

# **ADVICE ON DELEGATED AUTHORITY / DISCHARGE OF FUNCTIONS BY A LOCAL COUNCIL**

## **LOCAL GOVERNMENT ACT 1972 S101**

Despite several previous instances of guidance given to Bexhill-on-Sea Town Council that individual councillors cannot discharge the functions of the council, i.e. act on behalf of the council such as give instructions or carry out tasks, members have requested this advice be validated.

Whilst it is noted that councillors would like to carry out operational functions of the Corporate Body to help and support the team or utilise their skills, this is not the role of a councillor and is not permitted in law.

Below is a statement from the National Association of Local Councils (NALC) made specifically to this Town Council:

### **STATEMENT FROM JANE MOORE, SENIOR SOLICITOR AND LEGAL MANAGER NATIONAL ASSOCIATION OF LOCAL COUNCILS**

I confirm that the advice we can provide on the issues is contained within Legal Topic Note 1. Paragraphs 4 and 5 contain guidance on the role of individual councillors. Paragraph 9 also refers to the *Hillingdon* case. Paragraph 9 provides “functions may be discharged by a committee or a sub-committee but not, as confirmed in paragraphs 4 and 5 above, by individual members of the committee”.

Legal Topic Note 1 Paragraphs 4 and 5 are provided below:

### **Individual councillors**

4. A council cannot delegate the performance of its statutory and legal responsibilities to an individual councillor. This rule does not impinge on the statutory authority of a councillor to make decisions that do not relate to the performance of the council's responsibilities. For example, a councillor who is chairman of the council has additional voting powers in the election of a new chairman of the council (see Legal Topic Note 2 – the Chairman of Local Councils). Using another example, individual councillors may call an extraordinary meeting of the council if, having requested to do so, the Chairman of Council does not call one. As a further example, the councillor chairing a meeting of the full council, a committee or a sub-committee has additional voting powers and can take decisions relation to the running of a meeting (see Legal Topic Note 5 –Parish and Community Council Meetings).
5. The procedures and standing orders of a council should not allow for decisions about the discharge of a council's functions to be made by individual councillors. Resolutions made at a meeting or occasionally the standing orders of a council may authorise a councillor to act on matters which the council, or as the case may be, a committee or sub-committee is ultimately responsible for. For example, a meeting may resolve a particular councillor to be the council's representative at an external meeting. A council's standing orders based on model standing order 19c authorises a councillor to review the work of an individual member of staff and to conduct his appraisal on behalf of the staffing committee or sub-committee that he is a member of. The procedures and standing orders of a council should not allow for decisions about the discharge of a council's functions to be made by individual councillors.

### **Paragraph 9**

9. The collective decision-making responsibilities of the members of a committee or a sub-committee are limited by their terms of reference, Functions may be discharged by a committee or a sub-committee but not, as confirmed in paragraphs 4 and 5 above, by individual members of the committee (who may include the Chairman of a council or a chairman of a committee). Such practice was ruled by the High Court to be unlawful, in the case of *R v Secretary of State for the Environment ex parte London Borough of Hillingdon* [The Times 20 November 1985 also reported at greater length in the 'Local Government Review' on 4 January 1986].

### **IN CONCLUSION**

**It is unlawful for councillors to discharge any function of the Town Council, including the Chair. Functions are discharged to an officer or a committee/sub-committee only.**