through the Parish Council to avoid VAT

Treasure Tots

- Set up ultra-vires after incorrect advice from the Proper Officer in 2004. It was later confirmed in February 2016, that the Parish Council did not have the power to operate a Children's nursery. The school was closed 22 July 2016.
- The surplus funds remaining after closure of £52,000 was transferred to the Parish Council and has been used only for Youth Projects across the Parish.
- Cash bonuses were drawn and paid to all Treasure Tots on a sliding scale. between 2007-2014 **£16,140.37** paid.
- Salaries were paid by Parish Council from the Precept but often the funds were not effectively or consistently recharged to the Treasure Tots accounts.
- Purchases of stationery, toys and staff training all purchased from the Precept and often not effectively or consistently recharged.
- All hall hire paid for the use of the village hall was paid from the Precept and not reclaimed.

Neighbourhood Plan Project Manager

- An agreed contract for the consultant was signed by the Parish Clerk on behalf of the Council confirming 300 hours at a total cost of £7,500.
- Between 11/09/2013 and 31/07/2015 the Neighbourhood Plan Project Manager was paid **£25,728.23** in respect of the CHPC Neighbourhood Plan inclusive of expenses.
- There is no evidence of budgetary control of the expenditure by the Clerk, and neither is there any reference to approval of any increase in expenditure by Council.
- Some of the invoices received for payment were not appropriately approved and the governance of the payments were not in keeping with what electors should have expected from their Parish Council governance.

Colney Heath Village Hall

- Payments to cover shortfall in staff wages agreed by the Clerk.
- No Tax/NI or pension calculated on the above payments made.
- Purchases made through the Parish Council to avoid VAT.
- VAT claimed on purchase made by representatives of the organisation and cheques issued to individuals for VAT portion.
- Parish Council paid or contributed to the following for the whole building:
 - Fire extinguisher and alarm maintenance to 2016
 - Buildings insurance paid to 2012.
 - Business Rates/Council Tax on the whole building paid to 2013.
 - Maintenance, sewer works, and pest control of rat problem paid for by Parish Council.

Colney Heath Football Club

- Payments to the Colney Heath Football Club from 2004-2016 with four years 2010/11, 2011/12, 2014/15 and 2015/16 incomplete.
- Ultra-vires payments over the period totalled **£63,485** and included:
 - Internal and External works
 - Repairs
 - Blocked drains
 - New kitchen
 - New disabled access
 - Waste removal
 - Fire extinguisher and alarm checks
 - Shutter works
 - Fire door replacement
 - Payments to individuals

INTERNAL AUDITOR

All town and parish councils are required to maintain an effective internal audit. The role of an internal auditor can often be viewed as that of a 'critical friend' although there is a clear and governed framework for checks to be carried out.

The Parish Council is required under the Accounts & Audit Regulations to undertake an effective internal audit each year to evaluate the effectiveness of its risk management, control and governance processes considering public sector internal auditing standards or guidance.

The Parish Council appoints an Internal Auditor who is independent, competent and has no other role within the Council.

The Internal Audit report and any recommendations **should** be discussed by Full Council.

The Internal Audit company Auditing Solutions audited the Parish Council and Treasure Tots accounts from 2004 – 2016.

Issues with Internal Audit

- Audit reports were addressed to the Clerk/RFO of Colney Heath Parish Council and posted to his home address.
- Effectiveness of Internal Controls was never included in any agenda.
- There were verbal reports only on internal audit and no Council or Committee meeting ever reviewed an internal audit report. There is no evidence Councillors were ever provided with copies.
- No action plan or action points were raised in Council or reviewed from year.
- Issues and concerns raised over several years and noted within internal audit reports were left unresolved were not addressed with Council.
- The Clerk did not manage cashbooks these were created as a favour by the internal auditor and sent to the Clerk/RFO every year.
- Concerns were not raised or noted on the Annual Governance Annual Return

CLERK AND RESPONSIBLE FINANCIAL OFFICER April 2004 - July 2015

Employment

- No resolution to employ the Clerk/RFO or confirmation of hours or pay scale.
- No references were taken up and this jeopardised the success of any future payment on the fidelity insurance policy.
- No contract of employment was issued.

