

kpmg

REPORT No. 4

Appendix A

**Lincolnshire County Council**

**Report in the Public Interest  
Audit of Accounts 1998/1999**

**and**

**1999/2000**

**2 May 2002**

KPMG

*This report contains 58 pages*

*Appendices contain 7 pages*

<u>5.3</u>	<u>Instructions by individual members</u>	46
<u>5.4</u>	<u>Avoidance of Council/Committee</u>	46
<u>5.5</u>	<u>Conclusions</u>	48
<u>6</u>	<u>The Monitoring Officer</u>	49
<u>6.1</u>	<u>Conclusions</u>	52
<u>7</u>	<u>The present position and the way forward</u>	53
<u>7.1</u>	<u>Recent developments</u>	53
<u>7.2</u>	<u>Provisional legal views</u>	53
<u>7.3</u>	<u>Draft Public Interest Report</u>	54
<u>7.4</u>	<u>The new Ethical Framework</u>	55
<u>8</u>	<u>Recommendations</u>	57
<u>8.1</u>	<u>General (Section 1)</u>	57
<u>8.2</u>	<u>Severance (Section 2)</u>	57
<u>8.3</u>	<u>Member involvement in staffing matters (Section 3)</u>	57
<u>8.4</u>	<u>Economic grant aid (Section 4)</u>	58
<u>8.5</u>	<u>Delegated authority (Section 5)</u>	58
<u>8.6</u>	<u>Monitoring Officer (Section 6)</u>	58
<u>Appendix A</u>		59
<u>An auditor's powers and duties</u>		59
<u>Appendix B</u>		61
<u>Chronology of investigation</u>		61
<u>Appendix C</u>		63
<u>Duties of members and senior officers</u>		63

## 1 Introduction and overview

### 1.1 Introduction

1. As the external auditor to Lincolnshire County Council ("the Council"), I am required under section 8 of the Audit Commission Act 1998 ("the 1998 Act") to consider whether, in the public interest, I should make a report on any matter coming to my notice in the course of my audit, in order that it may be considered by the Council or brought to the attention of the public. I have formed the view that there are serious matters of concern with regard to the governance of the Council which need to be brought to the attention of both the Council and public. I make this report in accordance with the above statutory duty.

2. In this Section I give an account of the conduct of the investigation which led up to this report and an overview of the findings of this report. In the subsequent Sections I set out in detail the matters which have been the subject of my investigation and have led to my overall conclusions.

3. My investigation has been substantial both in scope and scale and I wish to record my thanks to all those who have provided co-operation and assistance to me, including current and former members and officers of the Council.

4. The first of the matters under investigation came to my attention in April 1999 when Councillor Parker wrote to me with his concerns that a payment had been proposed, to a local company, QV Foods, without proper consideration of the company's financial position. It was not however until October 1999 that I received a written response from the Council to my queries over this issue. In April 2000, (two months after the final payment to QV Foods had been made) I was told informally by David Bowles, the Chief Executive, and Mark Spink, the then Director of Finance and Resources, of concerns they had over both the payment to QV Foods and other matters in relation to which they felt action should have been taken by Peter Burns, the former Chief Solicitor and Monitoring Officer.

5. In addition the Chief Executive had, over the period from October 1999 to April 2000 raised with me his concerns over a number of other matters. I took the view that, in the light of the seriousness of the issues raised that it was necessary for me to commence an investigation. In May 2000 therefore I began an examination of Council's files with regard to the payment to QV Foods, the departures of Jill Barrow, the former Chief Executive, and Norman Riches, the former Director of Education, from the Council, the appointment of the Divisional Surveyor South and the regrading of a Principal Officer. The underlying issues, it seemed to me, were officer/member relationships, the legal advice of the former Chief Solicitor, the role of the Monitoring Officer, the use of delegated authority and severance powers. In August 2000 I commenced a series of interviews with members, officers and former officers. All interviewees were given the opportunity to be accompanied at the interview and to check the accuracy and to comment on the contents of the transcripts which were prepared by independent court shorthand writers. The interviews were completed in April 2001. In total I carried out 21 interviews. In addition I held meetings with councillors and officers to receive oral representations.

6. The investigation has given rise to a significant number of factual disputes. I have been greatly assisted however by contemporaneous memoranda and file notes kept by officers and wherever possible I have relied on this evidence in preference to contradictory testimony given some time after the event.

