

To: Clare.Moriarty@citizensadvice.org.uk from Ian Geering QC.

Dear Madam,

I understand that you have been appointed CEO of the Citizens Advice Bureau ("the CAB") and I am writing to ask for your help.

In November 2019, I was asked to help the residents in Steep, Hampshire (where I live) in trying to fathom how the Church Road allotments in Steep (which were protected from development by being outside the Settlement Boundary) became at risk when, without their knowledge or consent, the Settlement Boundary was changed. That change meant that the allotments became subject to the presumption that they would be developed. This change was all the more perplexing since the only event between the two positions was a Referendum (mentioned below) by which the people of Steep voted to reject the Steep Parish Council's then proposal to dispose of the site for housing.

I see from its website on the internet that the CAB declares:

"Our aims and principles

The CAB Service aims:

- to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities or of the services available to them, or through an inability to express their needs effectively".

I am forwarding to you (using your email address at the CAB which is publicly available) the two emails ("the original emails") which I sent to the separate legal person, Steep Parish Council, on the 24 November 2021 by the official route – namely by using the email set out on the Steep Parish Council website and on the Hampshire Association of Parish Councils – setting out my complaint as to the conduct of Steep Parish Council as an organ of local government and as trustee of the three Steep allotments and of the Steep War Memorial Village Club ("the SWMVC"). Please could you acknowledge receipt of this and the second email and their respective attachments?

In the first of the original emails I wrote:

"This is the first of two emails containing the result of an investigation into the conduct of the Steep Parish Council: you will see that this is based almost entirely on documentary material. If you find that there are some inaccuracies, I would be pleased to receive documentary material showing such inaccuracies. The attachments were submitted to and read by the First Tier Tribunal".

The attachments to both emails were submitted in July 2021 to, and read by, the First Tier Tribunal: I shall refer to the material sent by me to the Tribunal as "the material". The material was also sent to the Charity Commission. The material contains the result of an investigation into the conduct of the Steep Parish Council (as trustee or otherwise) in relation to the Steep Allotments. Forwarding this and the second email to you is also by way of reporting on the proceedings before the Tribunal.

On the 17 November 2021, the Tribunal handed down its decision which ruled: "I conclude that, as a matter of fact, Mr Geering's appeal was against the Charity Commission's letter dated 15 June

2021 (communicated by email). That email is not a decision under section 69 of the Charities Act 2011 and is not otherwise a decision listed in Schedule 6 to the Charities Act 2011. I conclude, therefore, that there is no right of appeal to this Tribunal against that letter. Therefore, and pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 I strike out the appeal". This meant that the underlying matters of complaint against the Commission and the Steep Parish Council were not the subject of a decision.

You will see, from the material, the profound difficulty which I, a beneficiary of the trusts of which Steep Parish Council was trustee and a resident and elector of Steep, had in obtaining documents and information from Steep Parish Council as trustee or otherwise. This reluctance on the part of the Steep Parish Council must be read in conjunction with its refusal to comply with the obligations set out by the Information Commissioner (to be found at [ICO lo What should be published? Minutes and agendas](#)) which includes the following:

"As a general rule, a public authority should publish the following on a routine basis:

- minutes and agendas of public meetings;
- documents it is required to make public by other legislation, such as the Local Government Act 1972;
- minutes of senior-level policy and strategy meetings, eg board meetings; and
- any background documents which are referred to in the agenda or minutes, or were circulated in preparation for the meeting. These are considered part of the agenda".

This intentional omission to comply with these obligations has been raised by residents but the Council has refused to remedy the matter. The important information concerning the Steep Allotments contained, in particular, in the background documents has been wrongly kept from the people of Steep: my request of the Council for this and other material under the equitable jurisdiction of the Court set out in *O'Rourke v Darbishire (1920) AC 581* as explained by Lord Walker in *Schmidt v Rosewood Trust Ltd [2003] UKPC 26* was consistently and wrongly refused. All beneficiaries in the Parish of Steep are entitled to disclosure under the equitable jurisdiction of the Court but most, if not all but one, such beneficiaries were ignorant of their right to such disclosure. All this added to the suffering of the beneficiaries and residents of Steep "through lack of knowledge of their rights", to quote your aims and principles.

