

## Ecclesiastical Trusts

### *Introduction*

- The ownership of parish property and finance is complex. A Parochial Church Council (PCC) is a charity; as a result, it must observe the general principles of charity law, though currently does not have to register with the Charity Commission if the annual income is below £100,000. In addition, the PCC must work within the framework of ecclesiastical law.
- Most of the funds raised in the parish can be applied without the need to obtain any consent from a diocesan board; parish treasurers need only act on the authority of their PCC or (in some cases) the churchwardens or other trustees of parish funds. All that is required in relation to such funds is that the PCC's examined or audited annual accounts should be deposited with The Oxford Diocesan Board of Finance in accordance with ecclesiastical law.
- For some purposes however, parish trustees cannot act unilaterally in this way; they may only act with the consent of the Diocesan Authority. In those cases, one of the trustees should contact me in order that a consent of the Diocesan Trust Corporation, Diocesan Trustees (Oxford) Limited [DT(O)L] may be obtained. DT(O)L is "the Diocesan Authority" in the Diocese of Oxford for the purposes of the Parochial Church Councils (Powers) Measure 1956 and the Incumbents and Churchwardens (Trusts) Measure 1964.

### *Real Estate*

- Under those two Measures, any real estate acquired by the parish must be vested in the Diocesan Authority. However, the PCC or Incumbent and Churchwardens continue to be responsible for administering and managing it. Where property is vested in the Diocesan Authority, the PCC or Incumbent and Churchwardens may not sell, lease, let, exchange or charge the property without an appropriate consent of the Diocesan Authority. Consent is also needed for the acquisition of property. If the value of the property transaction is £250k or below and is less than the PCC's/charity's unrestricted income then under the Ecclesiastical Property Measure 2015, the Diocesan Authority only has to consent to the signature/sealing of the associated legal documents or be advised that legal proceedings are to be taken in its name.
- For most transactions, trustees must seek advice from those with relevant experience or from a properly qualified Chartered Surveyor (registered valuer), in accordance with the Charities Act. 2011. When allowing a property to be occupied, consideration must also be given to safety matters. There must be compliance with several pieces of legislation; in particular, the provisions of the Gas Safety (Installation and Use) Regulations 1994, the Furniture and Furnishings (Fire) (Safety) Regulations 1988, the Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1993, the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 & The Homes (Fitness for Human Habitation) Act 2018. Other legislation is also applicable to the grant of any lease: Tenancy Deposit regulations, The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and The Immigration Act 2014. I can provide a separate more detailed information sheet.
- Before the Diocesan Authority can consider giving its consent to a transaction, parish trustees must consider the professional advice received and certain resolutions must be passed, including the indemnity of the Diocesan Authority against all costs of the transaction. I can supply specimen forms of resolutions.
- Sometimes, when a sale has been completed, the sale proceeds will form a "permanent endowment", with the Diocesan Authority continuing to have a role under the Measures, holding the investment of the capital whilst passing the dividend or other income to the managing trustees to use according to the Trust. This is one way in which the Diocesan Authority has a role in seeing that the Charity Commissioners' guidance is followed.

- In other cases, there is no such restriction. In every case, you need to look carefully at the terms of the underlying trust deed or other governing document to discover how the proceeds of any sale may be used. I will be glad to help; you can contact me by e-mail or telephone, as below
- It is most important that the consent of the Diocesan Authority is obtained where required and the correct legal documents produced. As the Diocesan Trust Corporation holds the Title of property it must be named as landlord, purchaser, vendor etc but the parish trustee(s) will be party to the documentation. It may be helpful to contact me at an early stage when considering property transactions, to get advice on the necessary requirements and consents.

### **Financial Trusts**

- Funds that are not permanent endowment and many other types of surplus funds may be held under the direct control of the PCC or churchwardens. Dividend and interest rates are the same whether funds are held in these accounts directly or through the Diocesan Authority.
- Where Diocesan Trustees (Oxford) Ltd [DT(O)L] is required to hold capital funds as permanent endowment, the PCC is or incumbent and churchwardens are the “managing trustee(s)” of the fund. They have the responsibility for administering the trust. This includes decisions on the investment of the capital and expenditure of the income. Therefore DT (O) L has resolved that the income of these trust funds should be mandated to an account directly in the control of the managing trustees. This could be a CBF deposit account or an account with a local bank. The main advantages to having local control of the income are that income funds will be available more quickly and supporting documentation will not have to be sent.
- Please write to the Trusts’ Accountant (address below) if any details change for a bank account that receives trust income and provide a paying in slip for the new receiving account or evidence of a CBF Deposit Account number.
- In relation to the funds that we do hold, an annual statement of funds is produced automatically and normally will be sent out from the end of January each year. Information from the investment managers is not received until mid-January and so the statements cannot be produced any earlier. The information is normally sent to the PCC Treasurer recorded on the Church of England database and so it is important to advise the Finance Administrator of all Treasurer changes ([finance@oxford.anglican.org](mailto:finance@oxford.anglican.org) ).
- The Charity Commission recognises that where the income of a Trust is small, the objects of the Trust may be difficult to finance. Therefore, if the annual income of a Trust is less than £1,000 or if certain criteria in respect of the capital are met, the trustees can pass a resolution to spend the capital as if it were income and thus wind up the Trust. Larger values of permanent endowment might also be used for building projects, subject to Charity Commission consent. Charity Commission guidance is available via its website under “Permanent Endowment: Rules for Charities” and its own operational guidance: OG545-1.

### **Conclusion**

This brief introduction cannot do more than indicate something of the complexities of the property and financial issues parish trustees might have to deal with, however help is available when you need it.

**Caroline Dyer**

**Trusts Administrator**

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**Please contact me if you would like advice on any Trust matters.**

**If you feel it would be helpful, please copy this sheet to anyone else on your PCC.**