Training

- The Clerk appointed had no training or experience in Local Government on appointment
- The Clerk did not undertake any qualifications to become a qualified Clerk.
- Grants awarded were often issued without appropriate power being noted and recognised therefore grants were issued ultra-vires.
- The understanding of financial governance and transparency was lacking throughout the period of tenure as Parish Clerk and RFO.
- Little to no knowledge of legislation, payment regulation or how to manage monies in the public purse led to ultra-vires payments and mismanagement of the Precept for the period.

Payments

- Over £100,000 was taken from the NatWest bank account in petty cash. Most were signed with the cheque photocopied on the back of the payment approval sheet but there are no records of what this money was used for.
- Clerk approved payments and amounts himself without referring to Council and without an appropriately approved scheme of delegation in place
- No Standing Orders or Financial Regulations were in place until 2014/15
- PAYE/NI under reported for a 7-year period
- Council email system was used for part time work for another Parish Council and also for role as a Councillor with a third Parish Council.
- Advice given was often incorrect and led to the operation of a pre-school for which the Council had no power to operate putting the Council at risk
- Salaries for staff were incorrect, had to be re-run by the auditor on several occasions including for the whole of 2011-2014.
- Cash bonuses paid to staff twice yearly without appropriate tax payments.

Salary

- Overtime was paid with Clerk/RFO approving own overtime and not authorised by Council.
- Wage calculations for staff were not approved by Council only the completed cheques were approved. Some were self-approved.
- No record of the Clerk/RFO being approved as an essential car user despite this being paid monthly, resulting in overpayment of **£13,319.20**
- Salary increases were not always approved by Council or in line with nationally approved increases.
- No mileage claim forms submitted or approved the Clerk carried out up to 2,000 or more business miles per year every year.
- Overtime for the period 2011 – 2015 between 20-30 hours were claimed every month all self-approved. During the Clerk's employment the monthly average was 18 hours
- Salary paid from start of employment £16,003 (£23,684 FTE) this increased to £28,106 (£41,597 FTE) by the end of employment.
 - The increase between the commencement and the end of employment was 76%
 - The NALC approved pay increases show the salary increase should have been SCP 26 2003/04 £19,713 FTE to SCP 34 2014/15 £29,588 an increase of 50%
 - 26% of salary and overtime paid over 11 years equates to an overpayment of **£69,538.91**

ASSISTANT/DEPUTY CLERK 2003 - 2016

Parish Council Employment

- Salary was shown higher than actual and then inflated in a letter signed by the Clerk to enable a mortgage to be obtained.
- Salary payments went from £13,852.80 to £21,122.40 a 52% increase.
 - The increase should have been 24% £13,852.80 to £17,714.00 a 24% overpayment or approximately **£41,000**
- During some of 2014 and most of 2015 whilst being paid 17 contracted hours per week 30 overtime hours per month, approved by the Clerk.

Treasure Tots Employment

- Commenced employment as Secretary to Treasure Tots in 2005.
- Hours were 5 per week. Commenced role on £8.49 per hour £16,334.76. with increases:
 - 2009 £17,181.32 Full Time Equivalent (FTE)
 - 2010 £17,970 FTE,
 - 2012 £22,299.00 FTE,
 - 2014 £30,899.44 FTE,
 - April 2015 £31,207.28 FTE
- Overall, 2005 – 2015 a 91% increase in hourly rate.
- During most of 2014/2015 the following was paid monthly
 - Treasure Tots contracted hours 5 hours
 - Overtime 20-25 hours
 - Deputy Clerk contracted hours 17 hours
 - Deputy Clerk overtime 30-40 hours
- No overtime was approved by Council.

Other payments

- Cash payments were made for cleaning the Parish Office from August 2007 – February 2015.
The payments were not approved by Council and were not declared to payroll.
Total paid in cash over this period **£5,930.80**
- Cash bonuses paid to this employee over the period **£2,125.00**

FINANCIAL SUMMARY

The figures presented in this case are reviewed and some are approximate pending outcomes of settlement discussions:

• Cash bonuses	£16,140.37
• Neighbourhood Plan Consultant	£18,228.23
• Colney Heath Football Club	£63,485.00
• Other Organisations	£25,000.00
• Clerk/RFO	£82,858.11
• Deputy Clerk	£49,055.58

TOTAL **£254,767.29**

This does not include losses as a result of the ultra-vires operation of Treasure Tots costs which, with the exception of the cash bonuses have not been calculated.