

**Walton Parish Council**  
**Report on Matters Arising 6<sup>th</sup> April 2017**

**Highway Related Issues**

See 'Issues Raised with WBC Report'. Updated 21/03/17.

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**Accident waiting to happen**

09/02/17 – Emailed Highways explaining the situation.

Response from Highways dated 8<sup>th</sup> March sent by snail mail and scanned on and emailed to councillors on 21<sup>st</sup> March 2017.

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**Tall fencing at the Ship Inn Development**

4th March 2017 – Emailed Tom Hill identifying the Parish Council's area of concern.

**RE: PLANNING ENFORCEMENT COMPLAINT - FORMER SHIP INN SITE, CHESTER ROAD - ENF/17/05991**

Tom Hill responded on the 8<sup>th</sup> March and said;

*I will have another look into this matter and get back in touch with you to confirm whether in fact there is a breach of planning control or not, and if so, how we are to progress with the matter.*

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**Creamfields/Drug Concerns**

Letter sent to Crime Commissioner and copied to Chief Constable. He was given the option to attend one of our meetings if he felt it would be beneficial.

Letter dated 24<sup>th</sup> March received from Police & Crime Comm. He understands our concerns & takes issue very seriously. Planning being led by Inspector Mark Gammage & he will ask him for an update on the planning and approach to drug prevention. The Inspector also the best placed person to come and meet us. (Letter in Other Correspondence).

Email from Insp Gammage asking for dates of our meetings & he will do his best to attend one of these.

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**Boundary Commission Appeal**

Emails requesting support sent to Appleton, Stockton Heath, Stretton and Hatton.

Received following response from Hatton:-

*We discussed at our Parish Council meeting last night and unanimously decided that we would like to join in with the campaign to maintain our identity. Let me know what the next stage is and what you need me to do.*

Margaret Winstanley the Chair at Hatton copied her above response to Stretton and the Clerk has passed it on to the councillors for consideration.

Judith Wheeler the Borough Councillor for Appleton has acknowledged.

***Good morning Ray***

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*Following discussion at the last meeting, it was agreed that Stretton Parish Council would like to support the application for the names of Stretton, Walton and Hatton to be incorporated within the Appleton borough name.*

*Please can you let me know what the next steps are?*

*Many thanks*

*Gill*

*Gillian Lett*

*Clerk to Stretton Parish Council*

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**Finance and Governance (Payment to Councillors)**

Emails with attached document were sent to Internal Auditor, ChALC, Sof LCC and Paul Claydon at Clerks and Councils Direct along with the Legal Dept at WBC. The following replies have been received todate;

**ChALC**

*Dear Ray*

*Firstly the issue of membership is an important one since Walton has in fact accessed two officers of ChALC and training in recent times and might clearly benefit from membership. Our job is not to 'police' you but to offer guidance, support and assistance which is particularly helpful for isolated parishes and lone workers. Do please ask your council to reconsider whether membership would be of value to them.*

*The matter is quite clear - your final paragraph of the report is the most pertinent.*

*The council may not pay a member for work. Of that there is no argument. The issue is can a member's business tender?*

*The answer to that is 'yes' BUT..... how do we define if they are a business?*

*If you are going to appoint a contractor you need to:*

- 1. Give a formal contract and manage it - i.e. ensure the work is done and satisfactory;*
- 2. Check that the contractor has done a Risk Assessment;*
- 3. Check that the contractor has proper insurance for the work.*

*So I agree with your final paragraph but it is important that there is clarity about the councillor and their relationship with the council. There has been no previous reference to the councillor actually having their own business and therefore quoting formally for work. All previous communication asks 'can a councillor be paid for work?' and the answer would remain 'no'.*

*Is that clear and helpful?*

*Kind Regards*

*Jackie*

**Legal Dept WBC**

*Dear Mr Hallam,*

*I refer to our conversation earlier this afternoon and look forward to receiving the notes you said you'll be emailing to me. In the meantime, I promised to let you have a summary of the general*

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*advice I gave you today. I have tried to organise that into the two sections below, but please let me know if there is anything that requires further clarification.*

