

St. Paul's Bay Local Council
An Investigation into the
Findings of the
Local Governance Board

Report by the
Auditor General
June 2018



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List of Abbreviations

DLG	Department for Local Government
LN	Legal Notice
NAO	National Audit Office
SPB	St. Paul's Bay

Introduction

On 19 December 2017, the Minister for Justice, Culture and Local Government submitted a request for an investigation to the National Audit Office (NAO). By means of Regulation 5(2)(b) of the Local Councils (Financial) Regulations, the Auditor General was requested to investigate the findings of the Local Governance Board, which concluded that there had been a breach of the Local Councils Act and the Financial Regulations in Case 001/2017.

Attached to the request was a copy of the report as prepared by the aforementioned Board, which document initially showed details of the complaint as submitted by the Minority Leader of St. Paul's Bay (SPB) Local Council. This was accompanied with the counter-reply put forward by the individual being arraigned, namely SPB Mayor who served in Office from 29 April 2015 to 10 January 2018, (when she submitted her resignation as Mayor but continued serving as a member of the Council), as well as the final decisions of the Local Governance Board.

Background

By means of an email dated 15 February 2017, addressed to the Local Governance Board Secretary, the Minority Leader of SPB Local Council brought to the attention of the said Board, a series of allegations against the then Mayor of the same Local Council. Such complaint was submitted on behalf of all Councillors representing the Labour Party.

The Local Governance Board requested the then Mayor's comments on such allegations, and response was received on 18 March 2017. Both parties also appeared before the same Board during a meeting held on 26 July 2017, to give their testimony on the case in question and present further documentary evidence. During the meeting, the Minority Leader of SPB Local Council, in the name of the Labour Party Councillors, put forward another allegation concerning a breach of the Financial Regulations whereby it was purported that direct order limits were exceeded with respect to the operation of the locality's public conveniences.

Following its examination of the evidence submitted by the parties involved, in a subsequent meeting held on 30 August 2017, the Local Governance Board discussed and agreed upon the conclusions reached regarding this case. The respective decisions were eventually published on 14 September 2017 in the report referred to under the Introduction section of this write-up.

Methodology

This investigation was conducted in terms of para 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 (XVI of 1997) and in accordance with practices adopted by NAO.

Minutes of Local Governance Board meetings, as well as all documentation compiled by the latter, forming the basis of its final decision, were extensively reviewed. To supplement NAO's understanding of such documentation, interviews were conducted, under oath, with the following stakeholders:

- Director, Department for Local Government (DLG) and a Senior Monitoring Officer from the same Department;
- Board Secretary and the then Chairman of the Local Governance Board;
- SPB Local Council's Minority Leader;
- SPB Local Council's Acting Executive Secretary in Office from 8 May 2015 till 13 September 2016; and
- SPB Local Council's ex-Mayor against whom the allegations were made.

The minutes of such interviews were reproduced in writing by the NAO.

All findings and conclusions reached in this Report are based on the evaluation of the aforementioned documentation, any other citations forwarded by the respective stakeholders following meetings held, applicable legislation and other related material available on the Council's website.

For ease of reference, NAO's findings are being disclosed separately under each of the conclusions reached by the Local Governance Board. A summary of the allegations as submitted by the Minority Leader is being reproduced under its respective title, followed by the conclusions reached by the Local Governance Board and the outcome of NAO's investigation.

Analysis of Local Governance Board Findings

i. Allegation

The Mayor was not present in the Council's hall to kick off meeting number 27 held on 13 February 2017, which meeting was called by her good self. In the Council's premises there were more than the required amount of Councillors to reach a quorum.

Local Governance Board's Conclusion

The Board did not indulge into the issue relating to the exact time of meeting commencement and whether the Mayor was attending another meeting in the same premises or otherwise. The Board drew the attention of the parties involved that cooperation is necessary for the effective operation of the Council. In any case, from the evidence provided it transpired that a quorum was reached within the 30 minutes timeframe stipulated by law and hence the respective meeting was held within legal parameters.

NAO's Observation

As per Council's minutes a quorum¹ was established within the half-an-hour timeframe specified in the Sixth Schedule of the Local Councils Act (Cap 363). Thus, no irregularities were noted in this regard.

ii. Allegation

Mayor failed to comply with financial regulations since no mid-term audit was requested upon her appointment, in line with pertinent legislation and as suggested by the Councillors.

