

2024

The Clerk's Yearbook



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CONTENTS

2	The Clerk's Year
4	Codes of Conduct
10	Accounts & Audit
13	Remuneration
14	Internal audit
16	Recruitment
18	Open space
20	Holding of land
24	Disposal of land

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The Clerk's Year

THE LOCAL government year runs from 1 April until the following 31 March. It is convenient, and sensible, at this time to preview the regular events for the year which begins on 1 April 2024 so that adequate preparation for them can be made and nothing important is overlooked.

PERIODS

The period of office of the Chairman of the Council starts at the annual meeting of the council. This must be held on a day in May, except in the year of the ordinary council elections (every fourth year), when it must be held on or after the fourth day after the election, or on or before the eighteenth day after it. The next ordinary elections in England for most local councils will be in 2027.

In Wales, the next ordinary elections will be on 5 May 2027. The 2021 Local Government and Elections (Wales) Act made a number of changes to local elections in Wales. Previously, only British, Irish, Commonwealth and European citizens aged over 18 could vote, whereas under the new law all legal residents of Wales who are aged 16 or over on polling day are eligible to vote in the local elections. Councils can choose whether to conduct elections under first-past-the-post voting or the single transferable vote. On election, a councillor must make a declaration of acceptance of office in statutory form at or before the first meeting he or she attends unless the council permits the declaration to be made at some other time. Failure to do so means the councillor automatically loses office and a casual vacancy arises.

The chairman remains in office until his or her

successor is elected unless he or she resigns in writing to the council, dies or becomes disqualified. If none of these events occur, the chairman's successor is elected at the next annual council meeting. There is nothing to prevent the chairman from standing for re-election.

There is no power for the council to elect a chairman for a longer period than one year; although in some councils an understanding or convention is followed whereby a chairman normally serves for perhaps three years before stepping down. If, after an ordinary election, the chairman is no longer a councillor, he or she nevertheless remains in the chair until a successor is elected. Once elected, the chairman must sign a declaration of acceptance of office as chairman.

The vice-chairman (if any) is also elected at the annual council meeting and holds office for one year. Again, some councils have a convention whereby the vice-chairman is elected chairman in the following year, but this is not a matter of law and the council need not follow the convention. The vice-chairman does not sign a declaration of acceptance of office as vice-chairman.

The term of office of councillors runs for four years from the fourth day after the date of the ordinary election until the fourth day after the next ordinary election. A councillor elected, co-opted or appointed between ordinary elections serves out the term. The Welsh Assembly has published a bill (the Local Government and Elections (Wales) Bill) which will extend the term of office of councillors in Wales to five years. The term of office of a councillor may be ended by written resignation to the chairman, failure to attend meetings for six consecutive months without a reason approved by the council, disqualification for a prison sentence, bankruptcy, an election offence or conviction for

failing to abide by the law relating to disclosable pecuniary interests (in England) or for a serious breach of the council's code of conduct (in Wales).

The clerk of the council serves from the date of appointment until his or her service is ended by death, resignation or dismissal within the terms of employment. If the council wishes to adopt the power of general competence (England only), the clerk must hold either the Certificate in Local Council Administration or the Certificate in Higher Education in Local Policy or Local Council Administration or the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor De Montfort University (Leicester). (The Local Government and Elections (Wales) Bill provides for the power of general competence to be conferred on eligible community councils).

ANNUAL EVENTS

Annual Parish Meeting: This is obligatory in England and must be held between 1 March and 1 June. The local government electors for the parish are entitled to attend, speak and vote. If present, the chairman of the Council must preside. The meeting may discuss any matter of relevance to the parish. The annual parish meeting is sometimes held on the same day as the annual council meeting, but is entirely separate from it.

In Wales, there is no requirement to hold an annual, or any, community meeting, except in connection with the establishment, dissolution or grouping of communities and community councils.

Other parish and community meetings: A parish or community meeting can be called at any time in accordance with the statutory procedures for so doing.

Annual Parish or Community Council meeting: The council must hold an annual meeting in May

or, in an ordinary election year, between the fourth and the eighteenth day after the election. This will, too, usually be in May because the normal election day is the first Thursday in May. At that meeting, the chairman of the council must be elected. It is normal to elect the vice chairman (if any), committees and sub-committees at the same meeting and to arrange a programme of meetings for the year.

Other meetings of the Council: In England, at least three meetings other than the annual meeting must be held. In Wales, only the annual meeting is obligatory. In practice, of course, councils meet more frequently than the statutory minimum number of times.

Audit: The accounts of the council are audited annually, with the audit for the preceding year normally being held in the summer or autumn.

Register of Electors: This is prepared by the electoral registration officer. A person on the register may vote at council elections, may speak and vote at parish/community meetings and is qualified to be elected as a councillor (there are other qualifications as well). The clerk usually holds a copy of the register but has no duties in respect of its compilation or use. The number of electors determines the expenditure limit under section 137 of the Local Government Act 1972, which is £9.93 per elector per year in both England and Wales for 2023/24.

PROCEDURES

Accounts: the accounts year ends on 31 March and begins on 1 April. In England, the clerk must keep proper accounting records in order to comply with the Accounts and Audit Regulations 2015 and the Local Audit (Smaller Authorities) Regulations 2015 (in Wales, the Accounts and Audit (Wales) Regulations 2014), and must ensure that the accounts balance at the end of the year. The clerk is responsible for dealing with VAT returns, income tax and national insurance deductions from employees' remuneration,

submitting accounts for payment to the council for approval in accordance with the council's financial regulations. (NALC publishes a model set of financial regulations.)

Meetings: the clerk is responsible for ensuring that the correct statutory procedures are followed for the calling and holding of council meetings, committee and sub-committee meetings and, usually, parish/community meetings (occasionally, such meetings are called by electors without reference to the council). After meetings, the clerk must prepare minutes for approval by the council, etc.

Elections: the clerk has no duties in relation to ordinary elections. When a casual vacancy occurs, the clerk must put up a notice advertising the vacancy and should then inform the electoral registration officer. If there is no by-election, the clerk should ensure that the co-option of a new councillor is put on the council's agenda as soon as possible.

Precept: the precept for the money the council requires to be raised from the council tax payers must be sent to the billing authority by the beginning of March (and is usually sent in earlier). This means that the council's budget must be settled before the amount of the precept can be determined. The budgeting process usually takes place between about September and January.

Insurance: the council's insurance policies will need to be renewed annually. The opportunity should be taken to review the levels of cover and the terms of the policies to ensure that the council is fully insured.

Fees and charges: the level of fees, rents and charges should be reviewed regularly and raised where necessary. This is best done at budget time.

LOCAL COUNCIL AWARD SCHEME (ENGLAND ONLY)

The Local Council Award Scheme (LCAS) is designed to both provide the tools and encouragement to those councils at the beginning of their improvement journeys, as well as promoting and recognising councils that are at the cutting edge of the sector. It is only through the sector working together to share best practice, drive up standards and supporting those who are committed to improving their offer to their communities that individual councils and the sector as a whole will reach its full potential. The scheme was created in 2014 and is managed by the Improvement and Development Board. It is reviewed on an annual basis. Accreditation under the Scheme is carried out by a panel set up by a county association of local councils or a regional group of associations. Councils can apply for an award at one of three levels.

- The **Foundation Award** demonstrates that a council meets the minimum requirements for operating lawfully and according to standard practice.
- The **Quality Award** demonstrates that a council achieves good practice in governance, community engagement and council improvement.
- The **Quality Gold Award** demonstrates that a council is at the forefront of best practice and achieves excellence in governance, community leadership and council development.

The scheme sets out criteria to meet at each level covering selected aspects of the council's work. Councils can seek to progress through the tiers over time thereby raising standards. Councils of any size can aspire to an award appropriate for their budget and level of activity. Full details of the LCAS are available at: www.nalc.gov.uk

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Codes of Conduct

ENGLAND

Code of Conduct

Chapter 7 of Part 1 of the Localism Act 2011 requires a “relevant authority” (which comprises all types of local authority including parish and town councils) to promote and maintain high standards of conduct by members and co-opted members. Every relevant authority must adopt a code which is consistent with these principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. There is no mandatory code, but local government representative bodies like NALC have published suggested codes. The Ministry of Housing, Communities and Local Government has issued guidance entitled *Openness and transparency on personal interests* which can be viewed on: www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors.

The main points of a typical code (Oxfordshire County Council) are as follows:

Selflessness

You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

Objectivity

In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

Openness

You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

Honesty and integrity

You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

Leadership

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence. A relevant authority may revise its existing code or adopt another one. NALC has issued a model code which is available to member councils. A principal authority must make arrangements for dealing with allegations of breaches of its code so that they can be investigated and decisions can be made about what action to take if a member is found to have broken the code. A local council does not have to make any such arrangements. There is no statutory sanction for breaking the code and no power for a relevant authority to suspend or disqualify a member.

Disclosable pecuniary interests

Every member of a relevant authority must declare any relevant pecuniary interests, called in the legislation “disclosable pecuniary interests”, he or she may have. The monitoring officer of the district or unitary authority in which a parish or town lies holds the register of

such interests of the members of parish or town councils. The list of interests must be available for public inspection at all reasonable hours and be published on the authority's website. If a local council has a website, details of those interests must be published there as well. Details of sensitive interests (see below) do not

have to be disclosed but the register may state that a member has such an interest.

Disclosable pecuniary interests are prescribed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) and are as follows:

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority- (a) under which goods or services are to be provided or works executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in the securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either: i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

An interest is disclosable if it is that of a member, his or her spouse or civil partner, or a person living with a member as a spouse or civil partner.

A member who has an unregistered disclosable pecuniary interest in any matter must normally declare at a meeting of the council or of a committee or sub-committee or a joint committee that he or she has such an interest. The unregistered interest must be registered within 28 days of the disclosure. However, if the interest is sensitive, only the fact that the member has an interest – and not its nature – has to be declared. A sensitive interest is one where the member and the monitoring officer consider that disclosure of details of the interest could lead to the member, or a person connected to the member, being subject to violence or intimidation.

When a member has a registered disclosable interest and/or has declared an unregistered interest, the member must not take any part in discussion or voting on the matter in question. A standing order may provide for the exclusion of a member from a meeting while a matter in which he or she has declared an interest is being discussed or voted upon.

