

*Salt and Light Papers provide important information and analysis to help Christians and Churches to engage with 21<sup>st</sup> century social issues*

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## COURT RULES ON PRAYERS AT BIDEFORD

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The government acted swiftly last month to overturn the effects of a High Court ruling that prayers as part of the agenda at formal Council meetings in England are illegal.

A few hours after the publication of the court's judgement in a case involving Bideford Town Council and the National Secular Society, the Rt Hon Eric Pickles MP, Secretary of State for Communities and Local Government, issued a statement criticising the finding and promising urgent action to restore the legality of Council prayers. Within a week he brought into effect Section 1 of the Localism Act 2011, which had been due to come into force in April 2012, and which gives local authorities a general power of competence to determine their own actions.

In announcing the fast-tracking of Section 1 of the Localism Act to protect prayers, Mr Pickles was uncompromising in his criticism of some of the influences currently threatening to remove British Christian traditions from public life:

'The High Court judgement has far wider significance than just the municipal agenda of Bideford Town Council. By effectively reversing that illiberal ruling, we are striking a blow for localism over central interference, for freedom of worship over intolerant secularism, for Parliamentary sovereignty over judicial activism, and for long-standing British liberties over modern-day political correctness.

Last week's case should be seen as a wake-up call. For too long the public sector has been used to marginalise and attack faith in public life, undermining the very foundations of the British nation. But this week, the tables have been turned.'

At the same time, in guidance issued to leaders of county and district councils, in which he describes the High Court interpretation of the law as 'narrow,' and refers to 'intolerant and aggressive secularism,' Mr Pickles unequivocally commends to Councils the practice of formal prayer: 'The tradition of council prayers dates back hundreds of years. And as a former councillor, I understand the importance it plays in the rhythm of formal council meetings and civic occasions.

We welcome and respect fellow residents and British citizens who belong to other faiths or none. However, the right to worship is a fundamental and hard-fought British liberty. I believe Christianity continues to play an important part in the culture, heritage and fabric of our nation.'

The closing words of his guidance – 'I am confident you will make good use of your new powers' – are a clear indication to Councils that he hopes that they will decide to continue to adopt the practice of Christian prayers.

Bideford Town Council in Devon, a 16-member council in a town of 16,000 people, had been taken to court by the National Secular Society, which argued that the Council had no authority to include prayers in its formal agenda, and by a former member of the Council, Clive Bone, a secularist, who claimed that the Council's practice of engaging in prayer amounted to discrimination against him, infringing his human rights.

The judge, Mr Justice Ouseley, heard the case on 2 December 2011 and issued his reserved judgement on 10 February. In his judgement, he rejected the claims that prayers at council meetings were discriminatory, or infringed human rights, but surprisingly ruled that formal prayers were *ultra vires* – i.e. not legally authorised by the terms of the Local Government Act 1972, the Act which currently governs the powers and procedures of local authorities in England. The ruling means that all prayers during formal Council meetings in England since the 1972 Act came into effect in 1974 have been illegal.

For a few hours, the National Secular Society thought that they had won a significant victory, but the government's swift intervention, the strength of the statements it made in defence of the practice of Council prayers, and the press reaction, has effectively isolated the NSS. Typical of press reaction was the merciless mocking of the court's decision by Matt in two cartoons in *The Daily Telegraph*.

The Court's judgement on the *ultra vires* issue hinged on the meaning of the word *calculated* in Section 111(1) of the 1972 Act. In that section, councils are given the following powers:

'Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.'

Mr Justice Ouseley ruled that although many people might believe that prayer did 'facilitate the discharge of functions,' the word *calculate* in this section required a more objective judgement than merely that it was 'thought likely by the councillors' that prayers would have this effect.

This is an odd judgement for Mr Justice Ouseley to make, since it is difficult to imagine what objective evidence would need to be identified in order for a decision to have formal prayers as part of the agenda to be legally acceptable. Mr Justice Ouseley gives no examples.

