

# 2023

## The Clerk's Yearbook

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INDEPENDENTLY SERVING LOCAL COUNCILS  
IN ENGLAND AND WALES

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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 2023 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 2023.

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 SubCommittees 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 will be £8.82 per elector per year in both England and Wales for 2022/23.

### 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 on the NALC website: [www.nalc.gov.uk](http://www.nalc.gov.uk)

January 2023  
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james hallam

Council Guard

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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](http://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:

- 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;
- whether the party political balance of the

authority would be affected (not normally relevant at local council level);

- whether or not granting the dispensation would be in the interests of people living in the area;
- 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:

- 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;

- show respect and consideration for others;
  - not use bullying behaviour or harass anyone; and
  - 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:
- 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;
  - prevent another person from gaining access to information to which that person is entitled by law.

#### 6. You must:

- not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- 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);
- 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;

- not to make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority;
- 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.

#### 7. You must not:

- 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;
- use, or authorise others to use, the resources of your authority:
  - imprudently;
  - in breach of your authority's requirements;
  - unlawfully;
  - 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;
  - improperly for political purposes;
  - 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 lied 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:

- observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- 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 -

a 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 subparagraph (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 subparagraph (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;
    - body whose principal purposes include the influence of public opinion or policy;
    - trade union or professional association; or
    - 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;
  - 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);
- 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;
- 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
- 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) 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:

- 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
- 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:

- details of the personal interest;
- details of the business to which the personal interest relates; and

- 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:
  - another relevant authority of which

you are also a member;

- another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- a body to which you have been elected, appointed or nominated by your authority;
- 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;
- your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

b relates to:

- 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;
- 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;
- 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;

- 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;

c 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:
  - 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
  - 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:
- state at the meeting that you are relying on the dispensation; and
  - 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.

January 2023  
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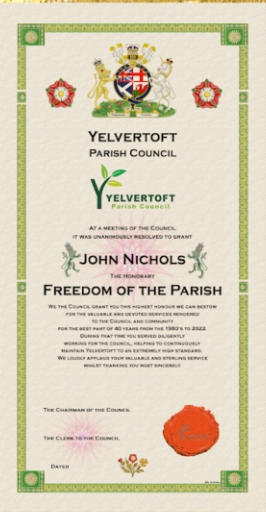
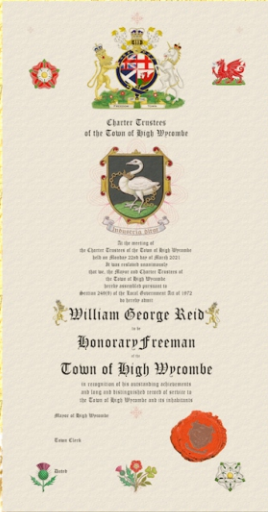
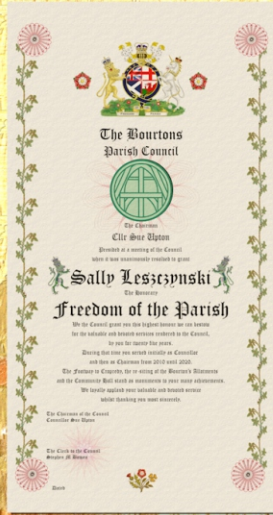
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# Accounts and Audit Regulations

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 2022).

This can be downloaded from the NALC website: [www.nalc.gov.uk](http://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](http://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 2022 on the pay scales for 2022-2023 (shown below) to be backdated to 1 April 2022. The settlement for 2023-2024 has not yet been agreed.

In addition, the NJC has agreed that from 1 April 2023, all employees covered by the National Agreement, regardless of their current leave entitlement or length of service, will receive a permanent increase of one day (pro rata for part-timers) to their annual leave entitlement. This may require, in some organisations, that a local agreement has to be reached in order for the extra day to be applied.

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](http://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 2022

Scale	Points below substantive range (c)	Substantive benchmark range (b)	Points above substantive range (a)
LC1	(5-6)	(7-12)	(13-17)
5	£21,575	£22,369	£24,948
6	£21,968	£22,777	£25,409
		£23,914	£25,878
		£23,620	£26,357
		£24,054	£26,845
		£24,496	

LC2		(18-23)	(24-28)	(29-32)	
18	£27,344	24	£31,099	29	£35,411
19	£27,852	25	£30,020	30	£36,298
20	£28,371	26	£32,909	31	£37,261
21	£28,900	27	£33,820	32	£38,296
22	£29,439	28	£34,723		
23	£30,149				

LC3		(33-36)	(37-41)	(42-45)	
33	£39,493	37	£43,516	42	£48,587
34	£40,478	38	£44,539	43	£49,590
35	£41,496	39	£45,495	44	£50,782
36	£42,503	40	£46,549	45	£51,999
		41	£47,573		

LC4		(46-49)	(50-54)	(55-62)	
46	£53,259	50	£58,583	55	£67,756
47	£54,532	51	£59,995	56	£69,684
48	£55,693	52	£61,932	57	£71,637
49	£57,199	53	£63,863	58	£73,551
		54	£65,803	59	£75,366
				60	£77,220
				61	£79,118
				62	£81,069

### SALARY SCALES (PART-TIME) from 1 April 2022

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 £11.22

For part-time clerks in LC1 and part LC2, for example, the hourly rates, payable from 1 April 2022 are:

#### Scale LC1 and LC2

SCP 5	£11.22
SCP 6	£11.42
SCP 7	£11.63
SCP 8	£11.84
SCP 9	£12.06
SCP 10	£12.28
SCP 11	£12.51
SCP 12	£12.73

SCP 13	£12.97
SCP 14	£13.21
SCP 15	£13.45
SCP 16	£13.70
SCP 17	£13.96
SCP 18	£14.21
SCP 19	£14.48
SCP 20	£14.75
SCP 21	£15.02
SCP 22	£15.30
SCP 23	£15.67

### SALARY RATES (BELOW LC scale)

(only applicable to staff other than the Clerk)

SCP 1	£10.53
SCP 2	£10.62
SCP 3	£10.82
SCP 4	£11.01
SCP 5	£11.22

### 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
<b>Essential Users</b>			
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
<b>Casual Users</b>			
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

# Seven highly effective habits

for parish and town councils  
by James Corrigan, Director of Council HR and Governance Support

Steven R. Covey's highly acclaimed book *The 7 Habits of Highly Effective People* has sold over 40 million copies and has not lost its relevance since it was first published in 1989. It has been cited by many in business and the public sector as their "go to" guide for success.