A relevant authority may, on receipt of a written request, grant a dispensation from either or both of the restrictions on participation and voting in relation to a disclosed interest. Before granting a dispensation, the authority must have regard to all relevant circumstances, including:

- i. whether or not the business of the authority would be impeded because of the number of members who have disclosed interests. For example, if all those members with disclosed

interests could neither speak nor vote the council or committee etc. might be inquorate;

- ii. whether the party political balance of the authority would be affected (not normally relevant at local council level);
- iii. whether or not granting the dispensation would be in the interests of people living in the area;
- iv. whether or not it would otherwise be appropriate to grant a dispensation.

It is an offence, without reasonable excuse, to break any of the foregoing rules and to give false or misleading information regarding a disclosable interest. The maximum penalty on summary conviction (i.e., by a magistrates' court) is a fine not exceeding level 5 on the standard scale (£5,000). In addition, the court may disqualify the convicted person from being a member of the relevant authority or any other authority for up to five years. A prosecution can only be instituted by or on behalf of the Director of Public Prosecutions and must be begun within 12 months from the date on which the prosecutor acquired sufficient evidence to warrant proceedings being taken against the member in question, but no more than three years after the commission of the alleged offence.

WALES

PART III of the Local Government Act 2000 gives the Welsh Assembly power to issue a model code of conduct for councillors and co-opted members. The current Code is the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (SI 2008/788) as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (SI 2016/84).

General obligations: paragraphs 4 to 9 of the code

4. You must:
 - (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
 - (b) show respect and consideration for others;
 - (c) not use bullying behaviour or harass anyone; and
 - (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

5. You must not:
 - (a) disclose confidential information, or information which should reasonably be regarded as of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
 - (b) prevent another person from gaining access to information to which that person is entitled by law.

6. You must:
 - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
 - (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph

does not include offences of behaviour capable of punishment by way of a fixed penalty);

- (c) report to the Public Service Ombudsman for Wales and to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
- (d) not to make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority;
- (e) comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

You must not:

- (a) in your official capacity or otherwise use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority:
 - i. imprudently;
 - ii. in breach of your authority's requirements;
 - iii. unlawfully;
 - iv. other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;
- v. improperly for political

- purposes;
vi. improperly for private purposes.

8. You must:

- (a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by:
- the authority's head of paid service;
 - the authority's chief finance officer;
 - the authority's monitoring officer;
 - the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);

- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

9. You must:

- (a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- (b) avoid accepting from anyone gifts, hospitality (other than official

hospitality, such as a reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

Interests

The interests which must be registered are set out Part 2 of the Code. They are as follows:

Personal interests

10.

- (1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.
- (2) You must regard yourself as having a personal interest in any business of your authority if
 - it relates to, or is likely to affect:
 - any employment or business carried on by you;
 - any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
 - any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
 - any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that

exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;

- any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- any land in which you have a beneficial interest and which is in the area of your authority;
- any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- any body to which you have been elected, appointed or nominated by your authority;
- any:
 - public authority or body exercising functions of a public nature;
 - company, industrial and provident society, charity, or body directed to charitable

purposes;
ca) body whose principal purposes include the influence of public opinion or policy;

da) trade union or professional association; or

ea) private club, society or association operating within your authority's area, in which you have membership or hold a position of general control or management;

x. any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

(b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division; or
(c) a decision upon it might reasonably be regarded as affecting:

- your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;
- any employment or business carried on by persons as

- described in 10(2)(c)(i);
- iii. any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;
- iv. any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- v. any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management, to a greater extent than the majority of:
 - (aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

Disclosure of personal interests

11.

- (1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of

that consideration, or when the interest becomes apparent.

- (2) Where you have a personal interest in any business of your authority and you make:
 - (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication; or
 - (b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.
- (3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.
- (4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any

requirements identified by your authority's monitoring officer from time to time but, as a minimum containing:

- (a) details of the personal interest;
- (b) details of the business to which the personal interest relates; and
- (c) your signature.
- (5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.
- (6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.
- (7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

Prejudicial interests

12.

- (1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you

also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business:
 - (a) relates to:
 - i. another relevant authority of which you are also a member;
 - ii. another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
 - iii. a body to which you have been elected, appointed or nominated by your authority;
 - iv. your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
 - v. your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;
 - (b) relates to:
 - i. the housing functions of your authority where you hold a tenancy or lease with your authority, provided that

- you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
- ii. the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;
- iii. the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;
- iv. the functions of your authority in respect of an allowance or payment made under the provisions of Part 8 of the Local Government (Wales) Measure 2011 or an allowance or pension under section 18 of the Local Government and Housing Act 1989;
- © your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.
- (3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.
- [13. Does not apply to community councils.]
- Participation in relation to disclosed interests**
- 14.
- (1) Subject to sub-paragraphs (2), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee:
- (a) withdraw from the room, chamber or place where a meeting considering the business is being held:
- i. where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or
- ii. in any other case, whenever it becomes apparent that that business is being considered at that meeting;
- (b) not exercise executive or board functions in relation to that business;
- (c) not seek to influence a decision about that business;
- (d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and
- (e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.
- (2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- (2A) Where you have a prejudicial interest in any business of your authority you may submit written representations to a meeting relating to that business provided that the public are allowed to attend the meeting for the purpose of making representations relating to the business, whether under a statutory right or otherwise.
- (2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that your authority may adopt for the admission of such representations.
- (3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if:
- (a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or
- (b) you have the benefit of a dispensation provided that you:
- i. state at the meeting that you are relying on the dispensation; and
- ii. before or immediately after the close of the meeting give written notification to your authority containing:
- (aa) details of the prejudicial interest;
- (bb) details of the business to which the prejudicial interest relates;
- (cc) details of, and the date on which, the dispensation was granted; and
- (dd) your signature.
- (4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.
- Part 4 - the register of members' interests**
- Registration of financial and other interests and memberships and management positions**
- 15.
- (1) Subject to sub-paragraph (4), you must, within 28 days of:
- (a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or
- (b) your election or appointment to office (if that is later), register your financial interests and other interests, where they fall within a category mentioned in paragraph 10(2)(a) in your authority's register maintained

under section 81(1) of the Local Government Act 2000 by providing written notification to your authority's monitoring officer.

- (2) Subject to paragraph (4) you must, within 28 days of becoming aware of any new personal interest or change to any personal interest falling within a category mentioned in paragraph 10(2)(a), register that new personal interest or change by providing written notification to your authority's monitoring officer or in the case of a community council to your authority's proper officer.
- (3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any change of registered personal interest falling within a category mentioned in paragraph 10(2)(a), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer or in the case of a community council to your authority's proper officer.
- (4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).
- (5) Sub-paragraphs (1) and (2) will not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.
- (6) You must, when disclosing a personal interest in accordance with paragraph 11 for the first time, register that personal interest in your authority's register of interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

Sensitive information

16.

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer, or in the case of a community council to your authority's proper officer asking that the information be included in your authority's register of members' interests.
- (3) In this code, "sensitive information" ("gwybodaeth sensitif") means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Registration of gifts and hospitality

17. You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage.

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Accounts and Audit Regulations

There are separate provisions for England and Wales. These are similar but not identical.

ENGLAND

The Local Audit and Accountability Act 2014 is the legislative framework for the accounts and audit procedure for local authorities in England (including parish meetings in parishes without councils). Charter trustees are also covered by the Act. The details are contained in the Local Audit (Smaller Authorities) Regulations 2015 (SI 2015/184) and the Accounts and Audit Regulations 2015 (SI 2015/234).

The 2014 Act applies to all types of local authority, called in the Act “relevant authorities”. Local councils and parish meetings are classed as “smaller authorities” if their gross income and expenditure for the financial year does not exceed £6.5 million.

Category 1 and Category 2 authorities

The Regulations effectively divide local authorities into two categories for accounting purposes. Category 1 authorities are those whose gross income or gross expenditure for the financial year is £6.5 million or more. Category 2 authorities are those whose gross income or expenditure for the financial year does not exceed £6.5 million (section 6 of the 2014 Act) Category 2 authorities are called “smaller authorities” in the 2014 Act. There are special provisions for authorities whose gross

annual income or expenditure does not exceed £25,000. These authorities are covered by the Local Audit (Smaller Authorities) Regulations 2015 (SI 2015/184) – see below.

As a general rule, a Category 2 authority may opt to prepare full accounts in the same way as a Category 1 authority.

The remainder of this article deals only with Category 2 authorities and those authorities below the £25,000 threshold.

The main provisions of the Accounts and Audit Regulations 2015 relating to Category 2 authorities

Regulation 3 - responsibility for internal control
This requires the authority to ensure that it has a sound system of internal control.

Regulation 4 - accounting records and control system

This provides for the responsible financial officer (RFO) (usually the clerk) to determine the accounting records and control systems of the authority.

Regulation 5 - internal audit

This requires the authority to maintain an adequate and effective system of internal audit, taking into account public sector internal auditing standards or guidance.

Regulation 6 – review of internal control system

There has to be an annual review of, and an annual governance statement on, the authority's system of internal control prepared in accordance with proper practices in relation to accounts, as defined in section 21 of the Local Government Act 2003. Proper practices are described in the JPAG (Joint Practitioners'

Advisory Group) publication *Governance and Accountability for Smaller Authorities in England: a Practitioners' Guide to Proper Practices* (published in March). This can be downloaded from the NALC website: www.nalc.gov.uk.

Regulation 11 - statement of accounts for Category 2 authorities

This requires the authority to prepare accounts as follows:

1. an income and expenditure account and a statement of balances, in accordance with, and in the form specified by, the annual return and as required by proper practices (see the *Practitioners' Guide* for details);
2. where the authority's gross income or expenditure (whichever is higher) does not exceed £200,000 for the current financial year or for either of the immediately preceding two financial years, the authority may opt to prepare a receipts and payments account instead.

Regulation 12 – signing and approval of statements of accounts for Category 2 authorities

The responsible financial officer (RFO) (usually the clerk) must sign and date the relevant accounts. Thereafter, the authority must consider and approve the accounts and ensure that the person presiding at the meeting at which the accounts are approved (usually the chairman of the council) signs the accounts.

Once the accounts have been approved, the RFO must open the accounts to public inspection (see below, Regulations 14 and 15) and inform the auditor of the date on which the accounts are so open.