To paraphrase the words of Steep Parish Council, "Parish councillors are publicly committed to be accountable to the whole community": accountable, that is to say, to each and every single member of that community. In order to hold the Parish Council accountable, the residents, electors and beneficiaries of Steep must **first** be told contemporaneously of the Steep Parish Council's intentions and actions as an organ of local government, trustee or otherwise. To keep from the residents of Steep those contemporaneous documents, which the Information Commissioner requires Councils to make publicly available, is to prevent such residents, electors, and beneficiaries from being able to hold, timeously, the Parish Council (as trustee or otherwise), and its Councillors, to account.

In the light of all the material which was lodged with the Tribunal, an available (if not irresistible) inference is that by intentionally not complying with the obligations set out by the Information Commissioner, the Steep Parish Council intended to keep from the residents of Steep (temporarily or worse) as much information as possible so that such residents would remain as long as possible in ignorance. By this and other means, the breaches of trust and other wrongs committed by the Steep Parish Council were allowed to remain concealed. Steep Parish Council's conduct as disclosed in the material submitted to the Tribunal was unconscionable.

The material submitted to and read by the Tribunal shows that the individual residents of Steep, to paraphrase your "aims and principles", suffered "through lack of knowledge of their rights". To take but one example from the material, under section 23 of the Small Holdings and Allotments Act 1908 (the 1908) Act, Steep Parish Council was under a duty to grant a lease of a vacant allotment plot upon request by a person resident in the Parish of Steep. The material shows that from at least 2007, the Steep Parish Council unlawfully and in breach of trust consistently refused every such request. Individual residents were unaware that there was no legal reason which Steep Parish Council could advance which in law justified such refusal – it was unlawful conduct through and through on the part of Steep Parish Council.

As mentioned in paragraph 14 of the Legal Submissions attached, Viscount Haldane LC said in *Nocton¹ v Lord Ashburton²*:

"[W]hen fraud is referred to in the wider sense in which the books are full of the expression used in Chancery in describing cases which were within its exclusive jurisdiction, it is a mistake to suppose that an actual intention to cheat must always be proved.

A man may misconceive the extent of the obligation which a Court of Equity imposes on him. His fault is that he has violated, however innocently because of his ignorance, an obligation which he must be taken by the Court to have known, and his conduct has in that sense always been called fraudulent, even in such a case as a technical fraud on a power. It was thus that the expression "constructive fraud" came into existence.

The trustee who purchases the trust estate, the solicitor who makes a bargain with his client that cannot stand, have all for several centuries run the risk of the word fraudulent being applied to them.

What it really means in this connection is, not moral fraud in the ordinary sense, but breach of the sort of obligation which is enforced by a Court that from the beginning regarded itself as a Court of conscience".

By virtue of the material sent to Steep Parish Council, the Council now knows what happened to the three Steep allotments from 1998 onwards. As mentioned in paragraph 18 of the Legal Submissions, the principle upon which the Court acts is described in a previous case thus: "but for the fraud, the land would still have remained the property of the plaintiff". The principle on which the court proceeded ... was that "equity will not permit any person ... to hold a benefit [derived by fraud] *as against the person who, but for the fraud, would be entitled*". In paragraph 22 of the same document: 'But for the unconscionable conduct (described in the Statement of Case and here) on the part of Steep Parish Council, the land at Church Road would have remained designated for the

¹ Nocton was Lord Ashburton's solicitor and the case dealt with the obligation of a fiduciary, the solicitor.

² [1914] AC 932 at 954.

purpose of providing allotments and would still have remained within the beneficial ownership of the residents of Steep and the residents of Steep would still have the right to have a lease of a vacant plot at Church Road upon their requesting. Furthermore, if Steep Parish Council now asserts that Steep in Need holds the legal estate of the Church Road allotments free and clear of any equity, that would also be unconscionable.

You will see, from the material read by the Tribunal, that the conclusion contained in that material is that the Steep Allotments have always belonged in equity to, and still now belong in equity to, the residents of the Parish of Steep for the designated purpose of allotments. Steep in Need was and is a mere volunteer (that is to say Steep in Need was not, and is not, a bona fide purchaser of the land of the Steep Allotments for value without notice) and holds the Church Road allotments subject to the better equity, namely that of the beneficiaries and residents of the Parish of Steep.

At all material times, Steep Parish Council was the Allotment Authority. From about 2002, Steep Parish Council started to rundown the Church Road allotments by failing to comply with their obligations as managers of those allotments as set out in the document attached "Steep Parish Council failures 3". In addition, the gate to the allotments was padlocked with no indication by notice on site or by mention on the Council website or otherwise as to whom one should apply for a key and for an allotment. This was done, no doubt, so as to create the impression in the residents of Steep that the land of the Church Road allotments was no longer available for allotments.

