



NCN: [2025] UKFTT 00354 (GRC)

Case Reference: FT/EJ/2023/0005

**First-tier Tribunal  
(General Regulatory Chamber)  
Enforcement**

**Before**

**JUDGE MOAN  
TRIBUNAL MEMBER TAYLOR  
TRIBUNAL MEMBER SIVERS**

**Between**

**GERRY WOODHOUSE**

**Applicant**

**and**

**POTTO PARISH COUNCIL**

**Respondent**

**Decision no 2 of 2 in the appeal**

**Decision:** The application to certify a contempt is dismissed.

The application was considered on the papers – all parties consented to a determination without a hearing.

### **REASONS**

1. On 7<sup>th</sup> June 2023, the Tribunal allowed the Applicant's appeal against the decision of the Information Commissioner and made a substitute decision notice in the following terms –

*Potto Parish Council was not entitled to refuse Mr Woodhouse's request for information dated 3<sup>rd</sup> May 2021 on the grounds that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("FOIA").*

*To ensure compliance with FOIA, Potto Parish Council must issue a fresh response to the Request which does not rely on section 14(1) FOIA within 35 days of the date of this Decision Notice.*

2. The Information Commissioner sent the substituted decision to the Respondent on 22<sup>nd</sup> June 2023. Thereafter, the Applicant made an application for enforcement on the basis that the Respondent has not complied with the substituted decision. This decision relates to that application to certify a contempt.
3. The Applicant's allegations of non-compliance are reconsidered in this decision after already determining 5 of the 7 parts of the request for information (in decision number 1 of 2). This decision needs to be read in conjunction with decision 1 of 2 dated 31<sup>st</sup> January 2025, where the Tribunal found that –
  - (i) The Respondent had answered requests 1 to 5; and
  - (ii) Requests 6 and 7 required a focussed response from the Respondent (paragraphs 64 and 65 of that judgment).
4. The history of these proceedings was outlined in the earlier decision and so will not be repeated here. The Tribunal adjourned the contempt proceedings and issued directions to the Respondent to respond to requests 6 and 7 within 21 days; and the Tribunal would thereafter consider objectively whether those requests had been responded to.

*The request for information and position of the parties*

5. This application arises from the Tribunal's decision dated 7<sup>th</sup> June 2023 in case number EA/2022/0266. The original request by the Applicant for information was made on 3<sup>rd</sup> May 2021.
6. Both parties have consented to a paper hearing.
7. The Applicant provided a bundle of 220 pages and some final submissions that were not included in the bundle for the previous hearing. The Tribunal has also considered the covering email from the Respondent with attachments submitted since the hearing on 31<sup>st</sup> January 2025 in addition to the Applicant's written submissions.
8. The outstanding requests that the Respondent was invited to respond to were –
  - (i) Request 6 - a copy of any supporting ledgers, etc, stating the financial details for each of these assets, for both 2019-20 and for 2020-21.
  - (ii) Request 7 - What [recorded] advice, information or evidence has Potto Council received from third parties (eg, YLCA), to support these persistent threats [of harassment under the Prevention of Harassment Act 1997]?

9. On 23<sup>rd</sup> February 2025 the Respondent responded to the direction of the Tribunal by email and attaching a number of financial documents.
10. In relation to request 6, the Respondent said that they had supplied the bank accounts and budgets for both years, and copies of the asset registers. All expenditure over £ 100 was listed on the Parish Council's website and the link to that website was provided. In addition, all items of expenditure were recorded in the Parish Council's meeting minutes when approved, these were available on the Parish Council website. As part of its financial regulations, the Parish Council maintained its financial accounts which were audited annually by both an internal auditor and an external auditor as per their Annual Governance and Accountability Return, these documents were available on their website.
11. Additionally, the Respondent said -

*Additionally, all financial documents are made available through the "Exercise of Public Rights" an annual period where members of the public can scrutinise the Parish Councils accounts.*

*For completeness, PPC have once again attached copies of the documents previously sent to yourself.*