Regulation 13 – publication of statement of accounts and annual governance statement for Category 2 authorities

After the period for the public inspection of accounts has ended, but not later than 30 September of the financial year immediately after the financial year to which the accounts relate, the authority must publish the statement of accounts, any certificate of the auditor and the annual governance statement. Publication must include publication on the authority's website.

Copies of the documents must be available for purchase at a reasonable cost and those published on the authority's website must be available for inspection for at least five years.

Regulation 14 – period for the exercise of public rights

This provides that any rights of objection, inspection and questioning of the auditor may only be exercised within a single period of 30 working days (working days exclude Saturdays, Sundays, Christmas Day, Good Friday and bank holidays).

Accounts etc. must be available for inspection on reasonable notice at reasonable times.

Regulation 15 – commencement of period for the exercise of public rights

This requires that the accounts etc. of the authority must be available for inspection during the first 10 working days of July in the financial year following that to which the accounts relate.

The RFO must ensure publication of the statement of accounts and of a statement which sets out details of the rights of public inspection, the manner in which members of the public should notify that they wish to

inspect accounts and the name and address of the auditor. Publication must include publication on the authority's website.

Regulation 16 – notice of conclusion of audit

As soon as reasonably practicable after the conclusion of the audit the authority must publish a statement saying that the audit has been concluded, giving details of the public's rights of inspection under section 25 of the 2014 Act and saying where and when those rights may be exercised.

Regulation 20 - publication of annual audit letter

This requires the annual audit letter received from the auditor to be considered by the authority and to be published (including publication on the authority's website) and to permit copies to be purchased.

Local Audit (Smaller Authorities) Regulations 2015

As a general rule, a smaller authority (i.e., a Category 2 authority) may certify itself as an exempt authority if the higher of the authority's gross income and gross expenditure for the financial year in question does not exceed £25,000, or if the authority's gross receipts and gross payments for that year do not exceed £25,000. The authority must publish its decision on its website (if it has one) or in some other manner likely bring the decision to the notice of local residents.

Where an authority has certified itself as exempt it does not have to comply with the Accounts and Audit Regulations 2015 in most respects. Instead, it will have to comply with the transparency code for smaller authorities (authorised by the Smaller Authorities

(Transparency Requirements) (England) Regulations (SI 2015/494). This requires the following financial information to be published annually no later than the beginning of July:

- all items of expenditure above £100;
- end of year accounts, annual governance statement, and internal audit report as contained in the annual return. The end of year accounts should be accompanied by:
 - a copy of the bank reconciliation for the relevant financial year;
 - an explanation of any significant variances (e.g., more than 10-15%, in line with proper practices) in the statement of accounts for the relevant year and previous year; and
 - an explanation of any differences between 'balances carried forward' and 'total cash and short-term investments', if applicable.

Parish meetings for parishes with no council are exempt from Transparency Code.

If there are questions or objections by electors an auditor will need to be available to deal with them.

There are elaborate provisions in the Regulations enabling an exempt authority to opt in to the statutory accounting provisions and for the Secretary of State to specify the audit regime for those authorities.

Guidance on accounts

As indicated above, the JPAG (Joint Practitioners' Advisory Group) publication *Governance and Accountability for Smaller Authorities in England: A Practitioners' Guide to Proper Practices* (published in March 2022) gives detailed advice on the preparation and audit of accounts.

Audits are carried out by accounting firms

appointed by Smaller Authorities' Audit Appointments. Details can be found on the SAAA website: www.localaudits.co.uk

WALES

The governing legislation in Wales is the Public Audit (Wales) Act 2004 (as amended by the Public Audit (Wales) Act 2013) and the Accounts and Audit (Wales) Regulations 2014 (SI 2014/3362). The 2014 Regulations apply to the financial year 2014/15 and subsequent years. The paragraphs below refer to the 2014 Regulations.

Regulations 2 interpretation

A principal council is a "larger relevant body". A community council is a "smaller relevant body", but it becomes a larger relevant body if its gross income or expenditure (whichever is higher) exceeds £2.5 million. As far as the author is aware, no community council exceeds this threshold. The remainder of this article deals only with smaller relevant bodies.

Regulation 5 – internal controls and financial management

The council must ensure that there is a sound system of internal control which facilitates the exercise of the council's functions. This must include the management of risk and adequate and effective financial management.

The council must conduct an annual review of the effectiveness of its internal control system and the findings of the review must be considered by the whole council. Thereafter, the council must approve a statement of internal control in accordance with proper practices. These are set out in the joint One Voice Wales/SLCC publication *Governance and Accountability for Local Councils in Wales – A*

Practitioners' Guide (2019 Edition).

Regulation 6 – accounting records and control systems

The responsible financial officer determines accounting records and accounting control systems and is responsible for keeping them up-to-date and in accordance with proper practices.

The accounting records must show and explain the council's financial transactions and must in particular contain (a) daily entries of receipts and payments; (b) a record of assets; (c) a record of income and expenditure in relation to claims for grants and the like from Welsh ministers, other Ministers of the Crown or a body to which those ministers may pay money.

The accounting control systems must include (a) measures to ensure that financial transactions are recorded as soon as reasonably possible; (b) procedures to ensure that uncollectable amounts, including bad debts, are not written off without the approval of the responsible financial officer or other member of his staff and that the approval is shown in the accounting records; (c) measures to ensure risk is appropriately managed.

Regulation 7 – internal audit

The council must maintain an adequate and effective internal audit system. It is the duty of the responsible financial officer to make available relevant documents and records (including those held in electronic form) and to supply information and explanations to the internal auditor. Guidance on how to choose an internal auditor can be found in *Governance and accountability for Local Councils in Wales: A Practitioners' Guide 2011 (Wales)* as amended in 2014.

Regulation 14 – accounting statements

Accounts must be prepared in accordance with proper practices. These practices are set out in *Governance and accountability for Local Councils in Wales: A Practitioners' Guide 2011 (Wales)*.

Regulation 15 – signing, approval and publication of accounting statements

The responsible financial officer (RFO) must sign and date the accounts. They must then be approved by the council as a whole and signed by the person presiding at the meeting at which the accounts are approved. The accounting statement must be published not later than 30 September after the end of the year to which the accounts relate.

Regulation 16 – procedure for public inspection

The accounts must be available for public inspection for 20 working days prior to the date appointed by the auditor for the audit under regulation 21. Working days exclude Saturday, Sunday, Christmas Day, Good Friday and other bank holidays in Wales.

Regulation 17 – notice of public rights

The council must display a public notice or notices for at least 14 days prior to the date on which public inspection of the accounts is allowed in accordance with regulation 16.

Regulation 18 – notice of conclusion of audit

As soon as possible after the conclusion of the audit the council must display a public notice for at least 14 days stating that the audit has finished and giving details of the rights of inspection conferred on local government electors by section 29 of the Public Audit (Wales) Act 2004.

Regulation 25 – written notice of objection

A written notice of objection to the accounts must state the facts on which the local government elector relies and must give, as far as possible, particulars of any item alleged to be contrary to law or of any matter on which the auditor should issue a report.

Regulation 27 – publication of annual audit letter

The council must as soon as possible after receipt publish the annual audit letter and make available copies for purchase.

Regulation 28 – extraordinary audit

Where the Auditor General directs the holding of an extraordinary audit the council must display a public notice or notices giving details of the right of local government electors to make objection to the accounts.

Local council accounts are audited by the Auditor General for Wales.

To keep up-to-date with consultations, guidance and regulations don't forget to read *Legal Matters* in every edition of *Clerks and Councils Direct*.

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Clerks' Remuneration

In 2005 NALC and the SLCC jointly created a comprehensive terms and conditions agreement for the local government sector which gave councils and clerks some certainty on fair salaries and provided a means of evaluating roles. The scheme that was established then is still more or less in operation today being only varied by annual up ratings of the pay scale and a spinal column point rationalisation in April 2019. The scheme provides a clear guide for councils and is widely adopted, although it remains advisory and not mandatory.

The National Joint Council (NJC) for Local Government Services reached agreement in November 2023 on the pay scales for 2023-2024 (shown below) to be backdated to 1 April 2023. The settlement for 2024-2025 has not yet been agreed.

For all spinal points to 43 the agreed award was a flat rate payment of £1,925. For scale points above that the award was 3.88%

The new spinal column points and their previous equivalents are also shown.

For more detailed information on clerks' salaries search for *Salaries of Local Council Clerks* on www.clerksandcouncilsdirect.co.uk

The main provisions of the agreement are as follows.

SALARIES

- The salary ranges are based on evaluated benchmark posts.
- The salary bands are established in four main overlapping scales starting at SCP 5/15 as set out in the National Agreement.

Scale	Points below substantive range	Substantive benchmark range	Points above substantive range
LC1	15-6/15-17	7-12/18-22	13-17/23-25
LC2	18-23/26-29	24-28/30-34	29-32/35-38
LC3	33-36/39-42	37-41/43-47	42-45/48-51
LC4	46-49/52-55	50-54/56-60	55-62/61-68

Councils will identify the appropriate salary range for a particular post by reference to the benchmark profiles of posts, which are published with the agreement. These benchmark profiles describe a range of typical posts within the sector. If the post exactly matches the profile, the substantive salary range above should be applied. If there is not a direct match, the applicable salary range will be from the 'points below' and 'points above' columns in the above chart.

Salaries will be either an incremental scale or a 'spot salary', within the appropriate salary range.

There are also provisions for dealing with exceptional positions, which have responsibilities substantially greater than the LC4 benchmark range.