7. In May 2001 I issued my provisional views on legality. I received responses from the Council and others by September 2001. In December 2001 I issued extracts of a draft of this report to the Council and those persons criticised in the report. The responses to the extracts were received in February 2002 and having taken those responses into account and made amendments accordingly, this report was issued on 2 May 2002.

8. I set out my powers and duties at Appendix A and a chronology of my investigation at Appendix B to this report.

## 1.2 The context

9. This report comes at a time of great change in local government. Local authorities are engaged in a modernisation process which will fundamentally change the arrangements for ensuring good corporate governance practices and in particular how standards of ethics and probity are to be maintained. The national climate, following the Nolan Report and the new Ethical Framework for local government is one in which ethical standards are expected to rise. The Council needs to ensure that its own standards improve in respect of the matters raised in this report.

10. I must stress however that this report concerns only one aspect of the functioning of this Council. The Council is renowned as an innovative local authority which provides many highly regarded services to its local people. I am of the view that the great majority of the Council's activities remain untouched by the problems described here. It would be wrong therefore to see this report as a condemnation of the overall workings of this authority.

11. The matters raised in this report should be viewed in this context. Nevertheless, I am concerned that left unchecked the dynamics set out here will destabilise the Council and damage its reputation. For this reason I will make enquiries and if necessary carry out further investigations regarding the Council's response to my recommendations.

12. It is important for each of the matters described below, to be considered in the overall context of the report. Thus even though a particular matter may only concern a relatively modest amount of money or appear to be a one-off incident, in my view, taken together the matters to which I draw attention in this report, build up a picture of dysfunctionality within the Council. It is important to note moreover that it is my view that the matters reported on here are not isolated incidents. During the course of my investigation a significant number of issues came to light which, on the face of it, were either an example of or touched upon the culture I describe here. In my choice of matters to investigate I have sought to illustrate the problems which the Council faces. I am aware of other matters which I decided not to investigate but which I understand are currently under investigation by the Council.

13. It should also be recognised that the issues which lie behind the specific incidents are of a serious nature. This report concerns a breakdown in corporate governance and in particular a failure in the safeguards of legality and ethics within the Council. On a

number of occasions this has led to decisions taken and acts by the Council which are unlawful (not in any criminal sense but on the grounds of being beyond the Council's powers). The democratic structure, the hierarchy of delegated authority, the need for sound legal and other officer advice, the role of the Monitoring Officer are all part of a system designed to safeguard and protect the interests of the local taxpayer. Without these safeguards officers and members are unaccountable in the exercise of their powers and in the spending of public funds and are vulnerable to charges of abuse of power and/or maladministration.

### 1.3 The public governance framework

14. High standards are expected of local government members and officers. These are supported by duties imposed by law and codes of practice which members and officers undertake to follow. I set out at Appendix C, the duties of members and senior officers and relevant provisions of the National Code of Local Government Conduct ("the National Code of Conduct")<sup>1</sup> and the Lincolnshire County Council Members' Handbook ("the Members' Handbook"). I also set out the provisions of section 5 of the Local Government and Housing Act 1989 ("the 1989 Act") which creates the statutory role of the Monitoring Officer. This officer has a critical role to play in the maintenance of a high standard of ethics and ensuring compliance with the law and relevant codes of practice within a local authority. Finally, at paragraphs 242 to 245, I describe the Ethical Framework introduced by the Local Government Act 2000 and its arrangements for Standards Committees and a Local Code of Conduct.

### 1.4 The culture

#### 1.4.1 Relationships between senior officers and certain members

15. Critical to the proper functioning of a local authority is the relationship between officers and members. In the course of my investigation I formed the view that a dysfunctional relationship had been allowed to develop between certain senior officers and certain of the majority group councillors, in particular the Leader, Councillor Speechley and the former Deputy Leader, former Councillor Mawby. I consider that a number of factors have given rise to this state of affairs.

16. First, I consider that senior officers have been subject to a climate of fear with regard to their jobs. Officers have spoken of being put under pressure, being subject to strong criticism, and in extreme circumstances fear that they would lose their jobs if they failed to follow the wishes of certain majority group councillors, in particular Councillor Speechley and former Councillor Mawby. I have been told that the way to preserve one's position was to carry out their wishes regardless of whether or not a particular matter had been before Council, Committee or Sub-committee and, in some cases, regardless of its legality. It appears that officers' fears have been fuelled by the circumstances in which Jill Barrow, the former Chief Executive and Norman Riches, the former Director of Education left the Council (see Section 2 below). In both cases, the officers fell out of favour with the majority group, in particular Councillor Speechley and

---

<sup>1</sup> Paragraph 243 below refers to the process whereby the National Code of Conduct is to be superseded by a Local Code of Conduct (yet to be adopted by the Council).



former Councillor Mawby. These two senior members gave instructions that the officers were to leave. Whilst on the face of it both officers agreed to go, I am of the view that their departure was in reality forced upon them, primarily on account of the wishes of certain majority group councillors and, in particular, the two councillors mentioned above.