Local Governance Board's Conclusion

The Board notes that in this regard there was a breach of the financial regulations. Evidence confirms that the Mayor did not request an audit to be carried out as required by pertinent regulations and her explanation does not exonerate her from the obligations arising out of Legal Notice (LN) 135 of 2007.

¹ Article 2 of the Sixth Schedule of the Local Councils Act defines quorum as the first whole number above 50% of the number of Councillors in office and not debarred by reason of declared interest.

NAO's Observation

According to Article 4(1) of LN 135 of 2007 a mid-term audit is only required whenever there is a change in the Executive Secretary. Therefore, in NAO's opinion, the respective allegation does not hold.

Despite the above, on 13 May 2015, a mid-term audit was requested by the then Acting Executive Secretary. However, as pronounced by the aforementioned Officer, eventually the proposed fee of €3,500 which was to be borne by the Council, was deemed too high in view of the latter's negative financial situation. Consequently, such audit was not carried out.

iii. Allegation

Tender for the collection of domestic waste was expired by one year and such service continued to be acquired through direct order with the Mayor's approval.

Local Governance Board's Conclusion

The Board recommended that in such circumstances a tender is to be issued well ahead the expiry of the one in force. Thus, such malpractice will be avoided.

NAO's Observation

Prior to the expiration of the contract (5 September 2015), during Council meeting held on 8 July 2015, the Council unanimously approved to extend such contract for a further period of six months. However, no further extensions were formally agreed upon by the Council thereafter, despite that the service in question was still being rendered in April 2018 whilst this investigation was being conducted.

The Local Councils (Tendering) Regulations, the Local Councils (Tendering) Procedures, as well as the Local Councils (Financial) Procedures stipulate that the responsibility to issue a fresh tender rests with the Executive Secretary being the administrative and financial head of the Council.

However, from testimonials given during interviews held, it transpired that at the time, the Office of the Executive Secretary was occupied by an Acting Officer whose services were limited only to just a few hours per week, thus priority could only be given to the day-to-day operations of the Council.

This Office acknowledges the fact that, with a population of over 23,000 residents and being also a touristic location with specific exigencies, an Acting Executive Secretary could not sufficiently manage SPB Council's matters efficiently and effectively. However, this does not justify the breach of the pertinent financial regulations.

iv. Allegation

Direct Orders became the norm rather than the exception.

Local Governance Board's Conclusion

The Board confirmed the allegation and concluded that both the Mayor and the Executive Secretary acted in breach of standing regulations. The Mayor claimed that this was the procedure adopted by the previous administration.

NAO's Observation

Documentation compiled by DLG by way of reply to a Parliamentary Question indicates that following the expiration of tender agreements, it was the norm that services continued to be procured under the same terms and conditions through a direct order. This malpractice, which goes counter to the procurement regulations, was also corroborated by the Minority Leader as well as the then Mayor, who both also confirmed that as at the time of this investigation, the situation was still not rectified.

v. Allegation

In breach of standing regulations, the annual public meeting for 2015 was not held.

Local Governance Board's Conclusion

The Board noted that in this case the then Mayor was not in default as she was not in Office in the first three months of 2015, during which, in accordance with legal requirements such meeting is to be held.

NAO's Observation

Article 70 of the Local Councils Act (Cap 363) stipulates that "*Councils shall call a locality meeting which shall be held before the meeting in which the Council will be considering the financial estimates for the next financial year...*". Furthermore, in line with Article 56(3) of the cited Act, the estimates as approved by the Council are to be sent to the Minister not later than the last day of March.

In view that the appointment of the Mayor in question was effective as from 29 April 2015, such shortcoming fell outside her responsibility, since the respective meeting was expected to be held by the previous administration.

vi. Allegation

Four clerical staff, from a total of six, resigned from their post following a number of complaints put forward by the same employees.

Local Governance Board's Conclusion

The Board has no evidence that such employees resigned due to Mayor's attitude. The Board concluded that such allegation was not adequately substantiated as required by law.

NAO's Observation

This Office has reviewed the resignation letters submitted by two of the said employees, which were made available to the Governance Board, by the Minority Leader. It transpired that the respective employees did claim that there were certain administrative shortcomings in the Council; however, no statements were traced substantiating that the resignations related directly to Mayor's attitude towards them.

vii. Allegation

Illegal traffic signs to the detriment of drivers notwithstanding that the Council was formally requested to remove such signs by means of an official letter issued from Transport Malta.