SALARY SCALES (FULL TIME) FROM 1 APRIL 2023

Scale	Points below substantive range (c)	Substantive benchmark range (b)	Points above substantive range (a)
LC1	(5-6)	(7-12)	(13-17)
5	£23,500	7 £24,294	13 £26,873
6	£23,893	8 £24,702	14 £27,334
		9 £25,119	15 £27,803
		10 £25,545	16 £28,282
		11 £25,979	17 £28,770
		12 £26,421	
LC2	(18-23)	(24-28)	(29-32)
18	£29,269	24 £33,024	29 £37,336
19	£29,777	25 £33,945	30 £38,223
20	£30,296	26 £34,834	31 £39,186
21	£30,825	27 £35,745	32 £40,221
22	£31,364	28 £36,648	
23	£32,076		

LC3	(33-36)	(37-41)	(42-45)
33	£41,418	37 £45,441	42 £50,512
34	£42,403	38 £46,464	43 £51,515
35	£43,421	39 £47,420	44 £52,752
36	£44,428	40 £48,474	45 £54,017
		41 £49,498	
LC4	(46-49)	(50-54)	(55-62)
46	£55,325	50 £60,856	55 £70,385
47	£56,648	51 £62,323	56 £72,388
48	£57,854	52 £64,335	57 £74,417
49	£59,418	53 £66,341	58 £76,405
		54 £68,356	59 £78,290
			60 £80,216
			61 £82,188
			62 £84,214

SALARY SCALES (PART-TIME) from 1 April 2023

Salary scales and hourly pay rates for ALL part-time clerks are calculated by pro-rata reference to the standard NJC working week for all local government staff of 37 hours. To calculate the hourly pay rate for part-time clerks paid between LC1 and LC4, divide the full-time annual salary by 52 weeks and then by 37 hours rounded to the third decimal place. SCP (Spinal Column Point) 5/15 £12.21. For part-time clerks in LC1 and part LC2, for example, the hourly rates, payable from 1 April 2023 are:

Scale LC1 and LC2

SCP 5	£12.21
SCP 6	£12.42
SCP 7	£12.63
SCP 8	£12.84
SCP 9	£13.06
SCP 10	£13.28
SCP 11	£13.50
SCP 12	£13.73
SCP 13	£13.97
SCP 14	£14.21
SCP 15	£14.45
SCP 16	£14.70
SCP 17	£14.95
SCP 18	£15.21
SCP 19	£15.48

SCP 20	£15.75
SCP 21	£16.02
SCP 22	£16.30
SCP 23	£16.67
SCP 24	£17.16
SCP 25	£17.64
SCP 26	£18.10
SCP 27	£18.58
SCP 28	£19.05
SCP 29	£19.41
SCP 30	£19.87
SCP 31	£20.37
SCP 32	£20.90

CAR ALLOWANCES FOR LOCAL COUNCIL CLERKS

The National Joint Council for Local Government Services recommends the following rates of car allowances payable from 1 April 2009. No increase appears to have been agreed since. The figures below also show the amounts of petrol element and VAT applicable to each group (VAT is 20%).

	451-999cc	1000-1199cc	1200-1450cc
Essential Users			
Lump sum per annum	£846.00	£963.00	£1,239.00
per mile first 8,500	36.9p	40.9p	50.5p
per mile after 8,500	13.7p	14.4p	16.4p
Petrol element	9.406p	10.366p	11.288p
Amount of VAT per mile in petrol element at 20%	1.881p	2.073p	2.257p

	451-999cc	1000-1199cc	1200-1450cc
Casual Users			
per mile first 8,500	46.9p	52.27p	65.00p
per mile after 8,500	13.7p	14.4p	16.4p
Petrol element	9.406p	10.366p	11.288p
VAT per mile	1.881p	2.073p	2.257p

Note: The rates applicable to engine sizes 1200-1450cc are also the maximum rates payable.

Note: HMRC'S tax-free mileage rates are:

	First 10,000 miles	Above 10,000 miles
Cars and vans	45p	25p
Motorcycles	24p	24p
Bicycles	20p	20p

January 2024
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Internal audit helps local councils

by Paul Reynolds, FMAAT,
Fair Account

While some clerks dread the internal audit at Annual Governance and Accountability Return (AGAR) time, many welcome the opportunity to ensure that processes and procedures are operating properly with all current good practices.

Internal audit is at the “coal face” end, checking prime documents at the source stage, whereas external audit is a remote overview of figures and explanations. The two audits complement each other, providing assurance to the public that local councils are operating efficiently and effectively, while utilising their council tax precepts both transparently and accurately. Yes, the internal auditor is checking the records to see that good practices are operating, thus ensuring financial accuracy and transparency. No, the internal auditor is not trying to catch anyone out, unless of course anyone is attempting to defraud the council.

Clerks can use the audit visit to ensure that they are fully updated on their processes and procedures. Ask the auditor if certain aspects are being performed properly or if there is a better way. If the internal auditor

reviews several local councils, they will already have sound knowledge of common financial software and spreadsheet problems that have been satisfactorily resolved elsewhere. Why re-invent the wheel?

At AGAR time, the clerk can refer to the latest guidelines on governance and accountability, which are contained in the latest Practitioners' Guide issued annually by the Joint Panel on Accountability and Governance (JPA), the National Association of Local Councils (NALC) and the Society of Local Council Clerks (SLCC). This provides a wealth of information on how to complete the AGAR forms correctly, while giving reasons for certain aspects required. These guidelines provide clerks with methods to operate with good governance, transparency and compliance.

Many councils will be under the £25,000 threshold (the higher of receipts or payments) and thus not subject to a mandatory external audit (a saving of £210 +VAT, as per the current five-year fee scale). However, all councils are subject to an annual internal audit. The auditors must be competent, totally independent and preferably well-versed in the local council sector. When selecting an internal auditor for a medium or larger council, consideration should be given to whether the firm or individual has professional indemnity insurance. This gives added assurance for the council.

Clerks can often get recommendations from fellow clerks when selecting a new internal auditor. Since September 2022, a new Internal Audit Forum has been in existence,

which provides local councils with online access to lists of internal auditors, operating across all the counties of England and Wales:

www.internalauditforum.org.uk

Once an auditor has been chosen, a letter of engagement should be issued detailing the expected number of visits, scope of the audit and reporting frequency.

Many smaller parish audits (including of councils that are self-certificating) will be conducted via an annual visit or remote access to records. However, for medium and larger councils the use of interim audits during the financial year, with a final AGAR audit, is very useful. The advantage for the

clerk/RFO and councillors is that it gives them assurance that processes and all bank reconciliations are accurate at various points in the year, and any minor errors (e.g., miscodings or correct VAT not noted for reclaim) can be amended within the actual year. The advantage for the auditor is that this spreads the audit activity throughout the year, allowing them to cover more councils, rather than packing all councils into the three-month AGAR deadline period up to 30 June each year. This also helps the clerk/RFO by reducing the pressure on their very busy year-end schedule of work.

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Areas that the internal auditor should review are:

1. Bank reconciliations for all accounts and investments held, including any cash holdings. Test checks of receipts and payments for all methods including BACS, cheques, debit cards, direct debits, standing orders, direct credits and local backings. This will cover security and the internal controls in operation. Also review bank mandates for effectiveness and relevancy.
2. Payroll aspects (whether in-house or outsourced) require test checks of staff contracts and pay calculations, with payments to HMRC and relevant pension schemes.
3. Insurance cover for standard aspects (including employer and public liability), vehicle and driver cover, cyber cover and personal accident cover (including volunteers) should be properly held at appropriate levels.
4. The asset register is updated with all additions and disposals shown. Additions should be noted, with relevant serial numbers, at the net cost value (i.e. no VAT or delivery charges included). This will provide the actual figure for the AGAR Box 9. When an item is added to the asset register it should also be notified to the insurer for cover on the current policy.
5. Risk assessments for all relevant aspects of the council performed and minuted as such, before the relevant 31 March.
6. VAT is noted correctly in financial software or spreadsheets and claimed on a regular basis (monthly, quarterly or annually) from HMRC. More frequent refunds will assist the council's cashflow.

Some councils may require partial exemption calculations or opt to tax on land and buildings.

7. Perusal of council minutes, ensuring that all are properly signed and dated by the chair at the subsequent meeting. This makes any council decisions legally binding. Payment schedules should be attached as an appendix or included in the minutes for transparency purposes. Any reviews and updates to standing orders or financial regulations and all risk assessments should be fully minuted before the relevant 31 March. The auditor should look for actioning on various projects, grants sought and earmarked reserves/CIL monies held.
8. Budgetary control is operating during the financial year, with regular comparison between budget and actuals on cost codes, to allow for virement (transferring money between accounts) if needed. Ensure that a proper budgetary process operates at the end of each calendar year. This allows each council to decide its precept for the following financial year, ready to notify its unitary, borough or district authority by the end of January. The precept figure is then used by these authorities to set their area council tax figures. Council minutes should always show the actual precept amount requested, not just "unchanged" or the percentage increase.
9. Are internal checks and controls utilised to alert councillors to errors or fraud? For example, simple verification checks that bank statement figures used in bank reconciliations are actually sighted on the statements monthly and then initialled by the chair as correct. For larger councils,

ensuring that staff duties are split, ensuring that no one person handles the payments/payroll processes without proper supervision and checks. Previously, this has often been the source of actual fraud within local councils' finances.

10. Verification of AGAR Governance (Sheet 1) and Accounting (Sheet 2) for both accuracy and full completion. Review of the significant variances sheet (currently all variances of +/-15% require explanations by the external auditors). Ensure that the bank reconciliation covers all council holdings and short-term investments. Long-term investments must be noted in the asset register and only re-entered in the cashbook when withdrawn and repaid into council bank accounts. If the council prepares accounts in a receipts and payments format, Boxes 7 and 8 must agree. If the council uses an income and expenditure format, the internal auditor needs to test the accuracy of debtors, creditors and accruals. The I&E format will also need a full reconciliation of Boxes 7 and 8 to be submitted to the external auditor with all the normal AGAR paperwork.
11. Check that the AGAR sheets 1 and 2 have been properly signed, dated, minute reference noted, and minuted in sheet numerical order (i.e., Governance first, then Accounting).
12. Ensure that the public rights notice has been posted on the website and noticeboards showing the selected 30 days' access period, and also that the announcement date is at least one day prior to day one of the period.

Finally, the internal auditor will complete

and sign off the internal audit report on the AGAR (currently with a required "wet" signature), ready for sending to the external auditor or, if self-certificating, for placing on the council website and noticeboard(s).

I hope that you have all come to the right conclusion that the answer to the question in the title of this article is indeed fact. The internal audit is an aid to management and helps local councils by enhancing their own transparency for all their parishioners. Good luck to all for your 2023/24 internal audits!