17. Since 1994 at least 20 senior officers have left the employment of the Council. Those I have spoken to have attributed their decision to leave, at least in part, to the issues described in this report. It has been suggested to me that these issues have also played a part in the decision of a number of the other senior officers who have left the authority. I am of the view that this degree of turnover of senior staff has had a destabilising effect on the authority. I have noted moreover that this turnover spans two different administrations. In my view, the current difficulties besetting officer/member relationships are a product of a culture at the Council which has grown up over a number of years. It should not be assumed therefore that responsibility for this culture should be laid solely at the door of the current administration and those officers in service during the period under investigation.

18. What is clear however, is that the breakdown in relationships has come to a head over the last few years. A Briefing Note sent by David Bowles, the Chief Executive, to senior members on 11 October 1999, that is at the time of Norman Riches' proposed departure, stated that:

*"There will be wider ramifications of members deciding to pursue their current line and sever Norman's contract. This will follow:-*

*Large scale redundancies following the change of control;*

*Departure of previous Chief Executive*

*Departure of [ Central Support Manager]*

*Members were advised that they needed to be aware of the impact of these on staff. Staff have openly expressed concerns about a members "hit list" of officers. Councils are political in nature and these sorts of problems are inevitable; it is the perception of the scale of them at Lincolnshire which causes concern.*

*If this climate were to develop the organisation will fossilise, high calibre staff will seek to leave and the organisation will suffer as a result."*

19. A second factor has been the close relationship between Peter Burns, the former Chief Solicitor, Deputy Chief Executive and Monitoring Officer, and certain majority group councillors, in particular Councillor Speechley and former Councillor Mawby. From the members' point of view, I believe this close relationship to have arisen in part from a belief that other senior officers were not to be relied upon. One former Chief Officer told me in interview:

*"It was an increasing occurrence that the members wanted not to work with other officers who did not want to do what members wanted to do and who would resort to working very directly with the Chief Solicitor, who would find solutions to implement things and, if officers had reservations about them, was quite happy*

*to get on and implement them. I think it is fair to say that there became an increasing tension between the leadership of the Council and a number of directors who refused to bend on areas where we did not think we should bend (and I have to say all three of those directors have since left the Council) ... .."*

20. The degree to which Peter Burns was compliant to members' wishes can be seen from the departure of Norman Riches. As I detail in Section 2 below, there was opposition from other members to Norman Riches' proposed departure from the Council. In the light of this, the Chief Executive asked Peter Burns for his advice whether Norman Riches' departure was legally sustainable. Peter Burns wrote in a memorandum dated 22 November 1999:

*"Taking a simplistic approach as officers we could respond to the wishes of the Leader, and assume that instructions are to be acted upon without recourse to other Members. I am aware that this approach has been adopted within Lincolnshire in the past. On the other hand, if we become aware of a conflict, we can hold back and wait for the conflict to be determined. I can fully understand why you thought it best to follow the second route, although I have to say that I would have followed the first route."*

21. In my view, Peter Burns was overly compliant to the wishes of majority group councillors and in particular, Councillor Speechley and former Councillor Mawby. In so behaving he allowed those members to exercise greater power than was properly theirs to exercise. This has led to the Council making unlawful decisions.

22. A consistent theme in the dysfunctional relationship described here, has been the lack of confidence and trust between senior officers and certain majority group councillors. Members have complained to me about the lack of and/or quality of officer advice and officers have complained that members have failed to act on the advice they have received. A climate of suspicion and mistrust has characterised the way in which officers and members have described to me the working atmosphere of the Council.

23. I have been surprised during the course of my interviews at the number of occasions on which officers and members have disagreed over their recollection of events (for instance the meeting on the 15 April 1999 at which the appointment of the Divisional Surveyor South was discussed – see Section 3 below). In my view, this level of division amongst senior officers and certain members can only be damaging for the Council. An illustration of how this is now affecting the day to day running of the Council is to be found in the recent events surrounding the proposed appointment of an Acting Deputy Chief Executive (see Section 3 below).

