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Dear Mr Cook

Formal complaint against Botus Fleming Parish Council.

It is with profound regret that I have been forced to take the unprecedented step of making a formal complaint against BFPC. Unfortunately, previous attempts to highlight concerns informally have been met with hostility and inappropriate actions. My complaint is that BFPC is guilty of systemic disregard for normal governance to the extent that it has made unlawful decisions and actions that are vulnerable to legal challenge, placing itself at risk of considerable financial losses. Factual evidence to support this claim is provided in the appended pages and falls into the broad categories of:

Procedural impropriety (appendix 1),
Maladministration of BFPC policies (appendix 2),

These comments should be read in conjunction with concerns expressed in previous correspondence.

These should not be treated as individual complaints against BFPC but purely as evidence to support the overarching complaint. You should also note that the complaint and evidence refer to procedures and processes and not to the substance of any resolutions of BFPC.

I expect BFPC to adhere to the processes defined in its Complaints Procedure. The section on written complaints states:

“1. On receiving a written complaint, the Clerk shall try to settle the complaint directly.”

If this is not successful then item 4 of this section should apply.

“4. The Clerk or Chairman shall bring any written complaint which has not been settled to the next meeting of the Council and the Clerk shall notify the Complainant of the date of that meeting. The Complainant will be offered the opportunity to explain the nature of the complaint to the meeting.”

If the issues can be resolved to my satisfaction through step 1 above, then the complaint will be withdrawn. I am prepared to give BFPC 4 weeks from the receipt of the complaint to resolve matters informally. If this is not possible then the matter should be dealt with in the Public Meeting of BFPC on 28th October 2020.

The remedies that I expect from this complaint are as follows:

- BFPC acknowledge that it has failed to achieve an acceptable standard of governance over the past two years.
- BFPC guarantee to undertake a review of its governance and engage in further training where necessary and to improve its governance in the future.
- BFPC acknowledge that has acted inappropriately when dealing with my concerns raised in the past and apologise for its actions and any distress caused by its actions.

Yours sincerely

1. Appendix 1 - Standing Orders

- 1.1. Standing Orders (SOs) are the written rules of the Parish Council (PC). They are used to confirm a council's internal organisational, administrative and procurement procedures and procedural matters for meetings. They reflect statutory requirements plus other requirements as decided by the Council. Mandatory Standing Orders cannot be set aside. Standing Orders relating to non-mandatory items can be set aside only by a resolution of the Council. BFPC has never voted to set aside any standing order.
- 1.2. Standing Order section 10 defines the procedure required to advance a motion or proposal at a public meeting. This reflects the provisions of schedule 12 of the Local Government Act 1972.
- 1.3. Section 10. (b) States that "No motion may be moved at a meeting unless it is on the agenda and the mover has given written notice of its wording to the Proper Officer at least 7 clear working days before the meeting. Clear days do not include the day of the notice or the day of the meeting."
- 1.4. The Good Councillors Guide, section 9, states: "It is actually unlawful to make a decision, especially a decision to spend money, without sufficient (three clear days) warning. Vague Agenda items that don't specify exact business (such as Matters Arising, Correspondence and Any Other Business) are dangerous and should be avoided, because the council cannot make unexpected decisions."
- 1.5. There follows a list of occasions when this Standing Orders was breached. It is not exhaustive but refers mostly to decisions to spend money.

1.5.1. DECISIONS MADE WITHOUT STATUTORY NOTICE.

February 2019

A. Agenda item 228 C - Correspondence (letter from parishioner)

Minute for 228 C - It was proposed that £200 be contributed as a donation amount from Council reserves.

Proposed Cllr Edwards (V/Chair), seconded Cllr Ellis (Chair). All agreed.

B. Agenda item 234 G - Cllr Dave Edwards (V/Chair) – Big Event preparations & Newsletter publishing Councillors will receive a progress report as to the Big Event preparations, and the publishing of the Parish Newsletter.

Minute for 234 G - Cllr Edwards (V/Chair) advised Councillors that the only item to mention was that the Big Event chairman Mrs Sarah Edwards proposed to purchase a marquee estimated at £500. This item of expenditure would be met from Earmarked funds under 'Big Event' (£1,167.04). The marquee would then be retained as Parish Council owned equipment. Entertainment issues for the Big Event were well in hand. Councillors Resolved to note this report and agreed proposed expenditure.