One fellow guru, Tony Robbins, author of *Unlimited Power*, described it as "[p]resenting a holistic, integrated, principle-centred approach for solving personal and professional problems. With penetrating insights and pointed anecdotes, Covey reveals a step-by-step pathway for living with fairness, integrity, honesty and human dignity – principles that give us the security to adapt to change, and the wisdom and power to take advantage of the opportunities that change creates. Fundamentals are the key to success. Stephen Covey is the master of them."

Covey's seven habits are:

- **Be proactive**
- **Begin with the end in mind**
- **Put first things first**
- **Think win-win**
- **Seek to understand first, before making yourself understood**
- **Learn to synergize**
- **Sharpen the saw.**

But how do these apply to the life of a local council?

## 1. Be proactive

It seems fairly obvious that to be a successful council representing your area and providing excellent services you need to be proactive. However, Covey describes being proactive as going beyond the basics of proactivity – he includes taking responsibility for your actions and your situation. How often do we hear people saying "we can't do that because of..."? Covey advocates reviewing the situation and finding an alternative route to achieve your objective: there is often more than one way to achieve, so look at the alternatives.

Proactive councils focus their efforts on their "circle of influence". They work on the matters they can do something about, those where they have control or influence such as improving a local park, supporting a community-run post office or improving the well-being of their staff. Reactive councils, on the other hand, focus their efforts in the "circle of concern" – things over which they have little or no control, such as cuts to the county council budget or changes in the policy of the district council or the system for adopting a Neighbourhood Plan. The rate of return from investing council energies and resources to try and influence such matters is very small compared with investing energies in areas where the council does have some control or influence.

Being aware of the areas where the council expends its resources and energy is a giant step in becoming proactive. It is therefore well worth undertaking a review of the council's current activities; this should be completed in conjunction with Habit 2 and in particular Habit 3 below.

## 2. Begin with the end in mind

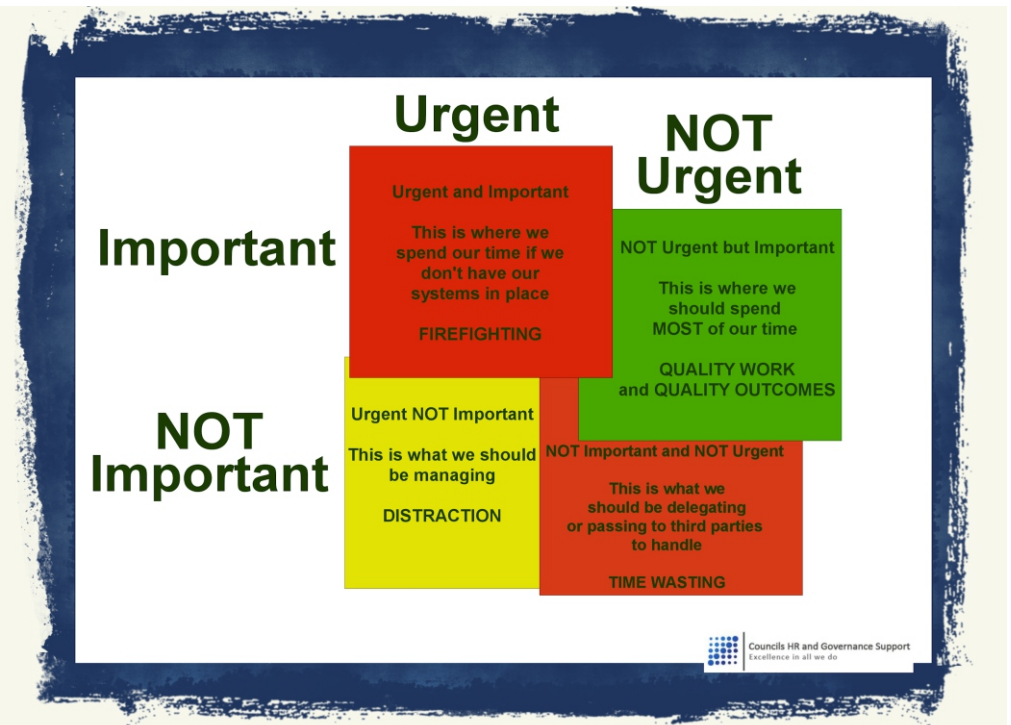
This is often referred to as "the habit of personal vision" or in the case of a council its mission statement and strategic plan. By having a clear idea of the wants, needs and aspirations of its community, a council can develop a clear mission statement and align with this a clear strategic plan with clear objectives, all of which must be SMART: Specific, Measurable, Achievable, Realistic and Time-constrained. In establishing these clear objectives, the council will be "beginning with the end in mind". By doing this, it will concentrate its resources into areas that will be productive for the local community.

Some councils appear at first glance to be

working very hard, with officer time fully expended and councillors attending lots of meetings. However, further examination can reveal that they are "pushing the rope with all their might rather than pulling it". This is often manifested in a tendency to have far too many meetings to agree on actions and then to continuously oversee what is being done – all of which is wasted energy. Clear objectives aligned with clear empowerment and delegation to competent officers to deliver these actions bring effective and efficient success.

## 3. Put first things first

The third habit deals with questions around time management. How many clerks complain of having too much spare time? None in my



experience. Covey has developed a simple and easy-to-follow "four quadrants of time management" tool. All activities can be placed in one of the four quadrants.

These are demonstrated in the graphic on the previous page.

As all officers within local councils are generally very busy and have more than enough work to fill their days, it would be a good exercise to review all the work that they have to do and place it in one of the four boxes in this model. This will enable them to prioritise what is important and look to drop or delegate less important tasks. It will also be a useful graphic tool to show to the next person who asks to add to their already overwhelming workload. When this happens, review the current priorities and then ask where their request should be placed. If it is not in one of the top two boxes, then the officer should not be pressed to do it unless they have a clear diary.

The same methodology applies to the council's activities as a whole: review all that the council has outstanding and focus on items that are in the top two boxes. Ideally, as the council becomes more efficient and effective as a result of following this and the other habits there will be no activities in the "Urgent and important" box as all resources will be focused on activities in the "Not urgent but important" box. However, when this is the case do not make the mistake of prioritising activities in the "Urgent but not important" box. As you will quickly find yourself back in the "Urgent and important" box, which is the area where stress levels rise. Start reviewing what you do today.