24. I understand there to have developed a very strained relationship between David Bowles, the Chief Executive, and certain members of the majority group, in particular Councillor Speechley. I consider that the Chief Executive is being blamed for having brought certain matters to my attention and for having co-operated with my investigation. Councillor Speechley denies this and has told me that he considers that the Chief Executive has been seeking to undermine his position as Leader and in particular that he should have raised many of his concerns with him at a much earlier stage.

25. In my view the Chief Executive has acted properly, in the best interests of the Council and sought to raise the standards of ethics and probity within the Council. I

accept however that the relationship between the Chief Executive and certain members of the majority group has deteriorated to the point where both parties are finding it difficult to work with each other. This is a matter which the Council must address urgently if it is to carry out its functions properly.

#### 1.4.2 Misuse of delegated authority

26. In certain of the cases detailed below, decisions were taken relying upon the Chief Solicitor's delegated authority (as contained in the Council's Scheme of Delegation) when the matters in question ought properly to have been decided by the Council, a Committee or Sub-Committee of the Council. In my view, a culture has developed in which the system of delegated authority has been misused. Certain majority group councillors have let officers know that they prefer a particular decision not to go before Council/Committee. Those officers have then sought to achieve this by relying upon the Chief Solicitor's delegated authority in circumstances in which they ought properly to have advised those members that the decision needed to be taken by Council/Committee.

27. Whilst Peter Burns' delegated authority was cast in wide terms, it did not empower him to take decisions which fell outside his sphere of responsibility. Nor did it empower him to take decisions which had been specifically delegated to other officers or which, on account of their importance or subject matter ought properly to have been taken by Council or, a Committee or Sub-Committee of the Council. The most striking example of this was Peter Burns' purported authorisation of the dismissal of Jill Barrow, former Chief Executive and her severance agreement. The departure of a Chief Executive from a local authority is a matter of such importance that, in my view, it was unlawful for this to have been decided upon without prior authorisation by the Council, a Committee or Sub-Committee of the Council.

28. I have been told by a number of interviewees that the reluctance to air matters at Council/Committee is borne of a lack of co-operation between the main political groups. I have also been told that the majority group has felt entitled to withhold information from the opposition on account of the way in which they felt they were treated when in opposition themselves. In my view, there is a degree of antagonism between the political parties which can only be damaging to the Council. I am concerned that this may be one of the factors which led to matters being kept from Council/Committee. Whatever the cause, the practice of keeping matters away from Council, Committee and Sub-Committee in order to avoid the scrutiny of the opposition, and in consequence the public, is unlawful.

29. In a number of the cases detailed below, Peter Burns, and on one occasion Mark Spink, when Acting Chief Executive, purported to exercise their delegated authority when in reality they were acting on the instruction of individual members. This rendered the decisions taken unlawful. Peter Burns has told me that, in the particular cases involving him, he believed Councillor Speechley to be passing on the views of the majority group. Peter Burns felt that it would in certain circumstances be acceptable to act directly on the wishes of the majority group as they could, if need be, vote through any decision or policy, relying upon their majority in Council. Councillor Speechley and former Councillor Mawby expressed similar views to me in interview.

30. The purported use of delegated authority when in reality the officer is acting on individual members' instructions (or those of the majority group), fundamentally



undermines the democratic safeguards embodied in local government legislation and is unlawful. Those safeguards include the rules on delegated authority, Committee membership and publicity. Under the current arrangements, for a local authority to function properly, its decisions have to be subject to debate in Council or a politically balanced Committee or Sub-Committee and, subject to exceptions, be made in public. The alternative is for officers to take decisions on behalf of the Council, but only where they are acting within the terms of their delegated authority and the delegated authority is exercised for a proper purpose.

31. Under the new arrangements pursuant to the Local Government Act 2000, local authorities will be able to adopt alternative ways of conducting their business, for instance an executive consisting of the Leader and Cabinet which I understand to be the Council's preferred model. It will remain the case however that only certain decisions may be taken by the executive and these decisions will be subject to a system of supervision by overview and scrutiny committees. Decisions with regard to the appointment of staff, their terms and conditions (including procedures for dismissal) are not to be decided under the executive arrangements. Whatever system of corporate governance is eventually adopted at the Council, it should ensure that its decision making processes are not open to the kind of misuse described in this report.