The Government issued the document headed "**ALLOTMENTS GUIDANCE – AN OVERVIEW - WHAT HAPPENS IF THE LOCAL AUTHORITY WANTS TO DISPOSE OF ALLOTMENT LAND?**" It was sent to Parish Councils under cover of a letter dated 27 February 2002 from the Department of Environment Transport and Regional Affairs. The legal presumption is Steep Parish Council received this document.

In that document which governed the conduct of Councils in relation to allotments including Steep Parish Council as from 1 April 2002, the following appears:

"Government guidance also requires allotment authorities to consult with plot holders before they apply for disposal consent. If the application goes ahead, it will be dealt with by the National Planning Casework Unit. Local authorities have been advised of the criteria for assessment in a letter to Chief Executives dated 27 February 2002 – see Annex A for details". The requirement of a consultation leads and led to the strict obligation of Steep Parish Council to comply with the Gunning Principles.

That 2002 document contains this:

"Demand for Allotments and Publicity

The number of people on a waiting list is one of the factors taken into account before granting consent for disposal. Ministers have been concerned that it is possible that demand may not exist because local people are unaware that allotments are available. **In some cases it has even been**

suggested that the authority has actively created the impression that allotments are not available because the land is to be disposed of. Therefore, Ministers announced in March 1998 that, for those applications where the local authority's case for disposal rests substantially on an argument that there is no demand (or that the demand can be met elsewhere), the authority should provide information about the steps they have taken to publicise the availability of allotments in their area'. Steep Parish Council studiously avoided complying with these obligations.

What the Steep Parish Council engaged in was precisely the vice which in 2002 concerned Ministers.

In the event of a Council seeking to dispose of an allotment, the Council is required to apply to the Secretary of State for consent under section 8 of the Allotment Act 1925 in the course of which there has to be a bona fide evaluation of demand, both latent demand and patent demand and in addition the provision by the Council of an alternative allotment site within the same distance as the original allotments namely within $\frac{3}{4}$ of a mile from the centre of habitation: the Church Road allotments are in the centre of habitation which those allotments serve. Steep Parish Council intentionally ignored all of these requirements.

As the documents attached show, the demand for allotments in the Petersfield area was well known to both Steep Parish Council and the East Hampshire District Council ("EHDC"). Steep Parish Council wrongly asserted that there was no demand for allotments in Steep: there was a waiting list for allotments in Church Road as the Council well knew. The Adhurst allotments have thrived since they were privately created in 2016.

In about 2002, the Steep Parish Council as trustees of the Steep allotments (holding the allotments for the designated purpose of allotments protected by the Allotments Acts) offered, in breach of trust, the Church Road allotments to the Petersfield Housing Association for affordable housing.

As mentioned above, Steep Parish Council was and is under a **duty** (not a power but a duty) to grant a lease (a property right) of an allotment plot upon request under section 23 of the Small Holdings and Allotments Act 1908: from about the time the Council began to rundown the Church Road allotments, not a single one was granted at that site – Steep Parish Council simply refused the many requests for a lease of an allotment plot at Church Road - there are only 11 such plots for which the Council admitted that there was a waiting list.

In February 2020, it was discovered that the Church Road allotments were created by virtue of the exercise of the powers which Parliament granted Vestries (under 59 Geo III, c.12 – now known as the Poor Relief Act 1819): Steep Vestry exercised this power by a resolution on the 22 April 1819 (some few weeks after that Act came into operation – Royal Assent being granted on 31 March 1819). They are the Oldest Statutory Allotments in the Country according to Dr Burchardt of Reading University who is the foremost authority on the Allotment Movement of the 18th and 19th century.

On the 12 July 2004 there was a high level meeting between, amongst others, Steep Parish Council and the then planners, the East Hampshire District Council ("EHDC") which included personnel from the EHDC Planners, EHDC Planning Department, EHDC Highways, EHDC Housing, the minutes of which stated:

"LOCAL PLAN DESIGNATION.

Are any houses at all acceptable on the site? The Local Plan has the area specified to be a Village Green (he thought at the original request of the villagers). The views of the villagers would be important if that were to be changed. Planners would **need to advertise it as a change** to the regional plan. **SPC members present assured XX that they would not go ahead with this unless the village wanted it"**.