#### 4. Think win-win

This should be so easy for us working in the public sector, as we are all working for the better public good – right? So why do we often find that

partner councils are anything but partners and seem to want to take lumps out of each other? Usually, it is due to a lack of trust and an overriding ambition on both sides to make sure that they win, not caring about their partner. If parties go into a negotiation with the perspective that if one wins then the other loses, that is likely to be what will happen. However, if the parties are open and confident and look at the options with maturity, with both looking for a win-win option, then that is the most likely outcome.

Of course, if a deal cannot be agreed where both parties win and the only deal offered means that one of them loses, then the council should be brave enough to walk away from the deal. This approach can also be applied to internal dealings between officers and working with local partners in the community – always look for the win-win.

#### 5. Seek first to understand and then to be understood

Communication is arguably the most important skill in life. We are all educated to be able to read, write and from a young age how to speak, but does anyone remember the lesson on how to listen? As is often remarked: "You were given two ears and one mouth for a reason."

I have always found that when dealing with a problem, no matter who is involved, asking them to first outline the issue is a very productive starting point. Allow the other party to speak without comment or interruption; this works wonders for finding a solution. Once the other party has finished outlining their issue, then attempt to summarise it: this can usually be reduced to a few bullet points. Then ask for the solution they would like to see. Again, allow the other party to speak without interruption. Once they have outlined the solution, summarise it and then address the way that you can solve their problem. If you cannot solve the problem as it is

not something within your control, provide them with advice as to how to pursue the issue elsewhere. Either way you end up with a solution, either from you or via a third party. Again, look for the win-win solution.

#### 6. Synergise

Put simply, to synergise means to work as a team. This is the concept that two heads are better than one, or the sum is better than the component parts. Councils are made up of people with varying experiences and qualities, both councillors and officers. These experiences and skills should be harnessed and utilised for the betterment of the local community. All parties need to work together with an open mind to put together all that each of them brings to the table to ensure that the best outcome is achieved. For councils, this can include a regular visioning exercise to share views and experiences in a productive environment to support the development of, say, a strategic plan for the council or an outline design for a park. As a council, you will know when you have synergised, as you will come up with a result that is better than what any individual started with.

#### 7. Sharpen the saw

This is quite simply preserving and enhancing the greatest asset that a council has – the people, both officers and councillors. It is vitally important that an environment of continuous professional development is created as a key part of the culture of the council. What about X who refuses to train, I hear you say. That is very much their choice; they will, however, quickly find that they are in an organisation with colleagues who are better educated and more knowledgeable and therefore more capable of giving reasoned grounds for their opinions and views, as well as a better understanding of the proceedings of the

council and how to achieve their objectives.

All effective organisations invest in the development of their employees. This should be monitored and encouraged as part of the council's performance management systems. Equally, it is good practice to have a number of induction training sessions for councillors when they first take up their posts, followed by regular internal training sessions throughout their four-year term of office.

#### Summary

Integrating the seven habits into your daily routines and strategic planning will pay dividends in abundance. Some may doubt that they have the time to undertake the reviews suggested. Stephen Covey addresses this. He tells the story of a group of workers cutting a path through a jungle to build a new highway. The site foreman is encouraging the team forward and they are breaking all records. The area manager arrives on site and shouts to the foreman to stop. "You are going in the wrong direction," he says; the foreman replies "Maybe, but we are making good progress!"

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. For more information, see: [www.councilhrandgovernancesupport.co.uk](http://www.councilhrandgovernancesupport.co.uk)

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# Climate emergency

by David McKnight BSc (Hons), MCIPR,  
FCIM, General Manager, LGRC

The act of declaring a climate emergency shows that your council acknowledges that a climate emergency exists and that it extends to its locality. The first such declaration by a local council was made in December 2016. Since then, over 1,900 local councils in 34 countries have made climate emergency declarations (as of June 2021). Populations covered by local government authorities that have declared a climate emergency amount to over one billion citizens. Numbers are increasing all the time.

Having made a declaration, the next step for the declaring council is to set its priorities to address climate change activities in its local area. This will vary according to the circumstances of each council. By making a declaration, the declaring authority acknowledges that climate change (or global warming) exists and that the measures taken up to this point are not enough to limit the changes it is bringing about. The decision to make a declaration emphasises the need to devise and advocate measures that try and stop human-caused global warming. Declarations are being made at different levels, for example by national governments or by regional or local councils, and they vary in the depth and detail of their guidelines.

## The world is getting warmer

Gaseous emissions from human activities on our planet are adding to the natural greenhouse effect, or the way the Earth's atmosphere traps some of the energy from the Sun – hence the term global warming. Our activities, both industrial and domestic, such as burning coal, oil and natural gas, are increasing the amount of carbon dioxide (CO<sub>2</sub>) in the atmosphere, which is the main greenhouse gas responsible for global warming. Carbon-absorbing forests are also being cut down, which makes the problem worse because the trees are no longer removing carbon from the atmosphere. CO<sub>2</sub> levels are now at critical levels in terms of our ability to limit global warming to below +2°C, the upper limit of future global warming agreed in 2010 by parties to the United Nations Framework Convention on Climate Change (UNFCCC), relative to pre-industrial levels. This was confirmed with the Paris Agreement of 2015, and further measures were agreed recently at COP26 in Glasgow.

So this is our challenge, and we all have a part to play in meeting it: post-COP26 analysis being undertaken at the time of writing suggests that the pledges made are still falling short of the UNFCCC upper target limit on global warming, and that greater commitments and more carbon reduction activities are needed.

## The risk is real already

Higher temperatures and more extreme weather events are in our futures and we're seeing evidence of this already, with early indications of major changes in food production

conditions and increases in the number of casualties worldwide from floods, storms, heatwaves and droughts. This is because climate change is increasing the frequency of extreme weather. Increasingly, we are seeing the impacts of the climate emergency close to home in the form of the more frequent occurrence of events such as heatwaves, heavy rainfall, flooding and moorland fires. Few now doubt the reality of what faces us or that action must be taken urgently to protect the population against the worst ravages of climate change.

