

Update 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 '22. 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.

A full background to the funding and current legal position with respect to the Memorial Clock is set out in report [WPC.22.11.10](#), which the parish council considered at its meeting on 24th November '22 (the matter having been referred up from the Estates Committee).

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.

Hawards Horological have now provided replacement costs separately for the Dial (£8K and Movement £7.5K), which have allowed a more accurate prediction of Insurance uplift based on £20K, which allows for some inflationary pressure).

A further quote from a recommended specialist solicitor, has also provided more clarity on initial costs (and reduced exposure to financial risk).

WPC.22.11.10: Request for Financial Support

Based on the information available to date, the likely costs to the parish council for taking on the Memorial Clock as a parish asset are:

Item	Current/1 st FY	Subsequent FY'S
Outstanding Repair to Winder	£450.00	
Annual Service	£350.00	£350.00
Insurance Uplift	£350.00 pro rata ¹ £72.58 ²	>£350.00 >£72.58
Solicitors' advice on formal agreement	£500.00 ³ £225.00/ hour ⁴	
Total	£1372.58.00⁵	Between £425 - £700 dependant on insurance cover

Provision was made in the budget for the next financial year (2023/24) for £500 for the Memorial Clock (if accepted as a parish asset) which would cover the cost to repair the winder mechanism.

The following funds could be drawn on if approved by the parish council:

Earmarked Reserves:

Insurance £245 (would fund uplift on insurance across first 3 years)

There is also an underspend on costs associated with the re-negotiation of the lease for the play park at Cemetery Road (£1450 against a budget of £1500 plus VAT), which could be considered towards any legal costs incurred in a transfer of the Memorial Clock.

Reports

[WPC.22.11.10](#)
[WPC.EC.22.11.02](#)
[WPC.22.02.08](#)
[WPC.21.11.09](#)

Minutes

22.11.19
22.11.11
22.02.13
21.11.17

¹ Based on a replacement cost of £120,000 (as quoted by Haward's Horological)

² Based on a replacement cost of £20,000 (Dial £8,000, Movement £7,500 – as advised by Hawards

³ Based on 2.5 hours and no unanticipated issues with third parties.

⁴ No estimation of time taken – this is where the greatest financial risk lies

⁵ Not including Solicitors costs

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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.