Local Governance Board's Conclusion

The Board confirmed this allegation and stated that although the Council was aware that the law was not being observed, such abuse was still tolerated. In order to rectify the situation, the Board requested the Council to carry out an audit on the traffic signs in the locality within a month from its report. Moreover, any illegal signs were to be removed with immediate effect. The Board was to be provided with a copy of the said audit, together with a report highlighting any remedial actions taken, by 31 October 2017.

NAO's Observation

From verifications carried out, it was noted that this allegation merely pertained to road markings in one particular street in the locality of SPB, which markings were already present under previous administrations. In fact, in April 2005, the then Transport Authority (ADT) had notified the Council that the single white line in the street in question was not approved by the Directorate. However, no action had ever been taken to remedy the situation.

In another official letter dated 25 July 2016, Transport Malta informed the Executive Secretary that it had received complaints that owners of vehicles were being fined for contraventions in connection

with the same line markings. It also notified that such markings were not approved by Transport Malta and the Council was granted a period of five days to remove them, with the former stating that, in the event that the latter did not comply, it would remove the respective markings itself at the expense of the Council. Nevertheless, during this investigation, the respective Officials confirmed that, to-date, such road markings were still there.

It also transpired that the audit requested by the Local Governance Board had not yet been performed, despite that it had to be concluded by end October 2017. In this regard, the Minority Leader testified that the timeframe of one month granted by the Board was too short. Moreover, both the Minority Leader and the then Mayor questioned the feasibility of such an exercise, with the latter claiming that the removal of such markings would negatively impact the locality and its residents since such action would result in the reduction of parking spaces.

viii. Allegation

Meetings of the Burmarrad Administrative Committee were not held for a period exceeding one year four months, with the then Mayor continually supporting this serious shortcoming. The latter also failed to bring this matter to the Council's attention and, in breach of the regulations, hindered the Council from obtaining a legitimate vote on the subject matter, which vote was requested by the majority of Councillors present during a Council meeting.

Local Governance Board's Conclusion

The Board noted that this matter was already investigated by the Monitoring Unit (DLG) and on 24 April 2016, the latter instructed that the case in question was to be considered as concluded. Accordingly, the Board deemed it unnecessary to reinvestigate this allegation.

NAO's Observation

Verifications carried out by NAO confirmed that no meetings were held by the Administrative Committee between the period 17 June 2015 to 16 January 2017. In addition, notwithstanding claims that these were not being convened due to a lack of quorum, the requested agendas to substantiate that meetings were at least called during the period in question were not provided. Furthermore, according to the ex-Mayor, the Administrative Committee met on 17 January 2017; however, the minutes pertaining to such meeting were not uploaded on the Council's website to confirm this statement.

This Office acknowledges that there was a breach of the regulations in view that meetings were not being carried out at least once a month. However, it is pertinent to point out that, in accordance with the applicable legislation, such duties are actually the responsibility of the Executive Secretary together with the Chairperson of the Administrative Committee. The Mayor has the right to attend such meetings but not the obligation.

ix. Allegation

The Mayor chaired a meeting when she was aware that a quorum was not reached.

Local Governance Board's Conclusion

Evidence indicates that what was alleged does not hold since decisions were taken in the presence of the majority of Councillors.

NAO's Observation

From a review of the applicable documentation, this Office also upholds the Board's conclusion that the meeting being referred to by the Minority Leader was in fact held within legal parameters, since, despite that three Councillors had left such meeting upon its commencement, those remaining were still sufficient to form a quorum.

x. Allegation

The then Mayor requested the Council's approval to delegate its powers to the Employees' Selection Board, so that the latter, through a simple majority, can decide whom to employ. This was done despite the fact that, through case 209/16, DLG notified that such action could not be carried out unless there was unanimous agreement between Councillors.

Local Governance Board's Conclusion

The Board confirmed that there was a breach of standing procedures since the Council's powers cannot be delegated to the Selection Board.

NAO's Observation

NAO endorses the Local Governance Board's conclusion, since, according to Article 24(2b) of the Public Administration Act, a selection panel is appointed to examine candidates and make recommendations to the Local Council. Thus, in such circumstances, whilst there was nothing wrong in appointing a Selection Board², the final decision regarding whom to employ was to be taken at Council level, based on the recommendations of the said Board.

² The Selection Board was composed of the then Mayor and two Councillors of SPB Local Council, one of whom was the person making the allegations.

xi. Allegation

Payments forwarded to an individual, for the operation of public conveniences on Sundays until a tender is issued, exceeded the stipulated thresholds allowable for direct orders.

Local Governance Board's Conclusion

The Board acknowledged that this particular Council has specific exigencies and understands that this decision was taken not to detract the service given to the local citizen. However, it pointed out that financial regulations are to be adhered to at all times.