## An active process

The basis of a Climate Emergency Healthcheck and Audit process is to support local councils with climate emergency work in their communities. I always recommend appointing a climate emergency champion, or champions, within local councils – ideally to deliver political support and operational support from the executive team. Choosing these champions is a critical step. Seniority is important, as is their ability to influence and command the respect of colleagues. This is because a key part of this role, as well as advising, is to hold the council to account on its decision-making. Declaring a climate emergency must not be a passive process once the declaration is made. In preparing a climate emergency action plan,





a local council should recognise that many desired projects will not be within its gift, either entirely or partially. This may be because assets are owned by others or for other reasons; I recommend working in partnership to deliver objectives.

Communities will also look to their local council for thought leadership, advice and guidance. It is important that councils are ready to provide this and have dissemination methods ready to use. It is vital too that council representatives are out and about in their communities, working with partners and higher authorities, educating and advocating for change.

Therefore, in devising a climate emergency action plan, a council can usefully consider its carbon control activities under four headings:

- Managing the **assets and activities it controls** in accordance with best practice and publicising this exemplar work;
- Being considered a **thought leader** in its local area and a source of information on carbon control issues in its community, **educating and advocating on carbon control best practice**;
- Showing **local leadership, devising, championing and implementing local community activities** in support of best practice;
- **Advocating strongly for carbon control best practice measures** with other authorities and with other partners to work together to support delivery.

### A knowledge base for the asking

The breadth and depth of knowledge available in our local communities never ceases to amaze me, and much of it is ready to harness for the

asking. LGRC has prepared its Climate Emergency Healthcheck and Audit based on what is practical and realistic for councils to do.

A skills audit can generate substantial results to help inform the choice of the best people locally to lead on and champion climate emergency priorities. In-depth experience and expertise specifically in climate emergency planning is not commonly available; look instead for transferable skills from related areas. For example, before my own involvement in the local council sector, my experience came from a professional degree in agri-environmental chemistry and a first career working as an environmental consultant in waste management and recycling in the restoration and management of UK inland waterways. In your community you will find a wealth of applicable skills in related areas that can be practically applied.

### Other benefits from decarbonisation

As well as minimising the impacts of global warming, a decarbonised world is also a more attractive world: healthier, cleaner, fairer and more resilient. Low-carbon initiatives are the building blocks of every local climate action plan and there are endless opportunities to emulate the ideas of neighbours.

### Understanding the different terminologies

In the worldwide quest to reduce carbon emissions, many countries have declared an aim of becoming carbon-neutral by a given date. The strategy of the UK government sets out how this country will reach "net zero" emissions by 2050. To reach this target by the middle of

the century, considerable changes will need to take place well before that date, and ideally before 2030.

Achieving carbon neutrality involves balancing emissions of CO<sub>2</sub> with its removal from the atmosphere (often through carbon offsetting). Net zero carbon gives emphasis to making changes to reduce carbon emissions to the lowest volumes possible – and using offsetting to remove carbon as a last resort.

Although "carbon emissions" and similar terms are generally used, a carbon footprint also includes other greenhouse gases, expressed in terms of their Co<sub>2</sub> equivalence. As such, the term "carbon emissions" is often used to talk about all greenhouse gas emissions. The term "climate neutral" reflects the broader inclusion of other greenhouse gases in climate change, even if CO<sub>2</sub> is the most abundant.

### Benchmarking and monitoring progress

The UK government publishes data county by county, so anyone can monitor annual progress in their area and also see what the carbon reduction priorities are locally. LGRC uses this information in its work with clients.

There are also a number of web-based calculators of personal carbon footprints freely available, enabling us as individuals to benchmark and monitor our own personal impact and our ongoing progress. Using one of these calculators, live for a volunteer in front of an audience, is a great way to get a discussion under way.

### A critical friend

A Climate Emergency Healthcheck and Audit can serve to:

- highlight progress made to date;
- act as a critical friend;
- indicate potential for further developments and activity;
- support the local council as a leader of local activity and a contributor/partner in activity over a wider geographic area.

Where LGRC undertakes this work, we always offer an annual assessment of progress to ensure that projects are kept alive, support further developments and keep priorities on track.

David McKnight BSc (Hons), MCIPR, FCIM is General Manager, Local Government Resource Centre Associates (LGRC). Founded in 2013, LGRC is an independent professional services provider focused on the town, parish and community council sector. LGRC works to bring best practice to every aspect of a local council's activities – from community strategy and planning through to service delivery and council governance and administration. It provides consultancy services, training, locum and interim staff, and outsourcing capabilities. LGRC staff and associates are a mixture of skilled local council practitioners and functional specialists. They have a wide range of experience and a significant record of successful client assignments. For more information, visit [www.lgrc.uk](http://www.lgrc.uk) or email [info@lgrc.uk](mailto:info@lgrc.uk).

# Neighbourhood planning

## Reflections on a decade of neighbourhood planning

by Phillip Vincent, Communications Manager, Action with Communities in Rural England (ACRE)

I recently attended a "roundtable" on the future of neighbourhood planning led by academics and comprising various alumni of the community planning world. What struck me was how many of the concerns that ACRE raised in response to the original legislation over a decade ago still hold true today.

The premise of neighbourhood planning was to give communities a new statutory right, or in layman's terms "clout", in the planning system. The logic of localism that prevailed at the time said that local communities had been ignored for too long, and that active citizens must be provided with new ways of holding the old guard (local authority planners) to account. They could, with a little support, come up with land use plans for the future of their neighbourhoods that complemented, rather than conflicted with, strategic plans for the wider area. In this brave new world – as the rhetoric would have it – communities would be free of the shackles of top-down bureaucracy and control.

But what has come of this vision of localism? And what can be learned from the experience of neighbourhood planning over the past decade for those thinking about embarking on this type of exercise?

Take-up of neighbourhood planning has undoubtedly been extensive. A government database shows that there were about 2,800 known neighbourhood plans in existence at the end of 2021, of which just under half were already formally "designated" (as planning policy). But a summary of research presented to the roundtable event shows that take-up has been higher in more affluent rural and semi-rural areas that largely benefit from stable communities and active local government bodies.

The more limited take-up of neighbourhood plans in more deprived and urban areas may be partly explained by the technocratic (and often costly) legal process and considerations involved. Plans need to be made in a prescribed way, have support at a local referendum and pass an examination according to three "basic conditions" – all of which can be tricky to negotiate for those unfamiliar with the mysterious world of planning policy. The condition that plans must have general conformity with adopted local plan policies has been a particular bugbear – with many communities rushing to get their neighbourhood plan designated ahead of area-wide development targets. This was always going to be a big opportunity for planning consultants.

