



AGENDA ITEM 8

Chichester City Council

The General Power of Competence: Briefing Document

Decision Required at Annual Council Meeting on 17 May 2023:

At the Annual Council Meeting the Council will need to reaffirm that it meets the qualifying criteria for exercising the General Power of Competence:

- 1) Over 2/3 (12 members) of the Council were elected at the last ordinary election.
- 2) The Town Clerk holds a relevant qualification.

Officer Recommendation:

TO RESOLVE that Chichester City Council continues to meet the eligibility criteria to exercise the General Power of Competence until the date of the next Annual Meeting of the Council in an Election Year.

Background

Under the 1972 Local Government Act, Parish Councils have a limited number of Statutory Powers and Duties (things they *must do*). Otherwise, they may only act if they have a specific legal power to do so (things they *may do*).

The powers of a Parish Council can, at first glance, seem quite limited and restrictive. Many powers relating to the issues which most concern Councillors and communities (e.g. Highways, Planning, Transport, Licensing, Housing) reside with higher tier authorities, whilst the powers of a Parish Council tend to be focused on provision of amenities and community activities (for example powers to provide parks, open spaces, allotments, town clocks, sports clubs, etc).

Parish Councils were, however, granted greater powers with the passing of the Localism Act (2011), which allows eligible councils to adopt what is known as the General Power of Competence (GPC). In practice this means that Councils no longer need to ask whether they have a specific power to act as they now have, "the power to do anything that individuals generally may do" as long as they don't break other laws.

It is a 'power of first resort'; this means that when searching for a power to act, the first question to ask is whether the Council can use GPC. To find the answer, the Council must ask whether an individual is normally permitted to act in the same way. For example:

- An individual can't put someone in prison – and neither can a local council (although, like an individual, the council can press for a prosecution).
- An individual can't impose taxes on other people – so a local council can't use GPC to raise taxes.

on the other hand, an individual

- could run a community shop or post office (provided they abide by relevant rules) – so a local council can do likewise;
- can set up a company to provide a service. GPC clearly permits a local council to engage in commercial activity as long as it sets up a company or co-operative society (s4) for this purpose

Sometimes a council can do things that an individual can't do – such as creating byelaws, raising a precept or issuing fixed penalty notices – but it must continue to do so using the

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specific original legislation. GPC does not mean that the council can delegate decisions to individual councillors – this is a procedural matter that remains enshrined in law.

GPC gives local councils confidence in their legal capacity to act for their communities. It encourages councils to use this power to work with others in providing cost-effective services and facilities in innovative ways to meet the needs of local people. The council can lend or invest money; it can trade; it can sell energy to the National Grid. If another authority has a statutory duty, then it remains their duty to provide that service (e.g. education, waste collection, social services) but local councils can still help out. For example, a local council can support a school in many ways, just as an individual might. It could even help a community trust to run a local school.

The council can undertake activities using GPC anywhere – not just in the parish (s1(4a)). It isn't necessary to worry whether the activity is for the benefit of the council, the area or the community (s1(4c)) although, in practice, parishioners might object if they can't see the benefit! And unlike the Local Government Act 1972, s137, it doesn't matter whether there are any other specific powers permitting the council to take action (s1(5)). So, for example, a council can use GPC to build a sports facility even though there is another power enabling it to do the same thing (Local Government (Miscellaneous Provisions) Act 1976 s19).

As always, the council is expected to act in accordance with the general principle of 'reasonableness' established by the Wednesbury court case in 1948. The judgement made it clear that a council can exercise reasonable discretion when interpreting legislation provided that it justifies its decision in terms of relevant, rather than irrelevant, matters.

Finally, as general rule it is worth observing that the most successful Councils are those that embrace the limitations of their statutory powers, accepting the areas where they cannot exercise power and focus instead on the huge range of possibilities that the GPC affords them.

Qualifying Criteria:

In order to affirm the right to exercise the GPC, the Council must meet the two qualifying criteria.

1. Elected Councillors

At the precise moment that the council resolves that it meets the criteria, the number of councillors elected at the last ordinary election, or at a subsequent by-election, must equal or exceed two thirds of its total number of councillors.

Elected councillors include all councillors who stood for election (including at a bye-election) whether or not the election was contested. Co-opted or appointed councillors do not count as they are not elected.

The total number of councillors means the number of seats on the council including those that might be vacant. If two thirds is not a whole number, then it must be rounded up to the next whole number.

For Chichester City Council the number of councillors that must be elected is a minimum of 12.

2. A Qualified Clerk

The clerk must hold at least one of the sector-specific qualifications and should have completed the relevant training designed as part of the National Training Strategy for local councils. From April 2012, this training is undertaken as part of a clerk's preparation for one of the recognised sector-specific qualifications. Where a clerk studied for one of these qualifications before April 2012, they undertake the relevant

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training and must pass Section 7 in Isolation Module in order to be fully qualified for the purposes of the GPC (see CiLCA Section 7 & GPC section at top of the previous page).

The recognised sector-specific qualifications are:

- (i) The Certificate in Local Council Administration (CiLCA) awarded by Ascentis (or previously by Monitoring and Verification Board or the AQA). If the CiLCA certificate was awarded pre 2012, you must also hold GPC Section 7 in Isolation Module certificate.
- (ii) Or one of the following higher education qualifications awarded by the University of Gloucestershire or its predecessor institutions, namely:
 - The Certificate of Higher Education in Local Council Administration
 - The first level of the Foundation Degree in Community Engagement
 - The Certificate of Higher Education in Local Policy and Governance (the Level Four course)
 - Any equivalent successor qualification

It is important that the council pays attention to the advice of its trained and qualified clerk when taking decisions to ensure that it acts lawfully.

Both the retiring Town Clerk and the new Town Clerk hold a relevant qualification.

Affirming the Right to Exercise the GPC

A local council must decide, at a full meeting of the council, that it meets the criteria for eligibility at that particular point in time. A resolution to this effect must be written clearly in the minutes of that meeting. The council is then required to revisit that decision and make a new resolution at every 'relevant' annual meeting of the council to confirm that it still meets the criteria (if it does). This means that eligibility remains in place until the first annual meeting of the council after the ordinary election even if the condition of the eligibility criteria has changed.

The Council currently holds the GPC, so at the Annual Council Meeting on 17 May 2023 the Council will need to reaffirm that it meets the qualifying criteria and resolve to continue to exercise the GPC.