

What is a Parish Council?

Parish councils are corporate bodies. It is the corporate body, of a council acting in its own name, which undertakes activities conferred on it by statute and is therefore capable of owning or transferring land, entering into contracts and taking or defending legal action. A parish council enjoys its legal status and identity until it is dissolved by operation of the law. As a corporate body, a parish council has a separate and distinct legal identity to the Councillors who make up the council and the Officers who are employed by the council.

Members of a parish council are democratically elected and have a fiduciary duty to their local government tax payers.

The term "local authority" is applicable to parish, district (sometimes known as borough), county and unitary councils, and in London, to London Borough councils. All local authorities are corporate bodies created by statute or by royal charter. Parish councils make up the first tier of local government in England and are the layer of local government closest to the communities they represent

Since 1894 parish councils have been able to exercise functions and powers specifically conferred on them by legislation or by arrangement with another local authority. Importantly, as with any body corporate, a parish council can only do that which it is authorised to do by statute. It must not do anything which it is prohibited to do by statute. A parish council must ensure that its processes and decisions are not ultra vires (beyond its legal powers). It is the principle of ultra vires which requires the need for governance in any local authority, including a parish council. For there to be public confidence in a council's decision making process, it is desirable for that process to be as transparent as the decision itself.

Basic effective governance for a parish council entails:-

- Understanding statutory duties, powers, and subsequent legal obligations;
- Efficiently prioritising and undertaking activities arising from statutory duties, powers, and subsequent legal obligations;
- Observing statutory prohibitions and limitations to their statutory duties and powers;
- Engaging with local residents and other key stakeholders to deliver the services and facilities required;
- Taking informed, transparent decisions and managing risk;
- Developing and increasing resources (land, property, finances, staff) commensurate with activity undertaken.

Decisions made by any local authority must be made in accordance with procedures laid down in statute. The most important piece of legislation for parish council law and procedure is the Local Government Act 1972 ("the Act").

All local authorities are required to conduct their business in an open and transparent way and must comply with statutory requirements in relation to decision making and activities undertaken.

Effective governance checks are in place to ensure that the decisions and actions of a local authority are lawful and transparent to the public at large and local council tax payers who have a vested interest in the activities of their parish council.

The legal requirements include:

- Public and advance notice of meetings of a parish council;
- Meetings of a parish council being open to the public;

- Regulation of the transaction of the business and the meetings of a parish council by appropriate standing orders;
- Procedures for voting on any decision which need to be made by a parish council;
- Opportunities to delegate functions or powers of a parish council to a committee or sub committee (with clear and unambiguous terms of reference) or an employee of the council or to another local authority. Arrangements by a parish council to delegate should be formally decided and evidenced;
- Access to minutes of meetings and accounts of a parish council;
- Strict control and regulation of the council's financial affairs;
- Regulation of the individual conduct of councillors who are elected, appointed or co-opted to a parish council;
- Regulation of the conduct of staff who are employed by a parish council.

As with other local authorities or public bodies, if a decision or the expenditure of a parish council is deemed ultra vires for any reason, it can be legally challenged by a judicial review claim in the High Court.

The Audit Commission Act 1998, and regulations made subsequent to this, require a parish council to exercise tight financial controls in respect of their finances and accounts. The legislation requires a parish council's yearly accounts to be audited by an external auditor appointed by the Audit Commission (www.audit-commission.gov.uk). Legislation makes it easy to access a parish council's accounts which detail their income and expenditure.

Unlike other local authorities, whose maladministration can be referred to the Local Government Ombudsman, the Ombudsman does not have any jurisdiction over parish councils. It is therefore vital for a parish council to adopt a comprehensive complaints procedure to handle complaints received in respect of its decisions or activities.

Other protocols have been produced to govern particular aspects of council activity where experience has shown that problems can occur, such as the relationship between Councillors and employees, gifts and hospitality.

Source: Governance Toolkit for Parish & Town Councils (Published jointly by ACSeS [The Association of Council Secretaries and Solicitors], SLCC [The Society of Local Council Clerks], The Standards Board for England, NALC [The National Association of Local Councils]) and LGA [The Local Government Association], 2009