#### **1.4.3 Improper pressure and misuse of power in staffing matters**

32. In my view, Councillor Speechley and former Councillor Mawby have been, and in Councillor Speechley's case continues to be, overly powerful within the Council. With regard to Councillor Speechley I have come across examples of behaviour which can only be categorised as both improper pressure and a misuse of power. This is most evident in his involvement in staffing matters. I have detailed below the appointment process for the post of Divisional Surveyor South, in relation to which Councillor Speechley threatened to dismiss a Chief Officer if he did not appoint Councillor Speechley's preferred candidate (see Section 3 below). I have also detailed below how Councillor Speechley sought to dismiss the former Chief Executive, Jill Barrow, according to her, telling her to "leave the building" there and then. Finally Councillor Speechley told a junior personnel officer that he was to disregard the established job evaluation criteria with regard to an officer who worked in the Leader's Office, and that he, Councillor Speechley, would tell the personnel officer, what the officer was to be paid. Former Councillor Mawby, in my view, also misused his power as a senior member in pressing for a pay increase for the aforementioned officer (see Section 3 below).

33. In the course of my investigation I became aware of members other than Councillor Speechley and former Councillor Mawby lobbying or seeking to exert pressure with regard to personnel matters (see Section 3 on the appointment of the Divisional Surveyor South). This is contrary to provisions of both the National Code of Conduct and the Members' Handbook. It is of crucial importance that members avoid improper involvement in staffing matters giving rise to an appearance of favouritism.

#### **1.4.4 Officer advice/member responsibility**

34. Peter Burns, the former Chief Solicitor and Monitoring Officer, failed on a number of occasions to warn members that their conduct was in breach of the National Code of Conduct and that their instructions to officers if acted upon would have led to unlawful decisions. In this regard, I have noted the failure of Peter Burns to advise

members against their conduct with regard to the appointment of the Divisional Surveyor South and the regrading of the Principal Officer (see Section 3 below).

35. However, members and in particular Councillor Speechley and former Councillor Mawby could not have been expected to be aware of the unlawfulness of certain aspects of the Council's activities detailed below. For instance, whilst I am critical of members' involvement in the decisions that Jill Barrow and Norman Riches leave the employment of the Council, I am of the view that the negotiation of the detailed terms of the severance agreements was properly a matter for officers. Those terms ought then to have been put before the Council, a Committee or Sub-Committee of the Council for decision. In the absence however of correct legal advice, I accept that members could not have been expected to be aware of the unlawfulness of certain of the items in the severance packages. Members are entitled to rely upon the professional advice of their officers and should have been advised that the particular severance agreements were beyond the Council's powers and unlawful.

36. A further example of the consequences of poor legal advice is to be seen in the payment of grant to QV Foods (see Section 4 below). What the Council has publicly described as a first class example of a Best Value scheme is, in fact, founded upon a breach of both domestic and European Law and has led to unlawful payments. The legal advice Peter Burns gave in this respect fell below the standard that might be expected of a competent solicitor. In my view, the incorrect advice was primarily a product of his lack of understanding of the area of law upon which he was advising. In addition, however, I consider that his desire to achieve the perceived wishes of the majority group and in particular, Councillor Speechley and former Councillor Mawby, gave rise to a complacent approach to the law. Whilst Peter Burns was, in my view, genuinely concerned to achieve outcomes for the Council he confused the desired outcome of these members with those required as a result of decisions taken lawfully by or on behalf of the Council.

37. Peter Burns wrote in a memorandum dated 22 November 1999 to the Chief Executive that:

*"Local Government is arranged on political grounds and it follows therefore that Chief Officers will always have to bear in mind the need to balance the political considerations, as against the need to ensure that matters are at all times legal, proper and above board. Balancing these two competing tasks can be a difficult task."*

I consider that this quote illustrates the detrimental effect that overly powerful leadership can have on an authority's senior officers. The role of a Chief Solicitor and Monitoring Officer is not to balance what is *"legal, proper and above board"* against the political considerations of members. Such considerations should be left entirely out of account. It was this approach that is, his willingness to depart from legality when *"political considerations"* so required, that was at the heart of the failure of the former Chief Solicitor and Monitoring Officer to discharge his duties in a proper manner.

