

## Request to take on Memorial Clock situated at All Saints Church as a Parish Asset

Each year Wickhambrook Parish Council sets aside some funds from its budget to give financial support to local organisations. The power under which a Parish Council may normally do this is s.137 of the Local Government Act 1972.

Previous requests have been received from Wickhambrook All Saints Church PCC asking the Parish Council to pay for repairs to the Memorial Clock sited on the Wickhambrook All Saints Church Tower. The parish council resolved to award a grant of £340 towards the cost of the repairs (Report [WPC.21.11.09](#) and **Min. 21.11.17 refer**) in November '21, and a further £340 in April '22 (Report WPC.22.02.08 and Min. 22.02.13). This grant was paid in August. The Parochial Church Council, who have been managing the maintenance of the clock, have reported that they do not have sufficient funds to instruct for all the work to be completed (there remains outstanding work to install a new switch to operate the winder, estimated in August '22 at £450) and are requesting that the parish council take on responsibility for the Memorial Clock, on the basis that in their view is not a Diocesan asset.

The installation of the Memorial Clock was funded mainly through subscription and grants raised by villagers (organised by the church) between 1944 and 1946, to commemorate the fallen of both world wars (<https://www.bansfieldbenefice.org.uk/wickhambrook/history/clock.html>). The clock installed in All Saints Church Tower (this being the only building of sufficient height for the clock to be visible in the parish at the time of installation), it does not form part of the infrastructure of the church, does not relate to the affairs of the church, and is not understood to be held for an ecclesiastical charity.

A parish council is generally able to make payments for services and supplies under the powers conferred upon it by relevant legislation. Where no such power exists, (e.g. Charitable donations) then a parish council may incur expenditure either under

- the General Power of Competence in s.1 of the Localism Act 2011 (which does not apply to Wickhambrook Parish Council, it not being eligible), or
- s.137 of the Local Government Act 1972 (LGA1972), for any purpose, except one which is subject to a statutory prohibition, restriction or limitation<sup>1</sup>.

Until recently, the clerk's understanding was that the use of s.137 of LGA1972 is constrained, because the memorial clock is on Church property. When parish councils were established under s6 of the Local Government Act 1894, there was a specific provision (s.6(1) (c) of the Local Government 1894 Act) which confirmed the powers, duties and liabilities conferred on parish council included "the holding and management of parish property **not being property related to affairs of the church or held for an ecclesiastical charity**". A detailed advice note from National Association of Local Councils (NALC) on Financial Assistance to the Church is attached as **Appendix A**.

Previous advice from the Suffolk Association of Local Councils and Society of Local Council Clerks, was that the best way to resolve this (until such time as any legal challenge provided a definitive answer one way or the other) would be for Wickhambrook All Saints Church apply to the Parish Council for a grant each time it needed support towards the cost of maintaining the clock (much as it did for the electrification of the clock). The Parish Council would then consider the application on its merits, and if approved, a payments were

Hilary Workman  
Clerk & RFO  
October 2022

authorised. This is the basis on which previous funding decision with respect to the Memorial Clock have been made by the parish council since 2019.

The Parochial Church Council asked in the spring that the parish council consider formally taking on the Memorial Clock as an asset for which it would be responsible for maintenance and repair. The PCC would ensure access to the clock to facilitate this.

The clerk has sought further advice on this matter from Suffolk Association of Local Councils, and their response (which includes advice from the National Association of Local Councils) is set out at **Appendix B**.

In summary:

1. the parish council could accept the Memorial Clock as an asset (valued at £1).
2. The PC should seek a formal agreement between itself and the PCC for transfer to it, from a solicitor of its choice (a request for quotes on this work has been requested).
3. The clock would be insured by the parish council on a replacement value basis (valued at £120,000 – advised by Hawards Horological) – the additional premium advised by current insurers is in the region of £350 per year.
4. The parish council would then be responsible for arranging and funding ongoing maintenance and repairs (annual service currently estimated at £350)
5. The PCC would hold Public Liability Insurance which would cover access to the Memorial Clock in the church tower.

This would put the management of the clock on a formal footing which the parish council would then need to budget for annually.

**Action:**

**The Committee is asked whether it supports this proposal, which would then be considered by the parish council at the November meeting.**

31 JANUARY 2018

## L01-18 | FINANCIAL ASSISTANCE TO THE CHURCH

### Introduction

The purpose of this briefing is to consider whether a parish council or, in Wales, a community council may provide financial assistance to the church (or other religious bodies).

### Relevant legislation

s.6(1) (a) of the Local Government Act 1894 (“1894 Act”) transferred powers from the Vestry and Churchwardens to the newly formed parish councils **“except so far as relates to the affairs of the church or to ecclesiastical charities.”** s.6(1) (c) of the 1894 Act confirms the powers, duties and liabilities conferred on parish councils include “the holding and management of parish property **“not being property relating to affairs of the church or held for an ecclesiastical charity”**”.