*PPC have provided all of the available documentation related to you request in multiple occasions specifically under this FOI request as noted above, as well as separate correspondences under other requests providing the same information. However, as per our initial response, if there are any additional financial details that you are requesting that are not included in the information already provided to you, please let us know, PPC is an open and transparent parish council and access to any of our information is available for public scrutiny.*

12. In relation to request 7, the Respondent said -

*For the avoidance of doubt, PPC did not reiterate allegations and threats of harassment under the Prevention of Harassment Act 1997. In our correspondence of the 26<sup>th</sup> November 2020.*

*The Parish Council however, views this complaint as a continuation of your vexatious behaviour towards the Clerk and members of Potto Parish Council, a matter that has been brought to your attention on many occasions by the Parish Council as well as the ICO. The Parish Council will therefore consider this continued behaviour under the "Prevention of Harassment Act 1997.*

*PPC responded to your request of the 3<sup>rd</sup> April 2021 on the 14<sup>th</sup> May 2021, stating that it held no documents relating to this matter.*

*PPC further responded to a request from you on this subject on the 29<sup>th</sup> July 2021, noting that this matter had been previously addressed.*

*On the 15<sup>th</sup> May 2024 PPC again responded to your request as follows;*

*PPC as a small parish council comprising of volunteers from the community, we have the right to undertake our work without fear of Harassment, Bullying and Abuse.*

*Information and legislation is available on the subject of harassment on the internet and from various sources. PPC have received information from bodies such as North Yorkshire Police, The ICO, Protection Against Stalking and Theseus Risk relating to stalking and harassment.*

*The following websites were accessed and can be viewed for further information.*

- North Yorkshire Police [Stalking and harassment | North Yorkshire Police](#)
- Police UK [What is stalking and harassment? | Police.uk](#)
- Information Commissioners Office [Step 5: Identify and assess risks | ICO](#)
- Protection Against Stalking [Protection Against Stalking | Look Forward Not Behind](#)
- UK Government [Protection from Harassment Act 1997](#)

*As noted above, information was sourced from various websites however no recorded advice has been sought nor received.*

*Regarding evidence of your harassment towards the Clerk and members of Potto Parish Council, you are fully aware that your behaviour towards the Clerk of Potto Parish Council was deemed as vexatious by the First Tier Tribunal Judge Anthony Snelson, Ref EA/2019/0178, and as a Parish Council we have a legal and moral duty to protect our employees from such behaviour. The comment noted by yourself in Request Seven is the parish council's response to your continued vexatious behaviour towards the clerk.*

*To be absolutely clear, Potto Parish Council have made no allegations nor threats, it should therefore be clear that as there were no threats nor allegations there are no documents held by PPC that would support the alleged "persistent threats" as noted in our original response.*

*We trust that our responses provide the information that you require, however as noted above, if there are any details that you are requesting not included in the above please let us know, PPC is an open and transparent parish council and access to any of our information is available for public scrutiny.*

13. On 9<sup>th</sup> March 2025 the Applicant sent in a reply to the submission of the Respondent. As far as request 6 was concerned, the Respondent had not confirmed whether it held supporting ledgers and had not provided them. The Applicant then advised the Tribunal as to his opinion that the Respondent had published accounts with errors and falsehoods for many years. He said that the asset registers for 2019/20 did not record the values of those assets, that the fixed asset value for that financial year had been recorded in the accounting statement and that the Respondent had confirmed to the Information Commissioner previously that the financial value of the assets were held in ledgers. Those ledgers were not published. He considered the ledgers to be crucial to the integrity of the accounts. The Respondent had not referred to

ledgers in is response, whether they are held or not and copies if they are so held. He acknowledged that the Respondent had provided the 2019-2020 asset register with figures latterly but was concerned about the integrity of the figures as the figures was not the same as the accounting statement. He described this as financial irregularity.

14. As regards request 7, the Applicant acknowledged that the Respondent did not hold any documents but had not indicated whether it held information other than in documents. He considered that the Respondent was intending to mislead the Tribunal by not referring to recorded information. He said it was impossible to ascertain if the Respondent held the information or not.