38. Despite the shortcomings in the advice or lack of advice from Peter Burns, I am nevertheless of the view that such experienced members were or ought to have been aware of the terms of the National Code of Conduct, which is reproduced in the Member's Handbook. When elected as a member, they undertook to follow the terms of

the Code. Moreover, Councillor Speechley and former Councillor Mawby were, at least on one occasion, reminded of the proper rules on conduct by the Chief Executive. For these reasons therefore, I am of the view, that certain majority group Councillors, in particular Councillor Speechley and former Councillor Mawby must take personal responsibility for many of the problems that have arisen. I am satisfied that these members, in these matters, were acting in what they thought were the Council's interests. I am of the view however that in carrying out their functions as senior members, seeking to put into effect the wishes of the majority group, they did not see the necessity to be constrained by the normal safeguards of the decision-making processes in local government and that the democratic process suffered accordingly.

#### 1.4.5 Misuse of severance powers

39. As a consequence of the culture within which certain members were able to bring about the departure of Chief Officers, unlawful severance payments have been made. The purpose behind these payments was to secure the officers' voluntary agreement to leave (see Section 2 below) in circumstances in which it was very unlikely that the Council would have been able to dismiss them through the normal disciplinary route.

40. A local authority employer is not in the same position as a private employer. As creatures of statute entrusted with public functions, local authorities may only do that which they are empowered or required to do by legislation. Such powers must be exercised properly and for the purposes Parliament intended. The rules on payments which may be made to a departing officer, be that as a result of resignation, a mutual agreement to leave or early retirement are subject to strict limits. I have detailed below how these powers were unlawfully exercised in relation to Jill Barrow and Norman Riches as a way of securing their departure. This has resulted in unlawful payments to those former officers.

#### 1.4.6 Monitoring Officer

41. One of the most concerning aspects of my investigation has been the almost complete absence of intervention from Peter Burns as Monitoring Officer. This is despite repeated attempts by David Bowles to galvanise Peter Burns into action. In my view, Peter Burns, on a number of significant occasions, failed in his duty as Monitoring Officer.

42. The role of Monitoring Officer is critical to the maintenance of legality and ethical standards within local government. The Council has had particular need for the services of a strong and independent Monitoring Officer. Insofar as the Council has not had this it has been particularly vulnerable to some of the improper practices and unlawful decisions described below. I set out in detail my views on this issue in Section 6 below.

### 1.5 Conclusions

43. As the external auditor to the Council, in addition to the issuing of this public interest report, I have had to consider whether I should exercise any other of my powers and whether I have any duty to perform under the 1998 Act. In this regard, whilst it appears to me that the matters under investigation have led to items of account which are "contrary to law" within the meaning of that phrase in section 17 of the 1998 Act I have



in the exercise of my discretion, decided against applying to the High Court for a declaration to this effect.

44. I have taken this decision on the basis that the Council have acknowledged that the particular items of account reported upon here are "*contrary to law*". As such, I consider that no useful purpose would be served in my seeking a declaration and that it is likely that the costs of doing so would fall on local taxpayers, without any or little compensatory benefit.

45. I have concluded that whilst the matters under investigation have led to losses in the Council's accounts, that they have not been caused by the wilful misconduct of any officer or member. As such I am not under any duty to certify as due any amounts from any person pursuant to section 18 of the 1998 Act (more commonly referred to as "surcharge").

46. Although I have decided against taking any action under my powers and duties in sections 17 and 18 of the 1998 Act, I consider that the matters reported upon here are of sufficient gravity to warrant a public interest report under section 8 of that Act. I am concerned that there is a dysfunction at the heart of the relationships between certain members and senior officers. This has led to a climate of suspicion and distrust and a lack of confidence as between those members and officers. In turn this has led to a breakdown in the normal decision making processes and therefore the proper governance of the Council. I am also concerned that since my investigation began there appears to have been little recognition by senior members of any of the problems reported upon here. I have not detected any significant progress in the Council addressing such problems.

47. In my view, the task ahead for the Council is to ensure that the following safeguards are in place:

- Members must be aware of and act in accordance with their duties and responsibilities, the provisions of the National Code of Conduct (to be replaced by a Local Code of Conduct – see paragraph 243) and the Members' Handbook.
- The Council must have access to professional advice of high quality, proffered independently and without fear of consequence. In particular, officers must be confident that unpopular advice will not lead to retaliatory action on the part of members.
- The Monitoring Officer must act in a robust and steadfast manner.
- Decisions must be taken at the appropriate level, that is, depending on its importance, by the Council, the executive (when introduced), a Committee or Sub-Committee of the Council or by an appropriate officer under delegated powers.
- Severance and other powers must only be used for the purposes for which Parliament conferred those powers.