S.8 of the 1894 Act gives parish councils further powers including the power “to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of the powers in s.6 , **“not being property relating to affairs of the church or held for an ecclesiastical charity”** and further “to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned”. It should be noted that the prohibition relates to the nature of the property concerned not to the use to which that any funding will be put. Thus funding to make a church hall suitable for meetings of the guides and scouts is still prohibited because the building is church property.

Despite references in the above provisions to parish councils, the 1894 Act applies to both England and Wales.

The powers in the 1894 Act prohibit councils’ involvement in property relating to the affairs of the church e.g. the maintenance or improvement of buildings or land or contributing to the costs. The question often asked is whether that prohibition still applies or is it overridden by legislation made after the 1894 Act. Examples of such legislation are:

- s.214(6) of the Local Government Act 1972 (“the 1972 Act”) which provides that councils which are burial authorities may contribute to another

- person's expenses (e.g. the PCC or synagogue) in providing a cemetery in which residents in the council's area may be buried.
- s.215 of the 1972 Act permits a council to maintain a closed churchyard.
  - s.137 of the 1972 Act which allows a council to incur expenditure for any purpose except one which is subject to a statutory prohibition, restriction or limitation.
  - s.138B of the 1972 Act empowers a parish council to support or facilitate a religious event.
  - The General Power of Competence in s.1 of the Localism Act 2011 ("the 2011 Act") is available to eligible parish councils that satisfy the conditions in Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965.

### **NALC's views**

There is an accepted legal principle, applied by the courts, which is that in interpreting what an Act of Parliament means, a specific provision overrides one of a general nature. In other words, if two statutory provisions are in conflict or overlap, the detailed provision will prevail over the more general one. In applying this principle, NALC's views are as summarised below.

Ss.137 and 138B of the 1972 Act and s.1 of the 2011 Act constitute general provisions and do not override the specific prohibitions in s.8 of the 1894 Act. S.137 expressly provides that expenditure cannot be incurred purposes which are subject to a statutory prohibition, restriction or limitation.

S.2 of the 2011 Act confirms that the general power of competence does not allow an eligible parish council to get round any statutory prohibition, restriction and limitation which existed before the general power was introduced.

S.214(6) of the 1972 Act which permits a council as a burial authority to contribute to the expenses of anyone else providing a cemetery, appears to overlap with the specific provision in s.8 of the 1894 Act which prevents a council from contributing to the affairs of the church and, in NALC's view, the specific provision would prevail.

S.215 of the 1972 Act is a specific provision in respect of the responsibilities of a council (whether or not a burial authority) to maintain a closed churchyard which, in NALC's opinion, thus overrides the prohibitions in ss. 6 and 8 of the 1894 Act.

## Summary

There is no current case law to resolve the question of whether or not the 1894 Act restrictions override the provisions in later Acts of Parliament and ultimately it would be for the courts to determine the extent of any prohibition from the 1894 Act. Any court action started so as to resolve this point is likely to be expensive and time consuming.

It would, of course, be possible for Parliament to clarify the point with a specific provision in new legislation, however, the Government's current view on the legal issues is that there is no need for any further legislation as they believe the 1894 Act restrictions do not override the provisions in later Acts of Parliament.

Whilst there is no consensus on this issue, a council that considers making a payment in these circumstances needs to consider whether it is prudent to take a course of action that it cannot be certain is legally valid.

## EN2452: Memorial Clock on Church Tower

**Referred to NALC LEGAL**

We have sent this enquiry to NALC legal to advise on:

1. whether ownership of the memorial clock can be transferred to the parish council and become an asset.
2. If you can take ownership, then we would recommend you instruct a property lawyer to handle the transaction on behalf of the council.

With regard to managing the asset, subject to the above, you would list it as a community asset with a value of £1 and we would also recommend you speak to your insurers, as you suggest, for valuation purposes.

We have asked NALC legal to provide the advice by 26th September.

**Update 28th September 2022**

Attached is the advice from NALC Legal which we followed up this morning to clarify as it was unclear on whether if the property was transferred to the parish council then they can fund it even if it is attached to the church building.

They replied: *"yes, the restriction is on funding works to the church property and once owned by the council it would not be church property. The presumption that items fixed to property form part of the property would be rebutted so to speak. The clock would be the council's to maintain using their powers, which could be as a public clock or as war memorial (if it is a war memorial)"*

Hopefully this clarifies the position to enable a discussion at your forthcoming meeting.

User Hilary Workman Thu Sep 15 2022

**Memorial Clock on Church Tower**

In 1947 or thereabouts a Memorial Clock was commissioned by the parish council which was funded by it, residents and the pcc. Every record I have been able to find references it being a parish memorial clock to the war dead. It was installed in the church tower, as that is the highest point, and makes it visible for residents.

When I started in 2018 I sought clarification from SALC about how repairs for this could/should be funded by the parish council.

The pcc has applied to the parish council for a grant to cover the cost of the work, and the parish council has relied on the powers under the Parish Councils Act 1957 to install and maintain clocks for the public benefit. Additionally, I believe it can be argued that it could be funded under s.137, the clock not being property related to affairs of the church or held for an ecclesiastical charity - it is simply installed in the clock tower, and the pcc has managed it up until now as they have access to it.