### *The Legal Framework for a contempt application*

15. The powers of the Tribunal are to be found in sections 61(3) and (4) of FOIA 2000 –
  - (3) *Subsection (4) applies where –*
    - (a) *a person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, and*
    - (b) *if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.*
  - (4) *The First-tier Tribunal may certify the offence to the Upper Tribunal.*
16. The 2009 Rules provide details of the procedure to be followed. The procedures were not contentious in this application.
17. The power of contempt is to be considered amongst the other provisions of FOIA 2000 namely –
  - (i) The power of the Information Commissioner under s50 to make a decision upon application;
  - (ii) The power of the Information Commissioner under s52 and 54 to enforce its own decision; and
  - (iii) The creation of a criminal offence under s77 of altering etc information with the intent to prevent disclosure.The delineation of powers and responsibilities are a clear reflection of the will of Parliament.
18. The power to certify an act or omission as a contempt has two distinct phases. Firstly, the Tribunal will consider whether the Respondent has committed an act or omission that would amount to a contempt and secondly, whether the First Tier Tribunal should exercise its discretion to certify the contempt to the Upper Tribunal.

19. In **Rotherham Metropolitan Borough Council v Harron & The Information Commissioner's Office and Harron v Rotherham Metropolitan Borough Council & The Information Commissioner's Office: [2023] UKUT 22 (AAC)** Farbey J said -

*At para 53 "...There is no power to compel a public authority to comply with a substituted decision notice. In the context of para 8 of Schedule 6 to the 1998 Act, the UT has held that there is a power to punish for not doing so, although that power may operate as an incentive to comply (Information Commissioner v Moss and Royal Borough of Kingston Upon Thames [2020] UKUT 174 (AAC), para 1). I see no reason to take a different view."*

20. And at para 54 -

*"54. The principle that proceedings for contempt of court are intended to uphold the authority of the court and to make certain that its orders are obeyed is longstanding (for a recent restatement, see JS (by her litigation friend KS) v Cardiff City Council [2022] EWHC 707 (Admin), para 55). A person who breaches a court order, whether interim or final, in civil proceedings may be found to have committed a civil contempt. Given the nature and importance of the rights which Parliament has entrusted twenty-first century Tribunals to determine, the public interest which the law of contempt seeks to uphold – adherence to orders made by judges – is as important to the administration of justice in Tribunals as it is in the courts. There is no sound reason of principle or policy to consider that any different approach to the law of contempt should apply in Tribunals whose decisions fall equally to be respected and complied with."*

21. In that case, Mrs Justice Farbey also restated the principles elucidated by the Court of Appeal in **Navigator Equities Limited v Deripaska [2021] EWCA Civ 1799**, para 82 as they apply to contempt -

*"The following relevant general propositions of law in relation to civil contempt are well-established:*

- i) The bringing of a committal application is an appropriate and legitimate means, not only of seeking enforcement of an order or undertaking, but also (or alternatively) of drawing to the court's attention a serious (rather than purely technical) contempt. Thus a committal application can properly be brought in respect of past (and irremediable) breaches;*
- ii) A committal application must be proportionate (by reference to the gravity of the conduct alleged) and brought for legitimate ends. It must not be pursued for improper collateral purpose;*
- iii) Breach of an undertaking given to the court will be a contempt: an undertaking to the court represents a solemn commitment to the court and may be enforced by an order for committal. Breach of a court undertaking is always serious, because it undermines the administration of justice;*
- iv) The meaning and effect of an undertaking are to be construed strictly, as with an injunction. It is appropriate to have regard to the background available to both parties at the time of the undertaking when construing its terms. There is a need to pay regard to the mischief sought to be prevented by the order or undertaking;*

*v) It is generally no defence that the order disobeyed (or the undertaking breached) should not have been made or accepted;*

*vi) Orders and undertakings must be complied with even if compliance is burdensome, inconvenient and expensive. If there is any obstacle to compliance, the proper course is to apply to have the order or undertaking set aside or varied;*