48. I make detailed recommendations on how the Council may strengthen these safeguards in Section 8 below.



## 6 The Monitoring Officer

214. Fundamental to the proper functioning of a local authority is the role carried out by the Monitoring Officer. This is a statutory post designed to uphold the legality of council action and the ethical standards of members and officers. Pursuant to section 5 of the 1989 Act a local authority's Monitoring Officer is under a duty, if it appears to him or her that:

*"any proposal, decision or omission by the authority, by a committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to –*

- (a) a contravention by the authority... of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or*
- (b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974...;*

*to prepare a report to the authority with respect to that proposal, decision or omission."*

215. As of 28 July 2001, pursuant to an amendment under the Local Government Act 2000, Monitoring Officers are now only under a duty to report with regard to maladministration or injustice as mentioned in Part III of the Local Government Act 1974 where the Local Government Ombudsman has conducted an investigation.

216. As I commented in Section 1, one of the most concerning aspects of the culture there described has been the almost complete absence of Monitoring Officer intervention in the matters under investigation. I believe that Peter Burns' failure to act was partly borne of a belief that nothing was amiss and partly on account of not wishing to aggravate certain majority group councillors and in particular Councillor Speechley and former Councillor Mawby.

217. Perhaps the most striking example of this was the meeting at which Paul Kirby was threatened with dismissal by Councillor Speechley if he did not appoint a particular officer. Peter Burns, the former Monitoring Officer was present at that meeting but said nothing. He thereafter encouraged other officers to give in to the improper pressure applied by Councillor Speechley, which, had they done so, would have resulted in unlawful action.

218. Paul Kirby commented on Peter Burns' presence at that meeting that:

*"It is very odd when you commit a crime to bring the policeman along. Why you would invite the Council's Monitoring Officer when you are asking somebody to do something which they really should not do seems to me a complete own goal".*

219. As the officer with statutory responsibility to safeguard legality and ethical standards within the Council, Peter Burns' failure to advise Councillor Speechley and

others present of the impropriety of the latter's actions and of the potential unlawfulness were the particular officer to have been appointed was, in my view, a serious omission.

220. The Chief Executive has told me that he asked Peter Burns as Monitoring Officer to produce advice for Councillor Speechley and other senior members on what had happened and more generally on member responsibilities with regard to staffing matters. Whilst a memorandum was produced<sup>11</sup> and given to the Chief Executive, it appears that it was never sent to councillors by Peter Burns. This was despite the fact that the Chief Executive had on a number of occasions encouraged Peter Burns to draw to members' attention the proper boundaries of their conduct, as reflected in a later memorandum dated 24 November 2000, in which the Chief Executive wrote to Peter Burns that:

*"We have discussed before, the need to draw lines in the sand and challenge inappropriate behaviour by members. Although I thought we had this as an agreed strategy, you usually seek to avoid those actions. I note in your response you seek to "justify" members threatening to sack a chief officer if he does not break the law, in the context of that being symptomatic of a wider relationship problem. No such relationship problems could ever excuse such conduct by members".*

221. The report asked for by the Chief Executive, following the incident with Paul Kirby, albeit not sent to members, is instructive in showing Peter Burns' approach to his role as the former Monitoring Officer. The document, which was under cover of a memorandum dated 13 May 1999, stated:

*"I have prepared this Report as the County Council Monitoring Officer with a view to ensuring all Members and Officers have full legal protection.*

\*\*\*

### Conclusion

1. *I accept that Members have acted in good faith to try and put right what they perceive as an injustice.*
2. *As Monitoring Officer I have no wish to issue a report under Section 5 of the Local Government and Housing Act 1989 in consideration of a breach of law or breach of the National Code of Conduct. Although there may have been a breach, we need to ensure no damage is done.*
3. *I am concerned that if there was a complaint from anyone asking me to consider my role under Section 5 because of a number of potential breaches in this case as mentioned above, I would have to consider the issuing of a report and would be in difficulty in avoiding issuing a report. It is not in anyone's interest for this route to be even considered. Any further steps need to be carefully considered to ensure that no former or*

---

<sup>11</sup> "Highway Staff Appointments – Confidential Report for David Bowles, Chief Executive"

*current member of staff can mount a claim. In Court or at an Industrial Tribunal.*

4. *Members and Officers need to consider fully the National Code of Conduct and even if nothing wrong has been done, there is an element of public perception, and not only must Members and Officers be whiter than white, they must be seen to be whiter than white. The problem is that when mud is thrown, even if is entirely unwarranted and unjustified, it tends to stick simply because allegations have been made. Any further decision needs to be carefully taken to avoid further embarrassment to Members".*

222. I am of the view that the threat to dismiss Paul Kirby by Councillor Speechley was of such gravity that, as Monitoring Officer, he should have issued a section 5 report. I find that it was a failure of his duty as Monitoring Officer for Peter Burns to have concluded that there was a breach of the National Code of Conduct and yet to have decided not to issue a report under the 1989 Act.