However, the pcc no longer wish to be responsible for applying for grants to cover the cost of maintenance. They would like the parish council to take this on, on the basis that it is s a memorial clock, not a church clock.

The parish council does not have it listed in its assets. if it were to agree to take on the clock and the financial burden, including insurance, how would it be included in the assets - I have the original grant the parish council paid towards it, should that be used? Can it be listed as £1?

Presumably, there could be insurance implications if a parish clock is sited in a church tower (I will check with our insurers).

Please advise the best approach to formalise how we deal with this going forwards.

**Responses**

Sally Longmate Thu Sep 15 2022 14:26:54 GMT+0100 (British Summer Time)

Your enquiry has been referred to NALC legal - please log onto the SALC Portal to access details using the link below. The matter will remain open and we will update you as soon as we receive a response.

[MEMBER PORTAL](#)

**Suffolk Association of Local Councils**



Laura Sampson Mon Sep 19 2022 09:36:22 GMT+0100 (British Summer Time)

NALC legal reference: Suff 22/464 recd 16/9/22



Sally Longmate Wed Sep 28 2022 14:28:21 GMT+0100 (British Summer Time)

27 September 2022

Sally Longmate, Chief Executive Officer  
Suffolk Association of Local Councils

Our ref: Suff 22/464

Your ref: EN2452

Dear Sally

**Client: Wickhambrook Parish Council**

**Subject matter: Memorial clock on church tower**

Thank you for your emails of 15 September 2022. The Clerk to Wickhambrook Parish Council ("the Council") has requested advice on behalf of the Council as follows:

*In 1947 or thereabouts a memorial Clock was commissioned by the parish council which was funded by it, residents and the PCC. Every record I have been able to find references it being a parish memorial clock to the war dead. It was installed in the church tower, as that is the highest point, and makes it visible for residents.*

*When I started in 2018 I sought clarification from SALC about how repairs for this could/should be funded by the parish council.*

*The PCC has applied to the parish council for a grant to cover the cost of the work, and the parish council has relied on the powers under the Parish Councils Act 1957 to install and maintain clocks for the public benefit. Additionally, I believe it can be argued that it could be funded under s.137, the clock not being property related to affairs of the church or held for an ecclesiastical charity - it is simply installed in the clock tower, and the PCC has managed it up until now as they have access to it.*

*However, the PCC no longer wish to be responsible for applying for grants to cover the cost of maintenance. They would like the parish council to take this on, on the basis that it is s a memorial clock, not a church clock.*

*The parish council does not have it listed in its assets. if it were to agree to take on the clock and the financial burden, including insurance, how would it be included in the assets - I have the original grant the parish council paid towards it, should that be used? Can it be listed as £1?*

*Presumably, there could be insurance implications if a parish clock is sited in a church tower (I will check with our insurers).*

*Please advise the best approach to formalise how we deal with this going forwards.*

The request goes on to say that SALC seeks guidance on a number of questions.

1. *Can ownership of the memorial clock be transferred to the parish council and form one of their assets? We assume as they have the power to fund we imagine they can also own it.*
2. *We will advise them to list it as a community asset with a value of £1.*
3. *We will advise them to speak to their insurers for valuation purposes.*
4. *If they can take ownership - then we would recommend they instruct a property lawyer to hand the transaction on behalf of the council.*

## **Advice**

I will first set out general advice on funding a church clock before turning to the specific request. The clerk refers to the clock as being installed in the church tower. It is not clear who owns the clock, and the clerk says it was commissioned by the Council. The purchase cost was apparently funded by the Council, residents and the PCC. I cannot give definitive advice on this basis other than to say the request is about the PCC handing over responsibility for maintenance, which indicates ownership by the PCC or that the parties have acted as if that were the case. It is a rebuttable legal presumption that items fixed to property form part of the property. A clock which forms part of church property would, as such, come within the prohibition under s.8 of the Local Government Act 1894 (the 1894 Act) and this would mean that the Council would not have the power to fund clock repairs. I refer the Council to NALC's Legal Briefing L01-18 for our general advice on the 1894 Act.

The clerk refers to s.2 of the Parish Councils Act 1957 ("the 1957 Act"). This provides that a parish council may provide, maintain and light such public clocks within the parish as they consider necessary, and [subject to the provisions of s.5] may cause them to be installed on or against any premises or in any other place the situation of which may be convenient. In my view the power in s.2 of the 1957 Act, which is a general power, is subject to the specific prohibition in s.8 of the 1894 Act. As such the 1957 Act cannot be used to override the 1894 Act prohibition. The same goes for s.137 of the Local Government Act 1972.

The first question I have been asked to consider assumes councils have the power to fund the maintenance of church clocks and I refer to my advice above. The prohibition in the 1894 Act does not prevent the clock from being sold/ gifted to the Council. The questions on insurance and the listing of the clock as a Council asset are not legal questions so I would direct the Council to its insurers on the





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insurance question. If the Council does assume ownership, we can put asset listing questions to the accounts and audit adviser.

I hope this has been of assistance.

Yours sincerely

Jane Moore,

Senior Solicitor and Legal Services Manager