This assurance given by Steep Parish Council that **"they would not go ahead with this unless the village wanted it"** is a continuing obligation to this very day. It found expression when in 2010, the Steep Parish Council agreed to give the people the final say by way of a referendum as to whether the Council's then proposal to develop the Church Road allotments for housing should go ahead. The Referendum took place in May 2010 monitored and supervised by the reputable Electoral Reform Services Ltd: the turnout was 63.5% and the result of the Referendum was that the residents rejected the Council's proposal.

The Petersfield Post reported the meeting at which the Referendum result was conveyed to the residents. Its headline was *"Allotments preferred to housing in Steep"*. Richard Coles [the immediate past Chairman] was reported to have said *"They [residents] wanted allotments ...It was a very, very good turnout and most of the Parish had their say"*.

Thereafter, as the material read by the Tribunal shows, the Steep Parish Council reversed the result of the Referendum without the knowledge or consent of the residents of Steep: the method by which this was done is described in the Statement of Case and the Legal Submission. The refusal to accept the result of the Referendum is not acceptable behaviour of a trustee or Council.

The only proper consultation, that is to say one that complied with the Gunning Principles, was the Referendum of May 2010. At no time thereafter did the Steep Parish Council dare undertake a consultation which complied with the Gunning Principles: the obvious inference is that the Council calculated that if a proper consultation was to take place, the people would decide against the Council.

The critical feature of the relationship between trustee and beneficiaries (as with any fiduciary relationship) is that the trustee or the fiduciary *"undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the*

detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position"^[1] [emphasis added].

Steep Parish Council admitted in its application to the Charity Commission in 2013 that it was under a **duty** to grant a lease of a vacant allotment plot and yet, cynically, failed, in breach of trust, to inform the residents of Steep of that very same right. The Steep Parish Council as trustee, as a Council and as the allotment authority was bound to so inform the beneficiaries and residents of their rights to an allotment.

It is the easiest thing in the world for a person to act as trustee and then act in breach of trust keeping the beneficiaries and residents in ignorance as such misconduct. The consistent failure to comply with the Information Commissioners guidelines mentioned above was intended by Steep Parish Council to ensure that the beneficiaries and residents of Steep in the dark. Taking your "aims and principles", the individual residents of Steep suffered "through lack of knowledge of their rights" and that lack of knowledge was intentionally not addressed by Steep Parish Council as trustee or as an organ of local government. Steep Parish Council wanted the residents to be kept in a state of ignorance.

However, for Steep Parish Council as trustee of the Steep allotments the matter does not end: as set out in paragraph 6 of the attached document entitled Legal Submissions,

"In *Fassihi Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244, the Court of Appeal held, per Arden LJ (as she then was), at §44 "... there is no basis on which Mr Fassihi [the fiduciary] could reasonably have come to the conclusion that it was not in the interests of Item [the beneficiaries] to know of his breach of duty. In my judgment, he could not fulfil his duty of loyalty in this case except by telling Item about his setting up of RAMS, and his plan to acquire the Isograph contract for himself".

Paraphrasing Arden LJ, there is no basis upon which Steep Parish Council could reasonably have come to the conclusion that it was not in the interests of the beneficiaries and residents to know of its breaches of fiduciary duty. Accordingly, Steep Parish Council is in continuing breach of trust but failing to inform the beneficiaries of its breaches of trust which took place from about 2002 onwards. Such failure is a major cause of the ignorance to which reference is made in your "Aims and Principles". As Sir Francis Bacon said in 1597: "knowledge itself is power". Steep Parish Council wanted to retain that power for itself. The beneficiaries and residents having no knowledge of the misconduct, the Council in practice avoided its duty to account to the beneficiaries and the residents of Steep.

It is the policy of the Court and the Government to uphold the law. This is reflected in the many codes of conduct. In *Ridehalgh v Horsefield* [1994] 3 WLR 462, the Master of the Rolls, Sir Thomas Bingham, giving judgment in the Court of Appeal held that a solicitor is under a duty to promote the cause of justice in his own sphere. This is reflected in the Solicitors Code of Conduct to uphold the rule of law and the proper administration of justice and to act with integrity: so it is with Civil Servants. Even Sir Thomas Bingham himself, in swearing the Judicial Oath, came under a duty like all judges "... **do right** to all manner of people **after the laws and usages of this realm**, without fear or

^[1] Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41 at 97-97 per Mason J (Australia).

favour, affection or ill will.” Those laws and usages include the principles of Equity relied upon in this case. Similarly, we, as citizens, are all obliged to uphold the rule of law living, as we do, in a democracy under the rule of law.