The three basic conditions for local plans are:

- having regard to national policy;
- achieving sustainable development;
- general conformity with strategic local policy and not breaching EU obligations.

Another topic of conversation at the roundtable was a general concern that many neighbourhood plans are limited in focus, often concerning themselves with single planning policies or the development of specific sites. This is not a problem in itself, but it was suggested that in adopting this myopic approach communities may be missing an opportunity to

appraise their needs in the round. This contrasts with what ACRE members previously knew as parish plans, or informal action plans developed by communities which placed an emphasis on involving as many people as possible in a discussion about the future needs of their local area. Such plans would commonly result in a spectrum of initiatives, from litter-picks to homework clubs or from local growing schemes to working with the local authority to secure more affordable housing using existing planning policy mechanisms. Perhaps most importantly, they provided a practical framework that gave communities confidence that they could meet many of their own needs by coming together and taking action, over and above being able to influence wider policies or expecting the state to deliver more for their area.

This leads on to the last and perhaps most important concern that we raised about neighbourhood planning when it was being introduced by ministers intent on creating something new back in 2011 – that of democratic accountability. As a pre-condition of being designated, neighbourhood plans need to pass a local referendum with a simple majority. However, there are no requirements relating to turnout or the process by which residents should be involved in the making of plans up to this point. This is not to say that neighbourhood plans cannot be accountable to local communities – many are; it is simply that it is possible for a small group of interested citizens to put something together without fully considering the needs of others or, at worst, the needs of those who stand to be affected the most by their decisions. On the plus side, there are many different consultation methods that can be practically deployed by those producing neighbourhood plans to understand local needs and to get people on board, including surveys, neighbourhood walks, ideas boards, focus

groups, model-making and much more.

Despite these shortcomings, the reality is that neighbourhood plans remain a powerful tool for local communities to have greater influence over future development. And there is plenty of support and advice available, such as that detailed on Locality's comprehensive neighbourhood planning website, at <https://neighbourhoodplanning.org>.

If you would like a chat about whether a neighbourhood plan is right for your community, or how you could engage local residents about a wider range of social, economic or environmental considerations, do contact your local ACRE member, as they will more than likely be able to help. To find the relevant organisation, see <https://acre.org.uk/in-your-area/network-members>.

Phillip Vincent is Communications Manager, Action with Communities in Rural England (ACRE). ACRE is a national charity speaking up for and supporting rural communities across England. It works to create thriving, inclusive and economically active rural communities which have the services they need. It believes that no one should be disadvantaged because of where they live. As the national body of the ACRE Network – England's largest rural grouping of county-based local development agencies – it supports its members to deliver initiatives that equip people with the knowledge, skills and connections needed to improve their community. At the same time, it draws on its membership to influence national policy so that the needs of rural communities are taken into account. For more information, see: [www.acre.org.uk](http://www.acre.org.uk)

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# Acquisition of land by parish councils

by Ian Davison, partner,  
Surrey Hills Solicitors LLP

## Introduction

The purpose of this article is to describe why parish or community councils would want or need to acquire land and the legal and practical implications of doing so. It is part one of a series of three articles dealing with the acquisition, holding and disposal of land by parish councils.

In making decisions to acquire 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:

- fall within the statutory envelope (functions);
  - be properly made by someone authorised to make the decision (authority);
  - follow the rules on proper decision-making.
- ### 2. Functions: duties and powers
- 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").
  - 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

- There must be authority for the

transaction.

- Decision-making can be through full council.
  - 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:
- be reached in a procedurally correct way: specific steps and requirements, decision-making in public or in confidential session; and
  - itself be reasonable.
- ### 5. "Reasonable" means a decision which:
- must take account of proper considerations;
  - must leave out of account irrelevant considerations;
  - must be made for a proper purpose;
  - must be proportionate as to the purpose to be achieved and the expenditure involved;
  - must have regard to the council's fiduciary duty to its taxpayers;
  - 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 (e.g., reduction of crime and disorder, public sector equality duty) and must 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 (LGA) 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 temporary structure (e.g., Portakabins) 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.

## Acquisition, holding, use, 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 S124 of the LGA 1972 or pursuant to S9 of the Open Spaces Act 1906.

4 Land may only be acquired for the council's statutory purposes.

5 The LGA 1972 makes the following provisions:

### 124 Acquisition of land by agreement by parish .... councils

(1) For the purposes of:

- (a) any of its functions under this or any other public general Act, or
  - (b) the benefit, improvement or development of its area,
- a parish council may acquire by agreement any

land, whether situated inside or outside its area (see specifically burial grounds and allotments).

### 125 Compulsory acquisition of land on behalf of parish ... councils

(1) If a parish council is unable to acquire by agreement under S124 above and on reasonable terms suitable land for a purpose for which it is authorised to acquire land other than:

- (a) the purpose specified in S124(1)(b) above, or
- (b) a purpose in relation to which the power of acquisition is by an enactment expressly limited to acquisition by agreement, it may represent the case to the council of the district in which the parish is situated.

(2) If the district council is satisfied that suitable land for the purpose cannot be acquired on reasonable terms by agreement, it may be authorised by the Secretary of State to purchase compulsorily the land or part of it; the Acquisition of Land Act 1981 shall apply in relation to the purchase.

(4) The order shall be carried into effect by the district council but the land when acquired shall be conveyed to the parish council; and accordingly in construing for the purposes of this section and of the order any enactment applying in relation to the compulsory acquisition, the parish council or the district council, or the two councils jointly, shall, as the case may require, be treated as the acquiring authority.

(5) The district council may recover from the parish council the expenses incurred by it in connection with the acquisition of land under this section.

6 Examples of land which can only be acquired by agreement include open space under S9 of the Open Spaces Act 1906. Open space land cannot be acquired compulsorily for statutory allotments (S41 of the Small Holdings and Allotments Act

1908).

7 Other specific powers under which land may be acquired include Sections 2–9 of the Open Spaces Act 1906, S25 of the Small Holdings and Allotments Act 1908 (allotments), S19 of the Local Government (Miscellaneous Provisions) Act 1976 (recreational facilities), S57 of the Road Traffic Regulation Act 1984 (parking places) and S50 of the Food Act 1984 (markets).

8 Trustees of public recreation grounds or allotments may, with the consent of the Charity Commission, transfer such land to a parish council (whether or not the land is subject to charitable trusts): S298 of the Charities Act 2011.