Internal Audit Forum

Paul Reynolds is a FMAAT (Fellow Member Association of Accounting Technicians) based in Hampshire and has been involved in local government internal auditing for 55 years. He worked in major authorities for 35 years, then set up Fair Account on 1 April 2002, when the "lighter touch" AGAR audit system was first introduced into the local council sector. Fair Account has a large portfolio of councils covering eight counties in the South and South West of England. It provides internal audit services to local councils, village halls and youth clubs and audits councils of all sizes, from large towns (with offices) to small villages (with the clerk working from home). Paul also provides lectures for AAT and SLCC on internal audit. <https://internalauditforum.org.uk>

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Getting recruitment right

by James Corrigan, CHRGS

Recruitment has never been more challenging than it is now across the whole of the employment sphere let alone within the local government sector and, in particular, so far as local councils are concerned, employing a competent clerk. Without a competent clerk in post, it is difficult, if not impossible, for a council to reach its potential. Added to this, once a council gains a reputation for a high turnover of clerks, it inevitably makes the job of recruitment even more challenging and can lead to poor performance for several years.

Develop an attractive package and recruitment process

It is important therefore that before advertising a position an attractive package is agreed via the legally delegated methodology, usually either full council, staffing committee or a delegated officer. Key areas to consider include pension, work environment, flexibility, job title and, of course, salary. The Local Government Pension Scheme (LGPS) is a significant advantage over many comparable private sector pensions so should be marketed strongly. A mistake often made is to reduce the clerk's salary as a cost saving measure when replacing a departing clerk. Arguably one of the most important assets at a council is the clerk; you should therefore ensure the post is correctly evaluated in accordance with the SLCC and NALC 2003 national agreement. You may even have to reflect market forces in your area and pay above the evaluated salary range to secure the right

candidate. It is worth checking with contemporaries in your area who have recently recruited as to what sort of response they received to their recruitment. Councils regularly make the mistake of advertising with too low a salary resulting in the post having to be re-advertised at a higher salary. This not only increases recruitment costs but also means the council is either operating with a locum clerk for longer or has a longer period of stagnation operating without a clerk.

Marketing the position is an area that councils very often get badly wrong, believing that they will have many candidates knocking at their door. That may have been the case once but rarely now. Making sure the recruitment "brochure" is high-quality and contains all the relevant information about the post and the council is a basic start point, as is ensuring you have an application form that enables you to easily compare the skillsets of all applicants against the essential criteria for the post.

You should also carefully consider the job title; most potential applicants will come from outside the sector so, for example, will have no idea what an RFO is, so may be put off even though they have all the necessary skills for the position. Consider calling the position something different that will appeal to all potential applicants such as Finance Manager, with RFO being part of the job description. It is also at this stage that many misleading statements in the advertisement are made such as "holding CILCA would be advantageous"; this is only a desirable requirement so why mention it when you do not mention **essential** requirements which will encourage applications.

You should also have a clear path laid out from the outset as to the dates for interviews and the system for appointment - has this been delegated to a committee or officer? Ideally there should be a streamlined system in place to make the appointment as quickly as possible after the

interviews are complete.

- Preparing a job description and person specification provides a useful basis for designing the advertisement to advertise recruitment.
- Advertisements should contain enough information about the job and the council to help applicants decide if they are suited to the job.
- Councils must not publish advertisements that indicate, or could reasonably indicate, an intention to discriminate.
- Advertisements must not target applicants with a particular protected characteristic, unless this is an occupational requirement or lawful positive action.
- Positive action may be used to encourage applications from under-represented groups.
- All forms of job advertisement are covered by the Equality Act 2010.
- Relying upon 'word of mouth' recruitment has the potential to indirectly discriminate.

Recruitment advertising overview

It is vital that you market the position as widely as possible, considering where potential applicants will come from. Profession specific providers are a great place to start, such as the Society of Local Council Clerks website, as well as via your local County Association. You may also find your local principal authorities willing to advertise the post via their internal and external jobs boards. However, do not rely solely on sector specific advertising; you have two other avenues to utilise. Your local connections in the town/parish and local area such as the council's notice boards, social media, and via any mailing lists or partner organisations. Lastly, you should look to general recruitment opportunities, such as internet recruitment sites and local publications, such as local papers whether digital or print.

- Ensure the advertisement is clear and sells the post, as well as outlining essential requirements, not desirable ones.

- Have a clear strategy on where to advertise the post before you place the advertisement.
- Make sure you advertise within and without the sector.
- Make sure you advertise via all mediums.

Application forms overview

Accepting CVs as opposed to correctly designed application forms is fraught as the council does not decide what information it will receive and in what order to enable easy comparisons. CV's will only include the information an applicant wants to tell you as opposed to what you need to know. Specific details will be missing, for example, reasons for leaving a position which may well be due to a disciplinary. This will be clear from an application form or, if the truth is not told on the form, will be adequate to take appropriate disciplinary action if the applicant is appointed and has been found to have made a fraudulent application.

Allowing CV's to be accepted will also attract speculative applications or applications that are subsequently withdrawn, possibly after being shortlisted, which wastes a lot of time.

- A standardised application process helps the recruitment panel to assess objectively an applicant's ability to do the job.
- Online-only processes can disadvantage some disabled candidates (as can a requirement to submit handwritten forms or use only forms) and employers should be prepared to modify their standard processes.
- Reasonable adjustments may be required in the application process to ensure fairness and equality.
- Application forms have several advantages over CVs.
- Councils may reduce the risk of discrimination if they treat personal information separately from the rest of the application and restrict access to that information.

- It will usually be unlawful to ask health-related questions about an applicant at the application stage.
- Shortlisting processes and decisions must be based on objective criteria that are related to the job.
- Monitoring equality in the recruitment process can help to address issues of inequality.

Interviewing and selection

Who is to be on the interview panel? Ideally this should consist of councillors/officers trained in HR who are briefed about how to conduct the interview and, in particular, what not to do, such as asking questions that can lead to claims of discrimination. An actual example being: "do you have any plans to have any more children?" of a prospective female employee.

In such circumstances, the council is open to a claim via an employment tribunal even though the person is not an employee. Ideally you should have pre-agreed identical questions for all applicants at interview; these should be designed to find out if they meet the essential criteria and thus their suitability for the post. You can use scoring for each question for all the panel members which can act as a guide to the preferred candidate, but do not have to be the sole factor.

- Planning a consistent approach to interviewing and selection can help the interview panel to focus on relevant job-related information and reduce discrimination or bias.
- Selection criteria should be identified in advance.
- Selection criteria and scoring methods should be based on objective criteria which tests skills that are relevant and necessary for the job.
- All staff involved in interviewing and selection should receive equality training and training on interview and selection techniques.
- Councils must not discriminate at interview

or in the arrangements relating to interviews.

- Clear records of the interview and selection processes should be kept as evidence to help reduce the risk of a discrimination claim.

Making an offer – overview

It is always useful to have some discretion available over the starting point of the salary within the pay scale depending on who is the preferred candidate. The winning candidate may, for example, request to start above the bottom of the scale, especially if they already earn that amount or thereabouts. You must make any offer subject to securing satisfactory references. One council's employee indemnity insurance was determined to be null and void where they had not taken up references and the employee subsequently stole funds from the council. Do be careful to ensure that the employer reference is from a person authorised to do so on behalf of the employer, as opposed to a friend who works for the employer. Whilst referees do not have to respond to specific questions it is useful nevertheless to set these out on a reference form to try and secure, for example, why they believe the applicant will be a suitable appointment relative to the attached job description? You can make a conditional offer subject to satisfactory references, this would include a basic reference from an employer who may choose to only provide start date, salary, and a job description of their existing post.

Once start dates are agreed it is important that you put in place an impressive on-boarding experience - first impressions last! This should include some induction training, which can now be provided via online recorded sessions, on basics such as health and safety and customer care. In addition, the employee should be taken through the staff handbook, introduced to all colleagues, and shown their workplace. This should include one-to-one meetings with their line manager and the head of paid service and, for some employees

who will work with councillors, meetings with some individual councillors. For a clerk it is suggested that one-to-one meetings are arranged with all councillors.

The employee should then receive regular one-to-ones, especially during their probation period, so both parties understand one another's expectations, followed by annual appraisals as part of the councils performance management systems.

- Job offers should be made in writing to help avoid any misunderstandings about the terms and conditions offered.
- Care must be taken when discussing the role with the candidate not to indicate terms which are inconsistent or differ from the written offer (verbal terms can be binding and equate to contractual promises).
- Conditional offers should be made where the council needs to verify information about the employee before confirming employment.
- Any checks to verify information must be transparent and made with the consent of the employee.
- Where a clear conditional offer is made and the condition is not met, the council will generally be entitled to withdraw the offer.
- Councils must not discriminate in the terms offered to employees.

Contract of employment overview

If the council follows the NJC green book terms and conditions, make sure the contract is compliant with this and consistent with existing employees to avoid discrimination claims. You may want to ensure all your contracts of employment are compliant via professional external expertise. Once you have a contract ready you should ensure this is provided by the first day of employment; it is good practice to supply it before then together with staff handbook and relevant HR policies, such as

disciplinary and grievance policies. By law you are required to provide part one of the "written statement of employment particulars" on day one of employment and the rest of the particulars within two months of employment beginning. It is easier to ensure all this information is included in one document which is supplied as the contract of employment before starting work, however.

For any support with recruitment to ensure you get it right you can contact Council HR & Governance support and ask about our bronze, silver, and gold packages.

James Corrigan is a Director of Council HR and Governance Support

The ethos of the company is to provide local councils with expert support via individuals who have done the day job themselves. The overall objective is to support clients to be more effective and efficient but at the same time to take care of the welfare of all who work for them and to ensure that relationships prosper for the benefit of the local community. It is dedicated to ensuring best practice and continuous improvement in the local council sector by working collaboratively with councils to help them to achieve their full potential and ambitions.

For more information see:

www.councilhrandgovernancesupport.co.uk

*Written by James Corrigan, CHRGs
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Open Space

by Nicola Hodgson, case officer,
Open Spaces Society

Local councils have a vital role to play in creating sustainable communities—and an important means of achieving this is through the creation and care of open space.

It is vital to secure green infrastructure in and around communities and neighbourhoods. This can include a network of paths and spaces, places for recreation, habitats for wildlife and natural corridors and flood mitigation.

What is open space?

There is no universal definition of open/green space, in respect of size, quality or description. However, open space is defined in the Town and Country Planning Act 1990 as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.

Open space may be managed under public or local acts of parliament, or under schemes of management (made by local authorities for common land and town/village greens). Open spaces are often accessed via public paths.