### **A) Clarifying the Nature of the Arrangement in question**

- 1) *Parish Councils fall within the definition of local authorities in the Local Government Act 1972. Section 117 of that prohibits the apt of an officer who is a Parish Councillor or has been (unless that was over 12 months ago). However, s121 of the Act provides an exception to allow Parish Councillors to be appointed to officer posts without remuneration.*
- 2) *It is not unlawful for a Parish Council to enter into a contract with one of its Parish Councillors in their capacity as a sole trader. However, if it does so, the Parish Council needs to consider the impact from a governance and voting rights perspective. They would need to be sure that the Parish Councillor awarded the contract:*
  - *Had nothing to do with the letting of the contract or decision making (s94 – breach of which is a criminal offence)*
  - *Has registered his interest*
  - *Has nothing to do with monitoring the contract*
  - *Has nothing to do with decisions re the contract*
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*From what you were saying re the current arrangements, it sounds as though you may be dealing with a contract for (occasional) services (per 2 above) rather than appointment to a post (per 1 above). However, the Parish Council may wish to check the paper trail eg meeting notes, correspondence and invoices. NB An invoice from the individual's business tends to be suggestive of a contract for services (per 2 above).*

*If it should be an appointment, per 1, we can consider whether it may fall within the s121 exemption (because you said that the invoices are currently limited to expenses and do not include any charges for the member's time or labour).*

*Once you know the view of the other Parish Councillors as to which arrangement was intended, it would be sensible to check whether the individual Parish Councillor in question holds the same view.*

### **B) Possible Remedial/Improvement Actions**

*We discussed any lessons to learn/potential changes going forward and the points/possible actions we covered included:*

- a) *that the concerns raised by the new member have clearly been taken seriously*
- b) *that members have considered some of the statutory provisions that may apply (ss117 and s121) and referred you to others - ss 94 – 98 regarding members' interests in contracts and other pecuniary interests, the related prohibition on voting, the requirement to register interests etc.*
- c) *I advised that the Parish Council should record, for the avoidance of doubt, the members' conclusion as to whether the arrangement was for appointment to a post or a contract for the provision of services (and the key terms)*
- d) *If the latter, then ensure the individual complies with the Register of Interests and consequential voting restrictions – from this point on\**
- e) *Introduce standing agenda items on your template agendas and reminders linked to other regular tasks to ensure members are regularly reminded to keep their registered interests under review and fully up to date*
- f) *Arrange any related training, refresher or otherwise, for members and clerk.*

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*\*If there has been inadvertent non-compliance with these governance points in the past, I do not consider that would necessarily make the contract itself ultra vires. If a person with a pecuniary interest under the contract had taken part in the decision to award the contract to themselves/their business, then that may merit consideration of whether the contract should have been awarded, but I would want a clear chronology and copies of all supporting documents to advise properly. It may be arguable that where the invoices only seek reimbursement of expenses incurred in undertaking the work, that the arrangement falls within the de minimus type exception to the s 94 prohibition at section 97(5):*

*“ a member shall not be treated as having a pecuniary interest in any contract...by reason only of an interest .... which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of, or in voting on, any question with respect to that contract or matter”.*

Kind regards,  
Joanne Crawford, Solicitor  
Legal Services  
Warrington Borough Council

Dear Mr Hallam

Thank you for the note, which seems very thorough. I have responded by reference to key parts of that I have quoted below.

***“For many years the PC has (with only limited success) attempted to find a volunteer "odd job man" to do many small varied jobs around the Parish and/or engage a Warden to do paid work on a casual basis. Following a number of unsuccessful leads to gain or share a Ranger, in October 2016, Councillor A offered the services of his company\* at a significantly reduced rate to carry out such odd jobs that were not part of the normal Parish maintenance but which would tidy the Parish. A contract to do the "odd jobs" has not been placed and would be subject to the result of this enquiry.”***

*\* Rather than company, it appears that Cllr A offered the services of his business (sole trader). Based on the information set out in your document, I can see no evidence of any appointment of an individual to a warden position ie no employment contract. My view is that, whether written or not, contracts have in fact been placed; as and when the jobs have needed doing rather than in advance on a long term basis ie a retainer arrangement or with agreed rates for work types but no commitment to give work (which I think is what you mean to refer to in the final sentence above.*

***“Our dilemma is in now knowing if Councillor A or B meets the definition of a “paid officer and an employee of the Parish Council”, or a contractor to the Parish Council for a particular task (contract for services). There are no other contractual ties between the Parish Councillors and the Parish Council.”***

*This looks to me like a contract for services with a sole trader rather than an employment contract or appointment to an office. (If I recall correctly the term Officer is limited to a few key roles in the legislation and would not cover a warden anyway.) A good check would be to ask the Councillors who made the decision what they believed they were agreeing – employment of Cllr A or a*