The other apparent flaw in his judgement relates to the singling out of prayers as an activity requiring to be put through this additional legal hoop. Councillors do many other things during formal Council meetings which are not specifically authorised by the 1972 Act, and which have not been subjected to any formal assessment as to whether they are objectively *calculated* to 'facilitate the discharge of functions.'

One such activity, for instance, is that in the event of a death of a serving councillor, Council members have in many instances traditionally observed a minute's silence, as a mark of respect, at their following meeting. It is obvious from Mr Justice Ouseley's ruling that such a practice would be just as *ultra vires* as the saying of prayers would be. The difference between the two issues does not lie in the legality of the practices, but in whether a particular practice is perceived as controversial, discriminatory or politically incorrect. However illegal it may be, no-one is going to bring a case against a Council for observing a minute's silence for a deceased colleague. However, the influential minority who want to remove all trace of Christianity from the public square will continue to attempt to use the law as a stick with which to beat faith out of town.

In rejecting the discrimination argument, the judge uses more understandable logic. He said that Mr Bone was 'seeking that others abandon a practice... so that he does not have to make any accommodation for them, but they do for him.' The judge indicated that in a situation in which there were two viewpoints, and a similar disadvantage would apply to whichever group's preference was not followed, this amounted to a 'division of view' and would need to be 'resolved democratically.' For similar reasons, the human rights claim also failed.

Bideford Town Council has lodged an appeal against the High Court's judgement, so that Mr Justice Ouseley's finding against formal Council prayers, and the legal reasons for his decision, will not become an unchallenged legal precedent. Throughout this legal case, Bideford Town Council has been supported by The Christian Institute.

Rod Badams

*The following is the full text of the guidance sent on 16 February to the leaders of county and district councils in England by the Rt Hon Eric Pickles, MP, Secretary of State for Communities and Local Government, in the wake of the Bideford ruling.*

Dear Leader

### **GENERAL POWER OF COMPETENCE AND FREEDOM TO PRAY**

On 10 February, the High Court issued a ruling in a case brought against Bideford Town Council, banning the practice of prayers at the formal beginning of council meetings. The basis of this ruling was a narrow interpretation of Section 111 of the Local Government Act 1972: in short, it asserted

that councils do not have an explicit power to hold prayers as part of the formal business at council meetings.

This high profile case has generated a public debate about intolerant and aggressive secularism. As a consequence of this ruling, I have decided to fast-track the commencement of the general power of competence in the Localism Act 2011. The power is now in effect for all principal local authorities in England.

Previously your council has only been able to do those things that the law specifically empowered it to do or which are incidental to those things. The general power of competence turns the current situation on its head. Rather than looking to Whitehall to hand down specific powers, it enables your council to do anything that an individual could do unless it is specifically prohibited by law.

The general power of competence is designed to allow local authorities to act innovatively without being found by the Courts to have acted outside the law. It is intended to give your council the confidence in its legal capacity to act for your local communities, and will provide you with more flexibility to innovate and work together with others, run new services and manage assets.

These new flexibilities include the freedom to pray. The tradition of council prayers dates back hundreds of years. And as a former councillor, I understand the importance it plays in the rhythm of formal council meetings and civic occasions.

We welcome and respect fellow residents and British citizens who belong to other faiths or none. However, the right to worship is a fundamental and hard-fought British liberty. I believe Christianity continues to play an important part in the culture, heritage and fabric of our nation.

Either way, the choice on holding prayers is now yours again.

I am confident you will make good use of your new powers.

**Rt. Hon Eric Pickles, MP**

*The above from The Bulletin [March 2012] under the heading of Prayers at Bideford.*

**Salt and Light Papers** is a series of occasional papers on contemporary issues of social concern. It is published online by the Affinity Social Issues Team. Its purpose is to help Christians to think through questions of relevance to our place in the world around us. The views expressed by contributors are not necessarily endorsed by the Affinity Social Issues Team.

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The Old Bank House, 17 Malpas Road, Newport, South Wales. NP20 5PA  
Telephone: 01633 893925  
Email: [office@affinity.org.uk](mailto:office@affinity.org.uk)  
Website: [www.affinity.org.uk](http://www.affinity.org.uk)

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