NAO's Observation

NAO confirms the shortcoming indicated in this allegation. Though one acknowledges the importance of the provision of certain services to the public, actions to address this issue were expected to be taken without unnecessary delays to avoid violation of applicable regulations.

It is also pertinent to note that the Mayor's request to opt for a direct order for the operation of public conveniences on a Sunday was unanimously approved by the Council members present for meeting number 22 held on 27 October 2016.

At the time of writing of this report, the situation had been duly rectified, in view that a tender for the cleaning, upkeep and maintenance of public conveniences in the locality of SPB was awarded on 12 December 2017.

Overall Conclusions

NAO endorses the Board's conclusions on the following allegations:

- ✓ Mayor not present to start meeting number 27
- ✓ Expired tender for domestic waste
- ✓ Direct orders became the norm
- ✓ Annual public meeting for 2015 not held
- ✓ Resignation of clerical staff
- ✓ Meeting chaired without quorum
- ✓ Delegation of powers to the Selection Board
- ✓ Payments for the operation of public conveniences on Sundays

On the other hand, NAO disagrees with the conclusion reached by the Governance Board, namely that there was a breach of the financial regulations when not requesting a mid-term audit on the appointment of a Mayor. Indeed, audit regulations clearly stipulate that a mid-term audit is required upon the appointment of an Executive Secretary.

The Governance Board also confirmed the allegation that there were illegal traffic signs. The NAO has reservations about this issue since interviews with the relevant stakeholders revealed that the concern merely related to road markings in one particular street in SPB, which markings had been in place, at least, since 2005. It also transpired that both the Minority Leader and the then Mayor questioned the feasibility of the recommendation given by the Board, to carry out an audit on the traffic signs in the locality and produce a report highlighting any remedial actions.

The case concerning the allegation on the Burmarrad Administrative Committee was not examined by the Board since it was already investigated by the Monitoring Unit (DLG) but NAO confirmed that no meetings were held by the Administrative Committee between the period 17 June 2015 to 16 January 2017.

Other salient conclusions arrived at by the NAO following this investigation are as follows:

- Most of the issues raised related to administrative shortcomings that unfortunately are common in a number of Local Councils and which, year after year, are highlighted in the report by the Auditor General on the Workings of Local Government.
- Some of the shortcomings highlighted were directly attributable to the fact that the Council was not adequately manned, despite the locality's highest population in the country with over 23,000 citizens.

- Moreover, most of the Mayor's tenure was characterised by the fact that there was an Acting Executive Secretary working only limited hours and therefore focusing solely on essential day to day needs.
- The Investigation undertaken did not elicit any evidence that the former Mayor used her influence to gain an unfair advantage or to make unwarranted personal gain.

Bibliography

Administrative Committees For Communities Regulations, 2010.

Legal Notice 135 of 2007, Local Councils (Audit) (Amendment) Regulations, 2007.

Local Councils Act (Cap 363), 1993.

Local Councils (Financial) Procedures, 1996.

Local Councils (Financial) Regulations, 1993.

Local Councils (Tendering) Procedures, 1996.

Local Councils (Tendering) Regulations, 2009.

National Audit Office Act, 1997.

Public Administration Act, 2009.

2017-2018 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2018 Work and Activities of the National Audit Office 2017

NAO Audit Reports

July 2017 An Investigation of Property Transfers between 2006 and 2013:
The Expropriation of the Property at Fekruna Bay, St Paul's Bay

September 2017 Performance Audit: Landscaping Maintenance through a Public-Private
Partnership

October 2017 Performance Audit: Maintaining and Repairing the Arterial and Distributor
Road Network in Gozo

November 2017 Follow-up Reports by the National Audit Office 2017

November 2017 Performance Audit: Outpatient Waiting at Mater Dei Hospital

November 2017 Report by the Auditor General Public Accounts 2016

December 2017 Annual Audit Report of the Auditor General - Local Government 2016

December 2017 An Analysis on Revenue Collection

January 2018 The use of IT systems to identify skills and professional development needs
within the Public Service

February 2018 Performance Audit: The designation and effective management of protected
areas with Maltese waters

March 2018 Performance Audit: Evaluation of Feed-In Tariff Schemes for Photovoltaics

May 2018 An Investigation of anonymous allegation on a Home Ownership Scheme
property in Santa Luċija

May 2018 An Investigation of the Mater Dei Hospital Project

June 2018 An Investigation of allegations on Dingli Interpretation Centre