The Government in its “ Review into the risks of fraud and corruption in local government procurement” published in June 2020, the Minister for Regional Growth and Local Government wrote:

“We must all play our part in creating a culture hostile to the risks of fraud ... , clearly setting out the line between acceptable and unacceptable behaviour within our organisations”.

It follows that it is incumbent on all of us to make sure that no fraud is allowed to come to fruition. I am taking such steps which I can, as an individual, to ensure that the fraud which Steep Parish Council engaged in does not come to fruition.

Taking your “aims and principles”, I ask you to take positive steps as part of your work as CEO to put right the wrong which the Steep Parish Council has committed against the residents of Steep.

It might be supposed, and Steep Parish Council might argue, that the Council can take comfort from the fact that it applied in 2013 to the Charity Commission for an order upon which such Council can rely. The flaw in this argument is that in applying to the Commission for an order, the Steep Parish Council made statements in their application which are now known to be untrue in material respects – as set out in the Statement of Case and the Legal Submissions – and in addition the Steep Parish Council failed to comply with its duty of full and frank disclosure in making its application to the Commission, particulars of which are contained in the material.

In *Reese River Silver Mining v Smith (1869-1870) LR 4 HL 64* Lord Cairns said at 79:

“But I apprehend it to be the rule of law, that if persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible as if they had asserted that which they knew to be untrue. Upon that part of the case, my Lords, I apprehend that there is no doubt”.

Your aim and principles as CEO of the CAB is to ensure that individuals do not suffer through lack of knowledge of their rights. The obligation of Steep Parish Council as trustee of the Steep allotments was to safeguard the assets of the trust, namely the Steep allotments, and to protect the interests and the rights of the beneficiaries to the Steep allotments. Steep Parish Council not only failed to safeguard and protect those interests and rights but the trustee turned out to be the very person which caused those interests to be taken away from the beneficiaries: the trustee as protector turned into the antagonist to the detriment of the beneficiaries, all in breach of trust. The beneficiaries trusted Steep Parish Council to safeguard those trust assets for the purpose of allotments: *“The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position”.*

No one acted so as to protect the beneficiaries: Steep Parish Council certainly did not. The beneficiaries had no idea what to do – they were vulnerable to the abuse by Steep Parish Council.

Indeed, the position was worse because Steep Parish Council ensured that those very beneficiaries were kept in ignorance of Steep Parish Council's intentions as trustee and furthermore ensured that all the important background papers which should have been publicly available throughout the period from, particularly 2007 onwards remained secret.

Your website also has this:

"Why we're needed

Life is complicated. Sometimes people encounter challenges and problems that they don't know how to deal with, and they need help to overcome.

- 9 in 10 of our clients said their problem affected their lives, including causing anxiety and financial difficulty
- 4 in 5 experienced a shock or life event before their problem
- 2 in 3 say they had difficulty knowing who to contact or how systems work before advice

People need different types of support at various times in their life. We believe individuals should be able to get help in the way that works for them and meets their needs.

We're here to help **everyone** in society that needs us. The people we serve through our local network are often among the most disadvantaged in society with the greatest needs".

This describes the position which has faced the residents since May 2010 and which faces them now; with a Parish Council which is resolute in holding the beneficiaries and residents in ignorance and refusing to apply the Gunning Principles to any consultation. They need your help as the CEO of the Citizens Advice Bureau so as to put right the fraud described in these two forwarded emails with their attachments which has been practised upon them by the Steep Parish Council - a fraud which has led to the Church Road allotments being at risk of being eliminated as allotments – in breach of trust and unlawfully.

Unless you have any objections, I intend to forward this correspondence to others including my elected representatives at national, county and district levels of government. If you do so object, please provide your detailed reasons.

Yours faithfully,

Ian Geering QC (Rtd)

(I have twice telephoned the main number for the CAB in order to ensure that I have your correct email address but the phone was not answered: on one of those occasions, the Chat facility showed this: "Sorry, none of our webchat agents are available right now. Our opening hours are Monday to Friday, 9am to 5pm. Please try again during those hours or at another time when we might be less busy".)