

31 JANUARY 2018

LO1-18 | FINANCIAL ASSISTANCE TO THE CHURCH

Introduction

The purpose of this briefing is to consider whether a parish council or, in Wales, a community council may provide financial assistance to the church (or other religious bodies).

Relevant legislation

s.6(1) (a) of the Local Government Act 1894 (“1894 Act”) transferred powers from the Vestry and Churchwardens to the newly formed parish councils **“except so far as relates to the affairs of the church or to ecclesiastical charities.”** s.6(1) (c) of the 1894 Act confirms the powers, duties and liabilities conferred on parish councils include “the holding and management of parish property **“not being property relating to affairs of the church or held for an ecclesiastical charity”**”.

S.8 of the 1894 Act gives parish councils further powers including the power “to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of the powers in s.6 , **“not being property relating to affairs of the church or held for an ecclesiastical charity”** and further “to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned”. It should be noted that the prohibition relates to the nature of the property concerned not to the use to which that any funding will be put. Thus funding to make a church hall suitable for meetings of the guides and scouts is still prohibited because the building is church property.

Despite references in the above provisions to parish councils, the 1894 Act applies to both England and Wales.

The powers in the 1894 Act prohibit councils’ involvement in property relating to the affairs of the church e.g. the maintenance or improvement of buildings or land or contributing to the costs. The question often asked is whether that prohibition still applies or is it overridden by legislation made after the 1894 Act. Examples of such legislation are:

- s.214(6) of the Local Government Act 1972 (“the 1972 Act”) which provides that councils which are burial authorities may contribute to another

person's expenses (e.g. the PCC or synagogue) in providing a cemetery in which residents in the council's area may be buried.

- s.215 of the 1972 Act permits a council to maintain a closed churchyard.
- s.137 of the 1972 Act which allows a council to incur expenditure for any purpose except one which is subject to a statutory prohibition, restriction or limitation.
- s.138B of the 1972 Act empowers a parish council to support or facilitate a religious event.
- The General Power of Competence in s.1 of the Localism Act 2011 ("the 2011 Act") is available to eligible parish councils that satisfy the conditions in Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965.

NALC's views

There is an accepted legal principle, applied by the courts, which is that in interpreting what an Act of Parliament means, a specific provision overrides one of a general nature. In other words, if two statutory provisions are in conflict or overlap, the detailed provision will prevail over the more general one. In applying this principle, NALC's views are as summarised below.

Ss.137 and 138B of the 1972 Act and s.1 of the 2011 Act constitute general provisions and do not override the specific prohibitions in s.8 of the 1894 Act. S.137 expressly provides that expenditure cannot be incurred purposes which are subject to a statutory prohibition, restriction or limitation.

S.2 of the 2011 Act confirms that the general power of competence does not allow an eligible parish council to get round any statutory prohibition, restriction and limitation which existed before the general power was introduced.

S.214(6) of the 1972 Act which permits a council as a burial authority to contribute to the expenses of anyone else providing a cemetery, appears to overlap with the specific provision in s.8 of the 1894 Act which prevents a council from contributing to the affairs of the church and, in NALC's view, the specific provision would prevail.

S.215 of the 1972 Act is a specific provision in respect of the responsibilities of a council (whether or not a burial authority) to maintain a closed churchyard which, in NALC's opinion, thus overrides the prohibitions in ss. 6 and 8 of the 1894 Act.

Summary

There is no current case law to resolve the question of whether or not the 1894 Act restrictions override the provisions in later Acts of Parliament and ultimately it would be for the courts to determine the extent of any prohibition from the 1894 Act. Any court action started so as to resolve this point is likely to be expensive and time consuming.

It would, of course, be possible for Parliament to clarify the point with a specific provision in new legislation, however, the Government's current view on the legal issues is that there is no need for any further legislation as they believe the 1894 Act restrictions do not override the provisions in later Acts of Parliament.

Whilst there is no consensus on this issue, a council that considers making a payment in these circumstances needs to consider whether it is prudent to take a course of action that it cannot be certain is legally valid.