Rights and responsibilities

There may be rights of access recognised in law and recorded, for example where land is registered as common land or town/village greens, and some public open spaces. Customary rights to use open space for recreation may have been established by long use. Land may have been leased to local

councils for recreation and the public then has permission to use it. Byelaws may make it a criminal offence to carry out prohibited activities on open space.

Open Spaces Society

The open spaces we champion come in all shapes and sizes, in town and country. The open spaces we are asked to defend often comprise land which the public uses by right, for instance town and village greens and registered common land, or by custom, such as an open space with no legal protection.

How is open space protected?

Just because people use land does not mean it is protected. Councils need to be proactive in taking action to protect open space.

Local councils (town, parish, and community councils) are well placed to protect and care for the open spaces and paths in their areas. Some powers are specifically conferred on local councils, others are conferred on the public in general but are best exercised by local councils, since they have the authority and more resources than most individuals and voluntary organisations, and they command respect. The society's information sheet: *What local councils can do for public access*,

[www.oss.org.uk/what-local-councils-can-do-for-public-access-to-town-and-countryside] sets out what local councils can do to improve public access to the commons, town and village greens, other open spaces, and public rights of way in their areas, and protect them for all to enjoy.

Land may be designated as open space in a local development plan, which contains policies about open space strategy and provision.

In England the National Planning policy framework, (NPPF) revised July 2021, provides

policy about open space at paragraphs 92 -103 and there is a Planning Policy guidance website. Natural England has produced a Green Infrastructure Framework which is a means of analysing where greenspace in urban environments is needed most.

In Wales open space policy is set out in Planning Policy Wales edition 11 and *Technical Advice Note 16; Sport, Recreation and Open Spaces*.

Natural Resources Wales has a greenspace toolkit which helps local authorities plan and improve green space for local people, and some councils have supplementary planning guidance.

<https://naturalresources.wales/about-us/what-we-do/our-roles-and-responsibilities/green-spaces/local-green-spaces/?lang=en>

Carmarthenshire County Council has supplementary planning guidance (Leisure and Open Space), requirements for new developments in the local development plan. Land may be held under local or public acts of parliament which may provide protection. It may be protected by covenants governing use of the land as open space, or through the use of byelaws.

Subject to the local policies in a local development plan, if land is held as open space, it cannot be disposed of unless the process under section 123 of the Local Government Act 1972 (as amended) is used. The disposal must be advertised and objections considered before any disposal can take place.

Managing open space

Under Open Spaces Act (OSA)1906, s9: a local authority may:

a) Acquire by agreement...any open space or

burial ground, whether situated within the district of the local authority or not; and...

b) undertake the entire or partial care, management, and control of any such open space..., whether any interest in the soil is transferred to the local authority or not'. Under Public Health Act (PHA) 1875, s164: '...may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.'

Under s139 Local Government Act 1972: If a council receives a gift under (1(a)), the land must then be held for the purposes of those functions, and in relation to open space, that would be under the 1906 or 1875 Act.

Protection of open space Voluntary registration as a town or village green

Reasons for registration might include the following:

The land owned by a council is already used by local people for recreation (perhaps with permission) and the council wishes to formalise the position and protect the land for people's enjoyment in the future, or to allocate for recreation land which is not currently used for that purpose. Alternatively, a council is promoting or funding the provision or improvement of open space, or there may be a planning condition for a development requiring provision of a recreational area.

Powers are available, under section 15(8) Commons Act 2006, which allow an owner of land voluntarily to dedicate the land as a town or village green by applying to have it included in the register of town or village greens. There is a fast-track process requiring proof of

ownership and the consent of anyone who holds a lease or mortgage over the land. Village greens are protected from encroachment and development by the Inclosure Act 1857 s12 and the Commons Act 1876 s29. The only development permitted is where it is for the better enjoyment of the green for sports and pastimes. Elmbridge Borough Council in Surrey has agreed voluntarily to register a new village green at Stokes Field, Long Ditton, following assistance from the society's local correspondent.

Fifty seven percent of Elmbridge's land area comprises registered commons and other accessible open spaces and the council does excellent work managing and protecting these. It deserves credit for being willing to listen to the society's arguments.

Local green space designation (England only)

The NPPF (updated in 2021), sets out the government's planning policies for England. Paragraphs 99 to 101 introduced a new Local Green Space designation (LGS) to protect local green areas of particular importance to local communities.

This enabled communities, in particular circumstances, to identify and protect areas that are of value to them through local and neighbourhood plans.

Once designated, the LGS is subject to the same strong development restrictions as green-belt land, and new development here is ruled out other than in special circumstances.

The LGS is designated by the planning authority (borough, district, metropolitan or other unitary authority) and needs to satisfy the following criteria: to be in reasonably close proximity to the community it serves;

demonstrably special to a local community; local in character, and not an extensive tract of land.

There is no prescribed process. Some councils allow submission of areas through the local plan process when they publish allocation of sites plans or policies.

Freshwater Parish Council on the Isle of Wight designated 15 areas of open space as LGS in its neighbourhood plan. The council created a checklist against which to test the potential LGSs and said they must not have an extant planning permission, nor be allocated for development in the local plan, they must not be extensive but must be local in character, close to the communities they serve and demonstrably special to that community. Once designated in the plan, the land is safe from development except in special circumstances.

The Freshwater Neighbourhood Plan recognises the importance of the natural environment and has policies which seek to protect, conserve and, where possible, enhance these assets. The council has set an excellent example to others.

Asset of community value (ACV) (England only)

An asset of community value can be buildings or land in use for well-being or social interests of the local community. Examples include parks, open spaces, libraries, heritage sites, village shops, pubs.

Listing can affect subsequent planning decisions and afford greater protection for open spaces where the ACV is regarded as a material issue. In addition, it allows the community to bid for the asset, and a temporary moratorium is placed on a sale of the land.

An application to list land can be made by the parish council or voluntary/community body. There is no prescribed form but most planning authorities have information on their websites.

An open space at Whitehall Road, Blackburn, following assistance from the society, was awarded ACV status.

Create a new common

A new common can be created by the owner granting a right of common, such as for grazing, estovers (to take wood), or turbary (to cut turf or peat).

The land then becomes eligible for registration as common land. This attracts the same protection as all commons, for instance restrictive works must gain consent using the process under section 38 Commons Act 2006.

The late owner of three acres at Rushall in Norfolk wanted to protect her land. She gave a right of common to a member of the Open Spaces Society so the land became common. He registered the right and the land on Norfolk County Council's commons register. Now the public has the right to walk on St Clements Common and it is protected from encroachment and valued by the local community.

Car parking

The Road Traffic Regulation Act 1984 section 57 allows a council to provide parking places, including appropriating open space, but the area must not exceed the lesser of one eighth or 800 square feet, and may require the consent of the higher-tier council.

Byelaws

There are byelaw making powers under the PHA section 164 for the regulation of a public walk or pleasure ground, and under section 12 and 15 of the OSA for the regulation of open space.

Byelaws can also be made on common land and village greens.

Councils, where such a power is conferred, may make byelaws, where there is no duplication of existing law but these should be used as a means of last resort.

When making byelaws councils should use the model byelaw set and adapt it as required. The model set includes byelaws on protection of the ground, its wildlife and the public, horses, cycles and vehicles, play areas, games and sports, waterways and model aircraft.

Public Spaces Protection Orders (PSPOs)

The Anti-Social Behaviour, Crime and Policing Act 2014 gives councils the power to make PSPOs. These are to ban any activities in public places which they consider have a detrimental effect on the lives of others. The activities must be shown to be persistent and unreasonable, and the restrictions must be evidenced as justifiable. A PSPO must identify a public place, prohibit specified things, or require specified things to be done to prevent or reduce detrimental effects. They can last for up to three years and can be extended for a further three. There must be consultation which includes the local community representatives and owners of land within the restricted area. Conflicting byelaws can be suspended and any offence is punishable with a level 3 penalty.

About the Open Spaces Society

The Open Spaces Society is Britain's oldest national conservation body, founded in 1865. It has over 2,000 members consisting of individuals, organisations and local authorities, including local councils. It campaigns to create and protect common land, town and village greens, other open spaces and public paths. As a charity it is dependent on subscriptions and donations for its funding. The membership subscription for local councils is £45 a year. The Open Spaces Society, 25a Bell Street, Henley-on-Thames RG9 2BA. www.oss.org.uk

Nicola Hodgson, Open Spaces Society
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The holding, use and development of land by parish councils

by Ian Davison, Surrey Hills Solicitors LLP

Introduction

The purpose of this article is to acquaint parish councils with the holding, use and development of land; it forms part two of a series of three articles dealing with the acquisition, holding and disposal of land by parish councils (part one, "The acquisition of land by parish councils", was published in the July 2022 issue of *Clerks & Councils Direct*). In making decisions to deal with its land, a parish council must consider and comply with the following principles of administrative law.

Administrative law framework:

proper and valid decision-making

- 1) Valid exercise of functions
 - The valid exercise of a function must:
 - a. fall within the statutory envelope (functions);
 - b. be properly made by someone authorised to make the decision (authority);
 - c. follow the rules on proper decision-making.
- 2) Functions: duties and powers

- a. A local authority is a creature of statute and can only do what statute expressly allows or implies. Functions are duties (obligatory requirements – "must" or "shall") and powers (permissive – "may").
- b. The scope of a council's powers will be materially affected by its ability to exercise Section 1 of the Localism Act 2011 (eligible councils only).
- 3) Authority
 - a. There must be authority for the transaction.
 - b. Decision-making can be through full council.
 - c. Decisions can be delegated to a committee or by a committee to a sub-committee or to an officer, but not to an individual member.
- 4) A valid decision must:
 - a. be reached in a procedurally correct way: specific steps and requirements, decision-making in public or in confidential session, and
 - b. itself be reasonable.
- 5) "Reasonable" means a decision which:
 - a. must take account of proper considerations;
 - b. must leave out of account irrelevant considerations;
 - c. must be made for a proper purpose;
 - d. must be proportionate as to the purpose to be achieved and the expenditure involved;
 - e. must have regard to the council's fiduciary duty to its taxpayers;
 - f. must be fair – avoiding bias or the appearance of bias and taking account of opposing views.
- 6) A decision-maker must have regard to certain specific statutory duties: reduction of crime and disorder, public sector equality duty and consideration of specific issues regarding consultations and legitimate expectation.
- 7) Decisions should be properly documented and justified by reasons in reports and background papers and recorded in minutes or records of delegated decisions.
- 8) The exercise of powers will be subject to the general law e.g., as to the obtaining of planning permission or the obtaining of consents from other bodies e.g., the Secretary of State, the Charity Commission.

