

West Rainton Parish Council - 21 January 2016

Agenda item 5:

Update - Legislative issues affecting the Parish Council

Report by Project Officer

Background

Members will recall that at its' meeting held on 15 October 2015, Parish Council considered a report from the then Parish Clerk outlining a range of concerns from a parishioner.

These concerns, raised in good faith, focussed on the lawfulness of processes associated with the co-option of councillors from 2013 to date and irregularities associated with the taking up of office. Combined, these issues potentially affected nine out of eleven elected members. The parishioner indicated that as a result, his view was that the Parish Council was not in a position to legally function.

Following consideration at the October 2015 meeting, Parish Council resolved unanimously that:

"Parish Council noted the issues highlighted by the elector and its' commitment to resolve these.

The Parish Clerk request County Durham Association of Local Councils to refer the issues raised to the National Association of Local Councils for opinion and advice.

Parish Council conduct business as normal."

Role of National Association of Local Councils (NALC)

NALC is the only national body specialising in the work of local councils. It works at national level to represent parish and town councils, provide advice and guidance in partnership with County Associations and campaign for a better future for local people and communities.

The NALC Legal team provides detailed legal advice on matters requested by member councils or County Associations.

Advice received

A response to the various queries raised with NALC via the County Durham Association of Local Councils has been received from Jane Moore, Solicitor.

Pertinent extracts from her response are replicated below to correspond with the points highlighted in the report presented to Parish Council on 15 October 2015.

The Parish Council's Project Officer has acted as the link with County Durham Association of Local Councils (CDALC) on these matters to ensure continuity. He has added his comments to provide additional perspective.

For information, Andrew Sowerby and Fiona Duckworth are no longer members of the Parish Council.

Concern 1

"The Parish Council needs to be advised that the co-option of Sowerby, Swinburn and Patterson is unlawful as their co-option was not specified in the Summons for the meetings held May 2013, June 2013. In relation to the June 2013 this co-option process was out of time with immediate effect these members must be suspended."

NALC Response

"I would say generally in respect of the two agendas I have seen that I am not satisfied that they set out the business to be transacted at the relevant meetings.

It is not clear what I can say that will benefit the Council after the event as the co-opted councillors have presumably been acting as councillors. The validity of any decisions made by the Council would not in my view be affected because of the lack of clarity on the agendas in question."

Project Officer's comment:

The May and June 2013 Parish Council agendas were not explicit in stating that actual co-options would take place. Lessons have been learned, and agendas produced since September 2014 include clearer detail of the business which it is proposed to transact.

Concern 2

"The Parish Council needs to be advised that questions have been raised about the legality of the election / resignation of Clifford, Bulmer and Duckworth. Problems linked to the declaration of Acceptance of Office. No Proper Officer in post, irregularities regarding the declaration of acceptance not in accordance with LGA'72 and the fact that the declaration of acceptance office are missing. With immediate effect these members must be suspended"

NALC Response

"It is not clear if Declaration of Acceptance of Office were signed and have been misplaced. If the forms were never completed, there are likely to be casual vacancies in respect of the persons concerned."

Project Officer's comment:

Of the three members in office at the time, two continue to serve the Parish Council. Following separate discussion with each, I have received confirmation that forms of

Declarations of Acceptance of Office were signed and (in the absence of a Parish Clerk at the time) returned to the then Chairman. There is no reason to indicate that the third councillor did not also do so.

Concern 3

“The Parish Council needs to be advised that the co-option of four members at the extraordinary meeting is unlawful (reasons outlined in previous email).
With immediate effect those members co-opted in September are revoked”

NALC Response

“This is not a matter on which prescriptive guidance can be given as there is no correct lawful way to co-opt.

NALC Legal Briefing L15-08 gives guidance on assessing the suitability of a proposed candidate. I understand the Council has seen this guidance. In my view, the only legal issue raised by co-option is ensuring that decisions are appropriately made so as to avoid the Council being open to judicial review claims on the grounds of illegality, irrationality and procedural impropriety.

I am not aware of any legislative provision requiring co-option to be a full Council decision. My general view is that full Council co-options make it less likely for complaints of pre-determination and legal challenge.”

Project Officer’s comment:

NALC Legal Briefing L15-08 was considered by Parish Council. This informed the development of a robust and transparent co-option process. The Parish Council took cognisance of views expressed by a parishioner about Council’s original intention to form a panel to oversee the co-option process.

The co-option process by full Council in September 2015 led to the most recent appointment of Members.

Concern 4

“The Parish Council must be advised that the irregularities identified above had been identified to Chairman prior to the September 2015 meeting.”

Project Officer’s comment:

Outside of scope of request to NALC - this matter was referenced in the report to Parish Council tabled on 15 October 2015.

Overall Concern

“The recommendation to Council as this affects 9 of the 11 members the parish council is no longer quorate the parish council cannot function until the legal position of the authority is confirmed. This will prevent the recruitment of your replacement.”

NALC Solicitor has also commented:

“The context of the suspension of councillors is not clear and I do not believe that to be appropriate.”

Project Officer’s conclusion:

Having read the response from NALC Solicitor, it is clear that there is no prescriptive guidance for carrying out co-options as there is no legislative provision.

NALC has not been critical of the process adopted in September 2015 nor the outcome.

There is no suggestion from NALC that the Parish Council has acted unlawfully; is at fault; should cease to function or that the appointment of the current Parish Clerk is invalid.

Parish Council is asked to:

Consider the response from NALC and make a decision in light of this whether to continue or suspend the business of the Parish Council; and if the latter to determine next steps.

Request the Project Officer to formally advise the parishioner of its’ decision and any further course of action which may be available should he remain dissatisfied.

GK 18 Jan 2016