April 2019

C. Agenda item 293c- Councillors reports. Container Unit. Cllr Dave Willey

Minute for 293c - Cllr Willey had sourced a suitable (internally weather treated) Container Unit from Tamar Valley Transport Co Ltd. The cost of the Container Unit was £2,436 (inclusive of Vat), and this would be funded in equal measure from the Community Action Team budget and the Sports & Recreation ring fenced budget. The Container unit would be in position in the St. Mary's church hall car park in June, and Parish Council assets would be stored in the unit.

Cllr Ellis (Chair) proposed, Cllr Fletcher seconded that the cost of the purchase of the unit, as explained above be progressed.

Councillors Resolved to make this purchase. All agreed.

August 2019

D. Agenda item 339 - Neighbourhood Development Plan

Minute for 339 - Councillors Resolved not to support adopting the draft Parish Plan. All agreed.

December 2019

E. Agenda item 416 - Matters arising from the Minutes for report purposes only.

Minute for 416 - Cllr Willey (Chair of Sub Committee) brought the following Proposals to Full Council, as proposed by Cllr Oakes and seconded by Cllr Smith. Etc...

January 2020

F. Agenda item 435 - Chairman's Agenda Items, Donations for St. Mary's Church PCC during 2020/21 a) Churchyard maintenance b) Church Hall room hire for Public Meetings

Minute for 435 - Donations for St. Mary's Church PCC during 2020/21
a) Churchyard maintenance @£250 Proposed Cllr White, seconded Cllr Ellis.

Councillors Resolved to support the donation. All agreed.

b) Church Hall room hire for Public Meetings @£350 Proposed Cllr White, seconded Cllr Ellis.

Councillors Resolved to support the donation. All agreed.

February 2020

G. Agenda item 451 - Recreation Field. - Cllr Dave Edwards (Chairman)

Minute for 451 - It was RESOLVED to seek the approval of the Secretary of State for Housing, Communities & Local Government to apply for a Public Work Loans Board loan of £70,000 up to 15 years for the purchase of the recreation field at Hatt, PL12 6PS.

H. Agenda item 452c - Councillors' Reports, C, Big Event - Cllr Dave Edwards (Chairman)

Minute 452c - Cllr Willey (Vice Chair) proposed that the Parish Council employ Nick Brown to clear the brambles, seconded Cllr Fletcher. All agreed.

June 2020

I. Agenda item 538 - Sub Committee report – Cllr Dave Willey (Chair of Sub Committee)

Minute for 538 - Cllr Willey (Chairman) confirmed that the Sub-Committee had considered point 5.1 of the vexatious complainant's policy in order to review a current case.

The Proposal for Full Council to consider was:-

'that the status of 'vexatious complainant' be lifted subject to review again on 23rd September 2020. This decision would be covered in a letter to the resident concerned'.

Proposed Cllr Willey (Chairman), seconded Cllr Oakes. All agreed.

Aug 2020

J. Agenda item 568 - Matters arising from the Minutes for report purposes only.

Minutes for 568. - The following original dialogue (sic) was omitted from the Minutes 24th June 2020 in respect to Item 536 – Grass cutting contract.

'Many residents had expressed their thanks to the Parish Councillors for arranging additional grass cutting measures in Hatt'. The work was necessary due to cessation of the Cormac service during the Covid-19 pandemic period.

Proposed Cllr Fletcher, seconded Cllr Willey (Vice Chair)

Councillors Resolved to note and agree the budget expenditure. All agreed

The resolution does not accord with the content of K and L below and is therefore misleading.

DECISIONS MADE AND ENACTED WITHOUT A RESOLUTION BY BFPC IN A PUBLIC MEETING.

January 2020

K. Agenda item 433 B -Cllr Malcolm Fletcher – Bio diversity

(i) Hatt Roundabout proposal

Cllr Fletcher advised Councillors that he had sent a letter and Plan to Mr Paul Allen (Highways Manager) concerning the Parish Council's desire to manage Hatt roundabout and the approach verges to the South East and South West.

The Plan had been discussed and formulated by Cllrs Fletcher, Willey & Edwards.

...Councillors Resolved to note these reports. All agreed.