223. The above memorandum indicates that Peter Burns' approach to his duty as Monitoring Officer was coloured by whether or not a complaint by a third party had been made. The duty under section 5 of the 1989 Act is a personal duty which must be complied with regardless of whether a particular matter has become public knowledge and the subject of complaint. Indeed, one aspect of the responsibilities of the Monitoring Officer is to bring improper conduct to the attention of the Council and the public, in the public interest.

224. Member involvement in staffing matters was raised again by the Chief Executive with regard to the Principal Officer's claim for regrading. In a memorandum dated 15 August 2000, the Chief Executive wrote:

*"There seems to me to be strong evidence of inappropriate conduct and behaviour by a number of people; the [Personnel Officer] incident, the "deadline", the Leader having a copy of an e mail to [the Principal Officer] regarding the grading process, member discussions with [the Head of Personnel] and what the grading review should deliver etc. These are all concerns that I have expressed to you in connection with this grading exercise and there are other matters including those raised in memoranda dated 6 October 1999 and 3 May 2000.*

*These strike me as fairly strong evidence of conduct which at a minimum is unwise and at worst improper. I do not see how you can advise turning a blind eye to it.*

*In considering such matters we have to put aside personal sentiments and relationships.*

*These are difficult areas and difficult issues but we are both paid to handle them effectively and in your case they go to the heart of your statutory role. I have told you on more than one occasion over the past twelve months that these are not issues I expect you to handle on your own; I have difficulty tackling them though when the Monitoring Officer is not prepared to be party to that action and even*

*worse says that he sees nothing wrong at all. I was fully aware of your reluctance in, for example, the [Divisional Surveyor South] incident but to have let that sort of thing go leads us to Doncaster territory."*

225. In my view, Peter Burns ought to have taken action as Monitoring Officer to advise members against their conduct with regard to member involvement in the regrading of the Principal Officer. Peter Burns has told me in interview that, in his view, members had done nothing wrong. He was of the further view that members are entitled to express a view as to what an officer should be paid provided the comment was not calculated to and did not in fact influence the outcome of a grading dispute. In my view, the degree of interference by Councillor Speechley and former Councillor Mawby in this matter was unacceptable and in breach of the National Code of Conduct.

226. The duty under section 5 of the 1989 Act to make a report to the Council only arises where "it appears" to the Monitoring Officer himself that there is or is likely to be a breach of the law or any Code. In the event, Peter Burns did not accept that members' conduct in relation to the Principal Officer had resulted in breaches of the National Code of Conduct and unlawful action. With regard to the severance agreements with Jill Barrow and Norman Riches and the payments to QV Foods, I am of the view that Peter Burns failed to appreciate that unlawfulness had arisen.

227. In my view however, a lawyer of reasonable competence would have identified the illegality and/or breaches of the National Code of Conduct in these particular matters such that the duty under section 5 to make a report would have arisen. What this illustrates therefore is the critical need, where the Monitoring Officer is a lawyer, for that person to be a lawyer of high calibre. Where the Monitoring Officer is not a lawyer, that person needs access to high quality legal advice. Without this, the role of Monitoring Officer cannot be properly discharged.

## 6.1 Conclusions

228. During the period under investigation, the Council has had particular need of a steadfast Monitoring Officer of sound judgement. In my view, on a number of occasions, reports to the Council with regard to breaches of the National Code of Conduct and breaches of the law, should have been made under section 5 of the 1989 Act. Of particular importance to the Council in the forthcoming period will be the need for the Council to put in place arrangements to ensure that its Monitoring Officer fulfils his or her function to the necessary standard.

229. I make recommendations in Section 8 with regard to these matters.



## **8.6 Monitoring Officer (Section 6)**

The Council should in any future appointment of a Monitoring Officer, take care to appoint an individual of high calibre, capable of formulating sound judgements and advising members impartially and with clarity. Steps should also be taken to ensure that the Monitoring Officer has access to legal advice of a high standard, if necessary, externally.