*vii) In order to establish contempt, it need not be demonstrated that the contemnor intended to breach an order or undertaking and/or believed that the conduct in question constituted a breach. Rather it must be shown that the contemnor deliberately intended to commit the act or omission in question. Motive is irrelevant;*

*viii) Contempt proceedings are not intended as a means of securing civil compensation;*

*ix) For a breach of order or undertaking to be established, it must be shown that the terms of the order or undertaking are clear and unambiguous; that the Respondent had proper notice; and that the breach is clear (by reference to the terms of the order or undertaking)."*

22. In the case of **Information Commissioner v Moss [2020] UKUT 174 (AAC)**, the Upper Tribunal concluded that, noting the enforcement powers that already existed under Rules 7 and 8 of the 2009 Rules, that not much else is left for section 61 of FOIA to deal with, apart from non-compliance with a substantive decision of the First Tier Tribunal.

### ***Analysis of the evidence and respective submissions***

23. The Respondent did not ignore the substituted decision notice and had responded to the directions made by the Tribunal. This is not a case of wilful or blatant disregard for the Tribunal's decision, the issue is whether they have responded to the request properly.
24. The issue as regards request 6 centres of the issue of supporting ledgers. The Applicant submits that the Respondent referred to supporting ledgers in previous correspondence with the information Commissioner. That correspondence has not been provided by the Applicant, but equally the Applicant's submissions about the Respondent's reference to supporting ledgers has not been denied by the Respondent either. The Applicant had no additional information to suggest that additional ledgers were kept by the Respondent, he relied on the alleged use of that phrase by the Respondent.
25. It has not been helpful that in the Respondent's response, there has not been reference to the existence or otherwise of supporting ledgers. In the tribunal's judgment, the reference to "ledgers" could be a generic description of the financial information that has already been disclosed or a specific ledger. To that end, the Respondent has allowed the Applicant to consider that there is a specific ledger that exists that has not been disclosed by not being clear when the issue was raised. In the context of this relationship where the Applicant does not trust the Respondent and makes allegations of incompetence, this has further fuelled the fire.

26. Looking specifically at the responses of the Respondent, on 21<sup>st</sup> August 2024 the Respondent said “the assertions made regarding missing ledgers etc are somewhat absurd..” and that all financial documents were available for inspection at an open day annually. In the February 2025 response, the Respondent provided information that had been already released but confirmed in the covering email that “PPC have provided all of the available documentation related to [his] request”.
27. The Respondent has demonstrated compliance and openness with the Tribunal albeit at times perhaps not entirely understanding the requirements of FOIA in terms of releasing recorded information and not being required to answer questions. The Respondent is a small Parish Council but it still has to comply with FOIA as a public authority. Taking into account the amount of information provided, we do not consider that there were any additional ledgers that have not been disclosed and we accept the Respondent’s submission that they have released all of the information held in response to the request. The Respondent should have confirmed clearly and contemporaneously to the request that no supporting ledgers were held, however.
28. As far as request 7 was concerned, the request for information was more nebulous. The information request was advice, information or evidence from third parties in regard to allegations that the Applicant had behaved in a harassing way.
29. The Respondent had indicated at the earliest opportunity to the request that there were no documents available. They then sought to signpost the Applicant to information on the internet which appeared to misunderstand that the request was about information held by them and not others. The Respondent then said they had received information from various bodies which appeared to be generic information although the Applicant was asking about information that related to him. In the very latest response, the Respondent reiterated that there was no recorded information.
30. The Applicant’s argument about whether there were documents or information did not assist the Tribunal. It is not information that FOIA is concerned with but recorded information. On this point, the Respondent was consistent in their assertion that no information had been recorded. They were not obliged to advise the Applicant where information about harassment may be found elsewhere.
31. The burden of proof is on the Applicant to demonstrate that the Respondent had not complied with the substituted decision notice. The Tribunal were not satisfied that the Respondent had failed to comply with the decision notice. The application to certify a contempt is dismissed.

District Judge Moan sitting as a Judge of the First Tier Tribunal

26<sup>th</sup> March 2025