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*standalone payment for services provided by him through his business? As mentioned in my general advice, it would be sensible to check that Cllr A has the same view.*

***“No matter how the worker is defined, the Parish Council is seeking a judgement on whether an illegal payment has been made or not. The PC has been aware of LGA 1972 section 80 and 116 but been unable to find any definitive instruction that prevents a Councillor with a business being unable to compete for irregular work (odd jobs) from the Parish Council.”***

*I share your view that there is no such prohibition. NB I have not checked that the processes followed and amounts involved are compliant with the Financial Regulations and standing orders, as that does not appear to be the issue in this case. If they did not the payments are likely to be ultra vires (although that may be capable of retrospective remedy). However, as regards your specific query, I do not consider that the payments to Cllr A are “illegal” simply because they are made to a Councillor providing services through his business.*

*I hope this helps, and please let me know if you need any further clarification.*

*Kind regards,  
Joanne Crawford, Solicitor  
Legal Services*

**Internal Auditor**

*Hello Ray*

*You have provided us with information stating that two members, through their businesses, have provided contracts to the council. Therefore, as internal auditors we should now investigate this, including a review of the register of relevant members interest disclosures and whether the minutes properly record interests, and provide a report to the council. I will telephone you to discuss this tomorrow.*

*As a general point, you have asked ‘whether a parish councillor carrying out a contract for services to carry out odd jobs from time to time is the same thing as being in the paid office of the Council, such as the Clerk’. A councillor cannot be a paid employee of a local council as this brings about an unacceptable conflict of interest and is prohibited in law. Section 112(5) of the Local Government Act states ‘a parish or community council may appoint one or more persons from among their number to be officers of the council, without remuneration.’ Therefore, where a councillor has an interest in a business that provides goods or services through a contract this does not represent paid employment. However, our view is that an exception to this could be the case where the provision of goods and services is via self-employment and the facts indicate that the individual does not meet the tests that define self-employment and is actually more correctly defined as an employee.*

*Regards*

*John Henry*

*Hello Ray*

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*Further to our telephone conversation today and the review of the responses received from the Warrington Borough Council legal department you have forwarded to us, we are satisfied the council has taken action to secure the correct legal advice regarding whether a contract awarded to an enterprise in which a councillor has an interest represents a contract for services or remuneration.*

*The feedback from the legal department also lists 6 actions relating to ‘lessons learned’ with which we concur and which the council should implement promptly. The council should ensure that the Register of Interests is always up to date for Disclosable Pecuniary Interests, and minutes always record clearly whether a member has declared an interest and played no further part in debate or discussion regarding a contract in which they have an interest. Finally, the council should query with the Monitoring Officer whether the format of the register of interests maintained by WBC requires the actual award of a contract for services to an enterprise in which a member has an interest to be disclosed in the register.*

*John Henry*

**Society of Local Council Clerks**

*Dear Dawn*

*If a councillor is given the label ‘warden’, ‘tree warden’ etc and paid for undertaking that role, he or she will be disqualified from being a councillor under s 80 LGA 1972.*

*If a councillor is a paid contractor, and the effect of what he or she does, is that he or she is the council’s tree warden, then the s 80 disqualification provision will apply.*

*A councillor cannot legally be a paid employee of his or her council.*

*But, if a councillor or a councillor’s company is awarded a contract for services after a council has followed the correct formalities for awarding a contract of that type and value, then that is legally permissible.*

*Kind regards*

*Debbie Ashton*

*SLCC’s National Legal Advisor at Nicholas Hancox Solicitors Ltd*

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**Stockton Heath Festival Sponsorship**

4th March 2017 – Emailed Stella Craggs advising that we would like the donation to be used to sponsor the Warrington Male Voice Choir event at St Thomas’s.

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**Microphone Facility**

A 3 microphone system from Maplins with wireless microphones and wired in to the existing speaker system would cost £190 plus the cost of wiring from receiver to the Hall’s HI-FI system. 5 microphones would cost £320.

I asked Appleton PC about the system they have at their parish rooms and I received the following response from the Clerk;

*ACTS Sound and Lighting Ltd installed the sound system at Appleton Parish Hall in Sept 2012 and the cost was £3,000. The Parish Hall also needs a licence for the use of microphones which is every two years.*

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*The phone number for ACTS Sounds and Lighting Ltd is 656469, they are a very good firm and have come out to do any repairs and will give quotes for any new system.*

*I hope this is okay,*

*Thanks Joanne*

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**Ray Hallam – Clerk to the Council**