9 A local authority may accept, hold and administer gifts of land for any of its functions: S139 of the LGA 1972.

10 Land may be acquired by adverse possession – 12 years for unregistered land, 10 years for registered land. The council must have treated the land as an owner: maintaining it, fencing it, repelling trespassers, occupying without force, not secretly, not with another's permission.

11 Consideration may be in money or money's worth and constitutes capital expenditure. Consideration can be financed from revenues, capital reserves or borrowing. A local authority cannot secure borrowing by way of mortgage of land: S13 of the Local Government Act 2003. Acquisition under compulsory powers or against the background of compulsory powers will engage the compensation code under the Land Compensation Acts.

### Methods of acquisition

1 Acquisition may be freehold (purchase) by way of transfer or exchange or leasehold by grant or assignment or the grant of a right, e.g., an easement. Acquisition may accrue by operation of time, e.g., accretion or adverse possession. Acquisition may be achieved by appropriation.

2 Transfers of land, leases of more than seven years and freehold easements must be registered at the Land Registry by the transferee or lessee.

Leases will also be noted on the landlord's freehold title. Easements will appear in the property register of the title to the land benefited and in the charges register of the land burdened.

3 A lease connotes exclusive possession and may be subject to the protection of the Landlord and Tenant Act 1954, Part II. A lease which confers an estate in land is to be distinguished from a licence which is a contractual right to use land.

4 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 e.g., S10 of the Open Spaces Act 1906.

5 There are compulsory powers of control and maintenance of closed churchyards: see S215 of the LGA 1972.

6 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 not confer exclusive possession as this may constitute a lease.

7 Appropriation is the transfer from one statutory purpose to another.

8 There cannot be any implied or informal appropriation of land.

9 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 is authorised by this or any other public general Act to acquire land by agreement.

10 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 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: S28 of

the Land Settlement (Facilities) Act 1919.

### Practical points to note – general

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

- Carry out a full appraisal of the proposal and the terms offered or wanted.
- Establish what the terms are.
- The authority should be looking for the best price when buying or selling.
- Are the necessary statutory powers available?
- Take professional valuation and legal advice.
- Ensure that decision-making is appropriate and documented and that appropriate authorities are in place. NB: the importance of delegated authority.
- There is a project plan, including a timetable, in place and a person has been appointed to lead.
- The clerk is properly equipped and authorised to act as the single point of contact with solicitors, etc.
- An adequate budget is approved to cover consideration, professional fees, fees for searches and the Land Registry, Stamp Duty Land Tax (SDLT), etc.
- Ensure proper reporting mechanisms.
- Do not underestimate costs or timescales, especially where there are pushy solicitors, prospective tenants playing games or unrepresented landlords or tenants.
- Do not underestimate the significant work involved in dealing with Commercial Property Standard Enquiries (CPSEs).
- Managing the process – note the difference between agreeing terms and handling the legal process.

### Practical points to note – acquisitions

For acquisitions you must consider the following:

- Is the statutory purpose clear?

- What are the terms?
- Agreements for the acquisition and sale of land must be in writing and signed.
- Acquisitions by local authorities need not be preceded by a contract.
- There must be a thorough investigation of title.
- Full searches are the norm unless the authority is familiar with the land.
- Transfer/lease must be executed as a deed under the council's common seal or with signatures of two councillors.
- Transfers of land and leases of over seven years must be registered at the Land Registry.
- SDLT could be payable.
- Who is paying what costs?
- Look at insurance and changes to the council's insurance schedule, asset and risk registers.
- Are arrangements in place for the management and maintenance of the asset?
- Beware restrictive covenants, overage clauses and rights of pre-emption.
- Beware principal authorities seeking to offload land and also be aware of statutory allotments.

## Effective insurance for local councils

by *Andy Cotter, Gallagher, and Nick Randle OBE, LGRC Associates Ltd*

Principally, the function of insurance is to help protect councils from financial compromise. While UK law stipulates that certain insurance covers are a legal requirement (employer's liability, for example), a council usually decides to protect its liabilities and assets through the procurement of a policy that is designed to protect it via the principle of indemnity. Such an insurance contract compensates a council for any damage, loss or injury caused, to the extent of the loss incurred. The main principle is to put the insured party in the same position financially as it was before the loss.

The National Association of Local Councils (NALC)'s Model Financial Regulations set out several requirements in relation to insurance, including one for an annual risk assessment. The regulations assign responsibility to clerks for identifying risk and properties and vehicles that require insurance, while it is the duty of the responsible financial officer (RFO) to arrange insurance, negotiate claims and keep insurance records. The regulations also include a requirement for members of the council and staff to be covered by an appropriate fidelity guarantee.

At a minimum, a policy designed to effectively protect a council and all those involved in its operation should include the following cover.

**Public liability:** protects against claims for injury to members of the public or damage to third party property. It includes hirer's indemnity, which provides cover for hirers of council property (non-commercial small groups or individuals), should injury or damage occur during the period of the hire.

**Employer's liability:** provides cover if an employee, councillor or volunteer is injured while carrying out their responsibilities for the council.

**Officials' indemnity:** provides cover for claims arising from financial loss as a result of a negligent act, error or omission committed in good faith by an employee or official of the council.

**Libel and slander:** provides protection in the case that a member of the public considers a verbal or written comment made by the council to be incorrect or damaging, and as a result seeks financial compensation.

**Fidelity guarantee:** provides cover against acts of fraud or dishonesty by any official of the council or multiple officials in collusion, along with loss of property.

**Key person:** provides cover should key staff be unable to work due to accidental bodily injury or illness.

**Business interruption** (increased cost of working and loss of revenue): increased cost of working (ICOW) insurance provides cover should the council incur additional expenditure as the result of a claim from an insured event. Loss of revenue insurance

provides cover following a claim from an insured event under the property damage section.

**Legal expenses:** a defence-only policy which provides protection for the councillors or clerk, acting in their capacity as officials of the council, against the cost of potential commercial legal disputes, legal advice and representation, including employment, tax and contract disputes.

These are the principal parts of a policy under which often complex claims can be reported. Further insurance provision relating to buildings and other assets may also be held by a council.

Due to the specialist nature of the

requirements of local councils (providing cover to effectively protect a council which is abiding by its financial regulations or councillors who are following standing orders), bespoke underwriting may be necessary and policies should therefore be sourced from specialist brokers.