What do we mean by land?

The Local Government Act (LGA) 1972 s 270 defines land as including "any interest in land and any easement or right in, to or over land". Land also includes buildings and structures attached to the land, but not caravans or portacabins which rest on the land. A licence, which is a contractual right to use land, is not an interest in land. For certain purposes, e.g., under the Town and Country Planning (General Permitted Development) Order 2015 (as amended), buildings can be treated separately from the land on which they stand, but this does not affect land law.

Acquiring, holding, using, appropriation and disposal of land

- 1) A local authority may only acquire, hold,

use, develop or dispose of land within the statutory framework. Even if the transfer or conveyance by which the land was acquired does not specify the powers under which the land is acquired or is to be held, the land will be deemed to have been acquired or held for a statutory purpose.

- 2) The purposes for which land is acquired or held are crucial to the purposes for which it can be used or developed or the freedom with which it can be disposed of.
- 3) The statutory powers should be specified in any transfer upon acquisition e.g., pursuant to s 124 of the LGA 1972 or pursuant to s 9 of the Open Spaces Act 1906.
- 4) If land is not capable of use for the statutory purposes for which it was acquired, then it may be appropriated to other statutory purposes.
- 5) A local authority may accept, hold and administer gifts of land for any of its functions, under s 139 of the LGA 1972.

Holding, use of and development of land

- 1) Land, once acquired, must be held for a statutory purpose. This will be for the purpose for which it has been acquired generally, e.g., under the LGA 1972, or specifically, e.g., under the Open Spaces Act 1906, unless it has been formally appropriated for another purpose.
- 2) The use of land and any restrictions on its use will depend on the statute governing the statutory purpose. Land may only be used for the purposes for which the powers are given. S 111 of the LGA 1972 may be relevant.
- 3) For example, land held under the Public Health Act 1875 (public walks and

pleasure grounds) is held under public open space trusts and the public uses the land by right. Accordingly, it can only be closed or access curtailed or restricted under the terms of the Public Health Acts 1875–1961. It follows that land held under the public open space trusts imposed under the Public Health Act 1875 and the Open Spaces Act 1906 cannot be used for allotments (see s 10 of the Open Spaces Act 1906, but also see the note regarding appropriation) and cannot be designated as a village green. Land held for the purposes of the Allotments Acts may only be let on certain terms and possession can only be obtained in certain circumstances, and compensation may be payable. It is a presupposition that not more than 5% of recreation land held under the Open Spaces Act 1906 will be built on.

- 4) The use and development of land may be subject to public law constraints of a specific or general nature and private law restrictions. Public law designations include a village green or common land, SSSIs and other nature and biodiversity designations. Public law rights include public rights of way e.g., public footpaths. Private law restrictions include covenants and easements and wayleaves and licences.
- 5) Land designated as a village green may not be used or developed other than for public recreation. It is a criminal offence to carry out works which disrupt the land surface, and development other than incidental to public recreation is prohibited.
- 6) Registered common land is owned by a

person, often by local authorities (not held in common), and is subject to the rights of commoners (if any) and the public right to wander on foot (access land).

Development on a common is severely restricted and may need the consent of Defra (see s 38 of the Commons Act 2006).

- 7) Land held also for charitable purposes, i.e., under charitable trusts, must be used and developed only in the interests of the beneficiaries and for the charitable purposes specified. Charitable objects may not necessarily be the same as the interests of the local authority or a local authority's perception of the public interest.
- 8) Regulation of land held under the Public Health Act 1875 and the Open Spaces Act 1906 can be effected by byelaws specifically made under those Acts. Land held under the Road Traffic Regulation Act 1984 (off-street car parks) may be regulated by order made under that Act (including the power to charge and to levy penalty charges). There may be a local Act of Parliament regulating activities. A parish council may enter into management agreements for the regulation of land of which it has taken control even if it has not acquired an interest: see, for example, s 10 of the Open Spaces Act 1906.
- 9) There are compulsory powers of control and maintenance of closed churchyards: see s 215 of the LGA 1972.
- 10) It is prudent to register at the Land Registry unregistered land in order to protect it from encroachment and to facilitate the compiling of the asset

register and to comply with the Transparency Code.

Covenants

- 1) Freehold land may be subject to covenants. Covenants are private law contractual obligations which can be enforced between the original parties, being the covenantor (the person subject to the obligation) and the covenantee (the person having the benefit of the obligation). A local authority which has acquired the land following a statutory transfer, e.g., under a reorganisation order, is treated as if it was the original party.
 - 2) Covenants affecting freehold land can be of two types: positive ("you must") and restrictive ("you shall not"). An example of a positive covenant is an obligation to erect and maintain fences. An example of a restrictive covenant is not to use the land other than as open space.
 - 3) In general, positive covenants do not run with freehold land, i.e., they are not enforceable by successors in title of the original parties.
 - 4) Restrictive covenants may run with the land, i.e., be enforceable by the successor in title of the original parties, provided certain criteria are met. The following are points to note:
 - a. Words in a conveyance or transfer whereby covenants purporting to be made for or on behalf of successors in title have no operative effect in terms of making covenants run with the land, unless the other rules set out below apply.
- b. Failure to register a restrictive covenant will render the covenant unenforceable, although registration does not make covenants run with the land unless the other rules set out below apply.
 - c. A restrictive covenant can only be enforced by a successor in title of the covenantee against the original covenantor or successor in title of the covenantor if the successor in title of the covenantee has land which is or is capable of being benefited.
 - d. The issue of fragmented dominant land (see below).
 - e. A restrictive covenant must exist to protect land.
 - f. The land benefited has to be easily identifiable within the deed.
 - g. Where the covenantee owns no land or no identifiable land, the restrictive covenant cannot be enforced against the covenantor's successor in title unless there is a specific collateral obligation between the successor in title and the covenantee (i.e., preserving a direct contractual relationship), for example a deed of covenant.
 - h. Where the covenantee's successor in title owns no land or no identifiable land, the restrictive covenant cannot be enforced against the

covenantor's successor in title unless there is a specific collateral obligation between the successor in title and the covenantee (i.e., preserving a direct contractual relationship), for example a deed of covenant.

- i. Certain statutes, e.g., s 106 of the Town and Country Planning Act 1990 (as amended) or s 33 of the Local Government (Miscellaneous Provisions) Act 1982, allow for covenants to be enforceable by certain authorities irrespective of retained land. The particular power must be specified in the instrument, e.g., a deed. Parish councils cannot apply these provisions.
- 5) Leases will also contain covenants both positive and negative. They are always enforceable as between the landlord for the time being and the tenant for the time being even if there is no direct contractual relationship between them. Note the use of very long leases as a mechanism for enforcing covenants.
- 6) Covenants cannot be enforced by persons outside the consideration, e.g., members of the public.

Easements and licences

- 1) Easements are private law property rights over land (the servient land) in favour of neighbouring land (the dominant land). They attach to land and not to people. An example is to pass and repass over land to enable the owner of adjoining land to access the highway. Easements are

enforceable as between the landowners for the time being. Wayleaves are similar to easements but typically enure to the benefit of utilities, e.g., to run a pipeline or electricity cables across land, and may not therefore benefit dominant land as such.

- 2) Licences do not constitute an interest in land. They are contractual rights to use land and are personal to the licensee. Licences do not run with the land. It is important that a licence does confer exclusive possession, as this may constitute a lease.

The development of land

The development of land by a local authority must follow the usual rules concerning planning permission and other statutory permissions and consents e.g., licensing. Planning permission is required for development: the making of material change of use of land or the carrying out of operational development. Certain activities are not regarded as development: e.g., the use of land for agriculture or certain changes of use within use classes. The Town and Country Planning (General Permitted Development) Order 2015 permits in certain circumstances development without the need for express planning permission (see in particular Schedule 2, Part 12), as do local and neighbourhood planning orders.

Appropriation

- 1) Appropriation is the transfer from one statutory purpose to another.
- 2) There cannot be any implied or informal appropriation of land.
- 3) The LGA 1972 provides:

126 Appropriation of land by parish ... councils

- (1) Any land belonging to a parish ... council which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the council for any other purpose for which the council are authorised by this or any other public general Act to acquire land by agreement.
- 4) Appropriation of open space land is treated as if it were a disposal of the land in question and the statutory advertisement procedure is engaged: s 127 of the LGA 1972. Appropriation of a common, village green or public open space to land for statutory allotments cannot proceed without an order by the Secretary of State: s 28 of the Land Settlement (Facilities) Act 1919.
6. The clerk should be properly equipped and authorised to act as the single point of contact with solicitors, etc.
7. An adequate budget should be approved to cover considerations, professional fees, etc.
8. Be alive to the VAT implications.
9. Ensure proper reporting mechanisms.
10. Do not underestimate costs or timescales, especially if there are pushy solicitors, prospective tenants playing games or unrepresented landlords or tenants involved.
11. In managing the process, note the difference between agreeing terms and handling the legal process.

Practical points to note – general

When approaching property transactions generally and in deciding what to do with the council's land, you should bear in mind the following general points.

1. Carry out a full appraisal of the proposals for the use of the land.
2. Establish whether the necessary statutory powers are available.
3. Take professional and legal advice.
4. Ensure that decision-making is appropriate and documented and that appropriate authorities are in place. Note the importance of delegated authority.
5. There should be a project plan, including a timetable, in place and a person should be appointed to lead.

Ian Davison has worked in and for local government for over 40 years. He is a partner in Surrey Hills Solicitors LLP. Before joining private practice, he was a chief officer providing and managing a wide range of services including legal, democratic, scrutiny, member support, licensing and project management and he has acted as monitoring officer and electoral returning officer. He was also a clerk to a parish council. Ian is legal advisor to the Kent, West Sussex and Hampshire Associations of Local Councils and SERCAF. He is also a contributor to the local government, open spaces, recreational leases and highways titles of the leading professional practitioner work *The Encyclopaedia of Forms and Precedents*. For more information, see www.surreyhillssolicitors.co.uk.

