

# **SUMMARY OF WHY FYLDE COUNCIL HAS NO LEADER AS AT 13 MARCH 2013**

## **IN BRIEF**

Section 44D of the *Local Government and Public Involvement in Health Act 2007*, says in short, that the Executive Leader's term starts on the day of his election as Leader and ends on the day of the post-election annual meeting. Councillor Eaves should have been elected as Executive Leader at the 2011 annual meeting. He was not then elected, therefore he is not, and since May 2011 has not been, Fylde Council's Executive Leader. This must cast some doubt about his ability to discharge Executive functions and / or to appoint a Cabinet.

It may also affect the status of documents he signed or agreements he entered into as Leader of the Council during this period, and it calls into question the Special Responsibility Allowance payments of £6,000 per annum made to him as Leader, together with the £4,000 per annum SRA's paid to Cabinet members who may not have had legitimate appointments during the same period.

## **THE OUTLINE**

### ***Begin in 2000***

The idea of an Executive Leader was introduced in 2000

Schedule 1 (2) (2) (a) of the *Local Government Act 2000* says that Executive arrangements may include provisions with respect to the election and term of office of the Executive Leader.

Note that they DO NOT SAY 'MUST'

Fylde Council's Executive arrangements DID NOT include provisions with respect to the election and term of office of the Executive Leader.

### ***Move forward to 2007***

The *Local Government and Public Involvement in Health Act 2007* introduced a new section called 44A to 44H into the 2000 Act.

Sections 44A and 44D relate to Councils like Fylde with whole-council elections.

In short, section 44A says that the Executive Leader is to be elected at the post-election Annual Meeting or, in default, at a subsequent meeting of the council.

### ***Move forward to May 2010***

David Eaves was properly elected Leader by the Council Meeting of May 2010 following the resignation of John Coombes

### ***Move forward to May 2011***

9th May: The Council adopted revised Executive Arrangements (as required and amended by the 2007 Act) But Fylde's Constitution still did not specify any provisions with respect to the term of office of the Executive Leader.

The (then) current Leader's term of office expired as a councillor on 4th day after the election when he ceased to be Councillor; and his tenure as Leader ceased on the day before the Post Election Annual Meeting of the Council.

Cllr Eaves was re-elected as a Councillor at the election, and resumed that role.

But the post-election Annual Meeting of Fylde Council (May 2011) did not elect a Leader, and no election of Leader has taken place since.

It follows that Fylde Council has not had a Leader since May 2011

### ***Move forward to 2011/12***

It is true that (Section 22 (Part 1, Chapter 5) Schedule 3, items 58 to 65 of the *Localism Act 2011*) now requires that paragraphs 44A to 44H of the 2007 Act are omitted - but Section 22, Schedule 3 was not brought into effect with the first provisions of the 2011 Act, and anyway, they are not retrospective.

And in any event, the "*Localism Act 2011 (Local Authority Governance Transitional Provisions) (England) Order 2012*" came into force on 4th May 2012. It provides (Section 2(2)) that sections 44A, 44B, 44D and 44E of the 2000 Act continue to apply to a local authority until such time as the local authority makes provision for their executive arrangements, and they should do so as soon as reasonably practicable after this Order came into force.

Neither Fylde's Constitution, nor the legislation, can be applied retrospectively. Both apply from the date at which they become active.

It follows that the Leaders status between May 2007 and 3 December 2012 was governed by paragraphs A to H of section 44 of the Local Government and Public Involvement in Health Act 2007. It then became governed by Fylde's resolution to change executive arrangements to a four year term on 3 December 2012

But irrespective of the date of the changed term of Leadership at Fylde, there was no Elected Leader to whom that change could be applied.

Ergo, Fylde currently had /and has no Leader and they need to elect one as soon as possible.