Comment on 433 B - There is no record of a resolution defining BFPC's position with regard to the Hatt roundabout. There is no record of a resolution by BFPC delegating powers to negotiate on behalf of the council.

June 2020

L. Agenda item 536 - Grass Cutting Contract

Cllr Edwards (Chairman) confirmed that a Contract Agreement for the additional cutting of verges in Hatt and maintenance of the roundabout had been agreed with Cormac.

The additional Contract for cutting would form part of the Tender exercise in March 2021 when the main grass cutting maintenance contract expires.

Cornwall Council would be contributing £390 towards the total expenditure of £1,000, this sum forming part of the grass cutting budget 2020/21.

Comment on 536 - There is no record of a resolution approving the contractual arrangement between BFPC and Cormac to maintain the verges and roundabout. No contract documents have been posted on the BFPC website. Despite the absence of a

resolution and debate on the matter it is noted that one Parish Councillor resigned citing his disagreement with the emphasis on biodiversity. Other residents had used social media to complain about the environmental management of the roundabout and verges. Given the controversial nature of this issue, it was not only unlawful, but also unwise to take these actions without public scrutiny. A formal resolution would have afforded BFPC the opportunity to demonstrate that it had the legal power to enter into this contract (despite not having General Powers of Competence) and that the investment represented value for money over the alternative route of permitting Cormac to continue with their environmentally sensitive management and supplement this using powers afforded to them by the Highways Act 1980.

October 2019

M. At some point during or before October 2019 BFPC took the decision to treat concerns about their governance as an official complaint. This matter was decided and enacted covertly without any mention in a public meeting of BFPC, contrary to BFPC Complaints Procedure.

November 2019

N. The financial record shows a payment of £500. The recipient is not named. The payment is labeled "refund of donation"
There is no recorded resolution of BFPC to determine that this action should be taken and there is no recorded authorisation of the payment.

2. Appendix 2. Maladministration of BFPC policies

2.1. Complaints Procedure.

2.1.1. In October BFPC published its response to an alleged complaint made against it. The response referred to documents obtained by BFPC.

2.1.2. No letter of complaint was received by BFPC

2.1.3. No letter of complaint was published on the BFPC website.

2.1.4. The procedures defined by the Complaints procedure were not followed. In particular, the following requirements were omitted:

1. On receiving a written complaint, the Clerk shall try to settle the complaint directly.
4. The Clerk or Chairman shall bring any written complaint which has not been settled to the next meeting of the Council and the Clerk shall notify the Complainant of the date of that meeting. The Complainant will be offered the opportunity to explain the nature of the complaint to the meeting.

2.1.4.1. Neither of these conditions was met, indeed the matter was not dealt with within a public meeting of BFPC.

2.2. Vexatious Complaints Policy.

2.2.1. In Dec 2019 BFPC enacted its Vexatious Complaints Policy in response to repeated attempts to communicate concerns about very real breaches in its governance, including some of the issues raised in Appendix 1. To claim that these concerns fulfilled the definition

“a habitual or vexatious complainant is an individual that makes unreasonable complaints, enquiries or outcomes that are repeatedly or obsessively pursued.” is disingenuous.

There was nothing unreasonable about communicating concerns about serious governance breaches and no evidence was advanced to demonstrate the contrary. If the comments appeared to be repetitive it was simply because BFPC refused to respond to the concerns and continued to practice poor governance - see appendix 1.

2.2.2. The Policy wording states:

“They should be advised that the decision will be reviewed in six months from the date of the letter advising them that their complaint/correspondence has been determined to be vexatious.”

2.2.3. BFPC’s comment that “We will review the procedure and your position as a Vexatious and Persistent Complainant in 12 months time” did not conform with the policy.

- 2.2.4. The policy also states: "Any future correspondence should be passed to the sub-committee for consideration. If they decide that it raises no genuinely new and substantive issues, no response is required." A further letter was sent raising new issues relating to the lawfulness of BFPC's actions but it was not referred to the sub-committee. This omission was contrary to the policy requirements.
- 2.2.5. The policy does not provide for further action once the vexatious label has been removed. BFPC exceeded its powers by stating that "the status of 'vexatious complainant' be lifted subject to review again on 23rd September 2020." BFPC also stated that the Single Point of Contact condition would remain despite lifting the vexatious. This can only be described as discriminatory. (see Code of Conduct 2.2)