Some councils now consider standard local council procurement frameworks as a means to obtain quotations. While we appreciate that, due to the potential value of the contract, financial regulations may require that such a process be followed, it is important to understand that taking this approach alone could lead to important areas being overlooked, particularly where



cheaper premiums are favoured over service and advice. As in all areas, cheapness and value for money may not be the same thing. It is vital to be able to establish, through the procurement process, that capability, responsiveness and experience are included in the package, and not just basic insurance cover. The time when these things are shown to be meaningful are the hopefully rare, but nonetheless important, occasions when claims are made. The difference between cheapness and good value may at this point turn out to be substantial.

When considering an insurance company that is offering coverage, a number of factors should be taken into account, advises Andy Cotter. Gallagher places cover for thousands of town and parish councils and therefore must ensure that its insurers have the infrastructure and capacity to manage any matter arising. He recently asked the company's principal insurance partner for local councils, Hiscox, to comment on insurance providers and current market conditions. It stated, in relation to considering an insurance company: "Look to an insurer that has a strong financial rating with a respected financial rating company. This will ensure that you are dealing with a financially sound insurer that has a reputation for quality, coverage and claims payments."

The insurance industry is yet another sector that is being significantly affected by the current economic crisis. The impacts of COVID-19 are still with us, and other factors (such as changes in regulation, increasing severity of storms and floods, and claims inflation) could result in premiums rising.

- Average claim costs are rising, as a result of increased costs of building materials and labour shortages, which will increase claims values in the event of an insured incident.
- Storm events within the UK are also becoming more severe and frequent and therefore costing insurers more money.
- Cover for flood risks is being more strictly controlled. This has been driven by the increasing frequency and extremity of flood events linked to climate change.

With its regular engagement with clients, a good insurer can quickly identify "hot" topics to look out for and share these with council clients. These complicating factors have remained fairly constant over the past decade, but it is still common to see councils experience large losses when there are usually circumstances that could have been mitigated with some proactive consideration.

Under-insurance is a key topic within the insurance industry and especially so with recent increases in the costs of building materials and labour. If a council has underestimated a rebuild cost for one of its buildings or the total value of its contents, for example, it could find itself significantly out of pocket if it has to make a claim, as its insurance company might not pay out the full cost to replace lost or damaged items. It is therefore crucial to ensure that cover accurately represents the cost of rebuilding or replacing the items that are insured, and the increased costs of building materials and labour should be considered when calculating these values. One way to ensure that the

correct values are insured is by undertaking a professional valuation.

Now more than ever, effective risk management programmes are proving vital. Identifying and recording the risks encountered by staff, third parties or anything associated with a council's property (or anything else for which it is responsible), and how these risks are to be managed, can be crucial in the defence of any claim for negligence levied against the authority. An effective risk management programme will enable council officers to understand these risks and take proactive steps to reduce or mitigate them. Most specialist providers offer access to portals or solutions that will help councils to better control their health, safety and risk management. A service that enables a council to reduce the frequency and severity of incidents that can be hugely expensive and disruptive will always be of significant benefit to its operation.

**Andy Cotter** has worked in the insurance industry for the past 25 years in varying roles including claims management, underwriting and business development. For the past 15 years, his principal role has been as a broker specialising in the local council sector. Now Managing Director of the community division for Gallagher, Andy and his team offer specialist insurance solutions for town and parish councils and their councillors, clerks and volunteers. Gallagher is the insurance broker most frequently turned to by local government and is the only broker serving the town and parish council market that has the strength of a global broker behind it.

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**Nick Randle** is Managing Director of LGRC Associates Ltd. Founded in 2013, LGRC is an independent professional services provider focused on the town, parish and community council sector. It works to bring best practice to every aspect of a local council's activities through the provision of locum, consultancy, outsourcing and training services. LGRC Partners and Associates are among the most skilled and experienced practitioners currently working with local councils, with a track record of hundreds of successful client assignments. For more information, see [www.lgrc.uk](http://www.lgrc.uk) or email [info@lgrc.uk](mailto:info@lgrc.uk)

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# Commons and greens

by Hugh Craddock,  
Open Spaces Society

MANY local councils will have common land within their parish or community. Some will be fortunate to host a town or village green – the vast majority of which have similar, indeed common, origins. A few, particularly in the Midlands where the eighteenth- and nineteenth-century inclosures were most severe, will have none, save perhaps an allotted recreation field, the sole remnant of the extensive former commons and common fields that once dominated the agricultural life of the parish.

Very probably, there is some place within the parish where the fences, hedges or walls bounding a local road fall away, and the land either side is unenclosed, open and uncultivated. Perhaps, particularly in the uplands, the land is still grazed by local farmers' sheep or cattle or, more likely, trees and scrub predominate and keeping the land "open" in practical terms is an increasing challenge. These are likely to be the commons, or the greens. They are the "waste" of the former manor, on which the tenants of the lord or lady of the manor would exercise rights of common – that is, rights to the produce of the soil, most often grazing, but including rights to wood or bracken (pannage), peat (turbarry), fishing (piscary) or quarry. Such rights often endure today, exercised by "commoners", and may be

essential to the vitality of upland livestock farms in particular. On greens, the inhabitants of the locality would also have customary rights to engage in sports and pastimes.

What was waste, common land or green in the past is not necessarily recognised as such today. Much has been inclosed; the last statutory inclosure was authorised in 1914. Many places are still known as "... Common" even though the common was inclosed generations ago. Under the Commons Registration Act 1965, all three classes of land were to be registered in a once-and-for-all exercise which lasted for just three years between 1967 and 1969. Land which was not registered in time was deemed no longer to be common land or green. The process had many flaws – just as did the preparation of definitive maps and statements of public rights of way some 16 years earlier under the National Parks and Access to the Countryside Act 1949. But the legacy is the registers of common land and town or village greens held by commons registration authorities (CRAs, which are county councils in two-tier areas), which form a comprehensive record of what land is legally protected, the rights of common exercisable over it and a now yellowing snapshot of claims to ownership.

Parish councils were to receive copies of extracts of the registers whenever a provisional registration was made affecting their area, and some local councils retain them to this day. However, reliance should be placed on the registers held by the CRA, which may reflect amendments not notified or retained by local councils. The registers are open to inspection by the public, and copies can be obtained (perhaps for a modest fee: a higher charge may be made for formal, certified copies, but these will usually not be required).

What do the registers show? Each common land or green usually has its own serially numbered register unit (in the format CLn or VGn); the forms for a register unit are otherwise identical whether for common or green.