*Ian Davison, Surrey Hills Solicitors LLP
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Disposal of land by parish councils

by Ian Davison, Surrey Hills Solicitors LLP

Introduction

1. The purpose of this article is to describe why parish councils would want or need to dispose of land or an interest in land and the legal and practical implications in doing so. This article is part 3 of a series dealing with the acquisition, holding and disposal of land by parish councils.

2. In making decisions to dispose of land a parish council must consider and comply with the following administrative law principles.

Administrative law framework - Proper and valid decision-making

1. Valid exercise of functions

The valid exercise of a function must:

- a) fall within the statutory envelope (functions);
- b) be properly made by someone authorised to make the decision (authority);
- c) follow the rules on proper decision-making.

2. Functions: duties and powers

- a) a local authority is a creature of statute and can only do what statute expressly or impliedly allows. Functions are duties (obligatory requirements) ('must' or 'shall') and powers (permissive)

('may');

- b) the scope of a Council's powers will be materially affected by its ability to exercise s1 of the Localism Act 2011 (eligible councils only).

3. Authority

- a) there must be authority for the transaction;
- b) decision-making can be through full council;
- c) decisions can be delegated to a committee or by a committee to a sub-committee or to an officer but not to an individual member.

4. A valid decision must:

- a) be reached in a procedurally correct way: specific steps and requirements, decision-making in public or in confidential session; and
- b) itself be reasonable.

5. 'Reasonable' means a decision which:

- a) must take account of proper considerations;
- b) must leave out of account irrelevant considerations;
- c) must be made for a proper purpose;
- d) must be proportionate as to the purpose to be achieved and the expenditure involved;
- e) must have regard to the Council's fiduciary duty to its taxpayers;
- f) must be fair – avoiding bias or the appearance of bias and taking account of opposing views.

6. A decision-maker must have regard to certain specific statutory duties: reduction of crime and disorder, public sector equality duty and consider specific issues regarding consultations and legitimate expectation.

7. Decisions should be properly documented and justified by reasons in reports and background papers and recorded in minutes or records of delegated decisions.

8. The exercise of powers will be subject to the general law e.g., as to the obtaining of planning permission or the obtaining of consents of other bodies e.g., the Secretary of State, the Charity Commission.

What do we mean by land?

The Local Government Act 1972 s270 defines land as including "any interest in land and any easement or right in, to or over land". Land also includes buildings and structures attached to the land but not caravans or portacabins which rest on the land. A licence, which is a contractual right to use land, is not

an interest in land. For certain purposes e.g., under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) buildings can be treated separately from the land on which they stand but this does not affect land law.

Acquiring, holding, using, appropriation and disposal of land

1. A local authority may only acquire, hold, use, develop or dispose of land within the statutory framework. Even if the transfer or conveyance by which the land was acquired does not specify the powers under which the land is acquired or is or is to be held, the land will be deemed to have been acquired or held for a statutory purpose.

2. The purposes for which land is acquired

WANT TO STAND OUT FROM THE CROWD?

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- SUPPLY
- INSTALL
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or held is crucial to the purposes for which it can be used or developed or the freedom with which it can be disposed of.

3. The statutory powers should be specified in any transfer upon acquisition and in transfer of lease upon a disposal e.g., section 127 of the Local Government Act 1972.

Disposal of land

1. The Local Government Act 1972 provides:

127 Disposal of land held by parishes

1) Subject to the following provisions of this section, a parish...council, may dispose of land held by them in any manner they wish.

2) Except with the consent of the Secretary of State, land shall not be disposed of under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

3) [Subsections (2A) and (2B) of section 123 above shall apply in relation to the disposal of land under this section as they apply in relation to the disposal of land under that section, with the substitution of a reference to a parish or community council or the parish trustees of a parish for the reference to a principal council in the said subsection (2A)]

4) Capital money received in respect of a disposal under this section of land held for charitable purposes shall be applied in accordance with any directions given under [the Charities Act 2011].

5) For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists:

a) of the grant of a term not exceeding

seven years, or

b) of the assignment of a term which at the date of the assignment has not more than seven years to run.

2. The Secretary of State has given consent to the disposals by local authorities of land at an undervalue: The Local Government Act 1972 General Disposal Consent (England) 2003 (attached to Circular 06/03) which allows local authorities to dispose of properties at an undervalue where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:

a) the promotion or improvement of economic well-being;

b) the promotion or improvement of social well-being;

c) the promotion or improvement of environmental well-being; and

d) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

3. Disposal may be freehold (sale) by way of transfer or exchange or leasehold by grant or assignment or the grant of a right e.g., an easement. Disposal may accrue by operation of time e.g., accretion or adverse possession. Appropriation or dedication will also be classed as disposals. The imposition of a covenant might be regarded as a disposal.

4. Easements are private law property rights over land (the servient land) in favour of neighbouring land (the dominant land). They attach to land and not to people. An example is to pass and repass over land to

enable the owner of adjoining land to access the highway. Easements are enforceable as between the landowners for the time being. Wayleaves are similar to easements but typically enure to the benefit of utilities e.g., to run a pipeline or electricity cables across land and may not therefore benefit dominant land as such.

5. Licences do not constitute an interest in land. They are contractual rights to use land and are personal to the licensee. Licences do not run with the land. It is important that a licence does confer exclusive possession as this may constitute a lease.

6. Appropriation is the transfer from one statutory purpose to another. There cannot be any implied or informal appropriation of land.

7. The Local Government Act 1972 provides:

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(1) Any land belonging to a parish council which is not required for the purposes for which it was acquired or has since been appropriated may, subject to the following provisions of this section, be appropriated by the council for any other purpose for which the council are authorised by this or any other public general Act to acquire land by agreement.

8. Appropriation of open space land is treated as if it were a disposal of the land in question and the statutory advertisement procedure is engaged: s127 of the Local Government Act 1972. Appropriation of a common, village green or public open space to land for statutory allotments cannot proceed without an order by the Secretary of

State: s 28 of the Land Settlement (Facilities) Act 1919.

9. A dedication to a charity or the execution of a charitable trust deed will count as a disposal. NB King George V fields, dedications to Field in Trust.

10. Proposed disposals of land which is an open space must follow the statutory advertisement procedure.

11. The grant of a lease where the protections given by the Landlord and Tenant Act 1954 Part 2 must be accompanied by the statutory notices.

12. Land may not be disposed of in breach of any trust, covenant or agreement binding upon the local authority: s131(1) of the Local Government Act 1972.

13. Disposals of statutory allotment land must be dealt with under the Allotments Acts 1908-1950. Capital receipts are to be used first for reinvesting in allotments: s32 of the 1908 Act; s131(2) of the Local Government Act 1972.

14. The disposal of land held for charitable purposes must follow the procedure on disposals set down in ss117-124 of the Charities Act 2011: s131(3) of the Local Government Act 1972.

15. Disposals of interests in village greens and common land (including easements) can be effected, but such disposals do not affect the status of the land and the statutory restrictions on works continue to apply.

16. Appropriate valuation advice should be taken when disposing of land. Consideration received is a capital receipt and must be treated as capital money.

Practical points to note - general

When approaching property transactions, you should bear in mind the following general points:

- a) Carry out a full appraisal of the proposal and the terms offered or wanted.
- b) What are the terms?
- c) The authority should be looking for best price when buying or selling.
- d) Are the necessary statutory powers available?
- e) Take professional valuation and legal advice.
- f) Ensure that decision-making is appropriate and documented and that appropriate authorities are in place. NB importance of delegated authority.
- g) There is a project plan, including a timetable, in place and that a person has been appointed to lead.
- h) That the Clerk is properly equipped and authorised to act as the single point of contact with solicitors etc.
- i) Adequate budget is approved to cover consideration, professional fees, fees for searches and the Land Registry, VAT.
- j) Ensure proper reporting mechanisms.
- k) Do not underestimate costs or timescales especially where there are pushy solicitors, prospective tenants playing games, unrepresented landlords or tenants.
- l) Do not underestimate the significant work in dealing with CPSE.
- m) Managing the process – note the difference between agreeing terms and handling the legal process.

Practical points to note – disposals

For disposals you must consider the following:

- a) Is the statutory power to dispose clear?
- b) What are the terms?
- c) Remember that disposal includes easements and leases but not licences.
- d) Be alive to the nature and capacity of a transferee or lessee - is it or they a corporate body or an unincorporated association, a charity?
- e) An unincorporated body does not have a legal personality.
- f) There are special rules for disposal by local authorities acting as charities: ss117 et seq of the Charities Act 2011.
- g) There are special rules for disposals to charities.
- h) Are any statutory consents or advertisements needed?
- i) Title must be deduced.
- j) Plans.
- k) Agreements for the sale of land must be in writing and signed.
- l) Local authority disposals need not be preceded by a contract.
- m) Replies to property enquiries need to be given.
- n) Transfer/lease must be executed as a deed under the council's common seal or with two signatures of councillors.
- o) Is there a home for any capital receipt?
- p) Who is paying what fees?
- q) Insurance and changes to insurance schedule, asset and risk registers.
- e) Permitted user
- f) Repairing obligations – common parts and unlet parts
- g) Insuring obligations
- h) Alienation – subletting
- i) Landlord and Tenant Act 1954 Part 2 exclusion
- j) Forfeiture – bankruptcy and non-use
- k) Plans
- l) Schedule of condition
- m) CPSE 1, 3, 7 – planning permissions, guarantees, insurances, asbestos report, fire risk assessment, EPC
- n) Superior landlord's consent
- o) Costs
- p) Registration

Practical points to note – leases

For leases you must consider the following in addition to the above:

- a) Parties – to whom
- b) Capacities – NB charities
- c) Term and break clauses
- d) Rent and rent reviews

in Surrey Hills Solicitors LLP. Before joining private practice, he was a chief officer providing and managing a wide range of services including legal, democratic, scrutiny, Member support, licensing, and project management and has acted as Monitoring Officer and Electoral Returning Officer. He was also a clerk to a parish council. Ian is legal advisor to the Kent, West Sussex and Hampshire Associations of Local Councils and SERCAF. He is also a contributor to the local government, open spaces, recreational leases and highways titles of the leading professional practitioner work The Encyclopedia of Forms and Precedents.

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