- The land section of the register will describe what land has been registered, and by whom; it should also state the area. A further entry will show that the registration has become final (perhaps following a hearing held by a Commons

Commissioner to adjudicate on any dispute).

- The rights section will show any rights of common exercisable over the registered land. On an upland common, there may be many; on a lowland common or green, perhaps none. Again, each entry will be supported by a further entry stating that it has become final (unless there is a subsequent amendment to it). Most rights are attached to land, typically the farm holding. That land is specified in column 5, sometimes by reference to a supplemental map. The owner or occupier of that land is entitled to exercise the right, and not the person (stated in column 3) who originally applied to register.
- The ownership section will state who claimed ownership of the common or green, and if disputed, the determination of a Commons Commissioner as to ownership. If the land was already recorded in the register of title held by HM Land Registry, then the only entry made in the ownership section was a cross-reference to the register of title. As land subsequently has become registered in the register of title, notice ought to be given to the CRA, which will strike out any entry and enter a cross-reference instead. But in theory, any subsisting entry ought to record an ownership which has not changed hands since the time of provisional registration in the late 1960s.
- The register map will record the boundaries of the common or green, usually drawn on an Ordnance Survey map at a scale of 1:10,560 (six inches to



one mile), sometimes on a larger scale or with an inset plan. These are not always well executed, and may give rise to uncertainty about the precise boundary: in such cases, it may be helpful to refer to the map supplied with the original application to register the land, and to check what physical boundaries existed at the time of the application (for example, a common is more likely to be bounded by a long-standing moorland wall than a nearby arbitrary line drawn on the map).

Apart from any rights of common exercisable over registered land, nearly all common land is subject to a statutory right of access for open-air recreation. This may arise under Part I of the Countryside and Rights of Way Act 2000. But some land, such as golf courses and race courses, is excepted land, and the right will not apply (even if it is common land). About a fifth of commons are subject to rights of access arising before 2000: these prevail over the 2000 Act, and are seldom subject to exception or restriction (even on golf courses). Most notably, commons in pre-1974 urban districts and boroughs are subject to access for air and exercise by walkers and horse riders under s.193 of the Law of Property Act 1925. Many amenity commons are subject to schemes of regulation and management under Part I of the Commons Act 1899 which also confer access rights.

A scheme made under the 1899 Act is a useful mechanism for managing commons and greens. A scheme may be made by the local authority (district councils in two-tier areas), National Park authority or Conservation Board. It is subject to veto by the owner of the land, or by one-third of the common right holders. In the absence of any veto, the management and

regulation of the common or green is vested in the authority which made the scheme. That authority may then make an agency arrangement with a local council under s.101 of the Local Government Act 1972, to delegate its functions. (Formerly it was possible to delegate powers under s.4 of the 1899 Act, and some such arrangements may still endure.) Making a scheme can be an excellent means to bring management to commons or greens with no, or a neglectful, owner (in respect of the former, a veto is of course unlikely unless there are active and opposed commoners). However, local councils will need to recruit the district or unitary council for the purpose, perhaps with a commitment to enter into an agency arrangement.

There is a notable power conferred on local councils – and local authorities generally – in relation to commons and greens with no known owner. The absence of any active owner makes such land particularly vulnerable to abuse. Under s.45 of the Commons Act 2006, the local authority may act to protect the land against unlawful interference as if it were the owner. That would include bringing proceedings where there is trespass or encroachment on the land (such as an adjoining owner who has extended a garden onto the common).

More generally, any person, including a local council, may take enforcement action against unlawful works on common land, under s.41 of the 2006 Act. Works are unlawful if they restrict or impede access across the land, or if they involve putting down a sealed surface across the land (such as a tarmac road) other than in replacement for an existing lawful surface. Where unlawful works are done, a good first step may be to encourage the person responsible to seek consent from the Secretary of State or the Welsh Government under s.39,

but the local council can make it clear that, if consent is not sought or not granted, further steps may be taken to secure removal of the works. The Open Spaces Society publishes information on how to take action. A regular organised "beating of the bounds" of the commons within the parish or community can be an effective means of discouraging encroachment and identifying any which does take place.

Town or village greens are subject to protection under what are often referred to as "the Victorian Acts": s.12 of the Inclosure Act 1857 and s.29 of the Commons Act 1876. It is, among other things, an offence under s.12 to do anything "to the interruption of the use or enjoyment thereof as a place for exercise and recreation", and encroachment on a green is a public nuisance under s.29.

Perhaps the local council may own one or more commons or greens. Many councils acquired ownership long ago, perhaps as a gift from a lord or lady of the manor, or when the land came on the market in the distant past when values were low. Such land is now likely to be held under the Open Spaces Act 1906 or the Public Health Act 1875, in trust for enjoyment by the public. The public have a right of access to such land (leaving aside any right arising under legislation for common land generally) by virtue of it being held in trust. Where land was registered under the 1965 Act as a town or village green, no person claimed ownership and the Commons Commissioner held a hearing into the matter, the Commissioner – if satisfied that the owner could not be identified – would direct the CRA to register a local authority as owner (generally the local council) and title was to be vested in that authority. Vested land is to be held under the 1906 Act (unless it is already subject to a

scheme under the 1899 Act).

Local councils which own any common or green, including in consequence of vesting, would be well advised to seek registration of title by making a voluntary application for that purpose to HM Land Registry. This will secure effective protection against any future claim to adverse possession, and enable a more reliable mechanism for recovering possession than an action under s.41 of the 2006 Act. No local authority should leave land vulnerable to predation for want of a registered title. Council-owned open space, not already registered as a town or village green, can be registered as such on a simple application to the CRA under s.15(8) of the 2006 Act: once registered, the protected status of the land is almost impregnable.

#### Useful publications

*Our Common Land*, Seventh Edition, by Paul Clayden. Open Spaces Society (2022).

*Finding Common Ground*. Open Spaces Society (2010): a guide to assessing the community value of common land.

*A Common Purpose*. Natural England et al. (2012): a guide to community engagement in the management of commons.

The **Open Spaces Society** is Britain's oldest national conservation body, founded in 1865. It campaigns to create and protect common land, town and village greens, other open spaces and public paths. It has provided assistance to parish vestries and then local councils on protecting commons and greens throughout its existence.

Contact: The Open Spaces Society, 25a Bell Street, Henley-on-Thames RG9 2BA.

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