Managing Restricted Funds

Contents

A Overview

Why has this guidance been produced?

PCCs of the Church of England hold restricted funds totalling an estimated £480 million. This Guide has been produced to help PCCs ensure that they are acting as good stewards to these restricted funds.

Section B provides a reminder of what restricted funds are and how they should be accounted for. Those familiar with this do not need to read Section B.

Section C explains what is meant by good stewardship of restricted funds and describes what PCCs can do to overcome some of the barriers to good stewardship.

Section D gives practical help on how PCCs can bring into active use any restricted funds which have been lying dormant for some time.

Section E gives links to other websites and publications offering further guidance.

References to 'the Charities Act' in this Guide are references to the 2011 Act which supersedes the 1993 and 2006 Acts.

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Why now?

Over time, charity law has introduced new provisions making it easier for PCCs and other charities to manage small restricted funds. 'Manage' may mean transferring, changing the purposes of, or spending the small restricted funds. These provisions came into effect in March 2008 and are described in Section D, which sets out what PCCs can do and how. The new provisions offer a good opportunity for PCCs to review their restricted funds and to ensure that they are using them to the maximum potential. This chance to bring any unused funds back into productive use should be welcomed with open arms!

HOW TO USE THIS GUIDE

- If you want to refresh your memory on what restricted funds are and how they should be accounted for, go to Section B below. This section also gives tips for treasurers setting up new restricted funds.
- To learn more about what good stewardship of restricted funds means, including some tips on how to manage them effectively, go to Section C on page 6.
- If you have restricted funds sitting un-used or under-used in your accounts and would like to transfer them to another charity, change their purposes, change the PCC's administrative powers in relation to them or spend their permanent endowment, go to Section D on page 9.

B What are restricted funds?

B1. Restricted Funds as distinct from Unrestricted (including Designated) Funds

'Restricted funds' are sums of money that are held on trust for particular purposes and can only be spent on those purposes. 'Restricted fund' is the accounting term; in legal terms, it may be described as a 'trust fund.' Note that each restricted fund is a 'charity' in its own right. This will be particularly important when considering the provisions set out in Section D.

'Unrestricted funds' are simply the ordinary property of the PCC (its 'corporate property') and can be spent on any of the PCC's general purposes. '**Designated funds**' are sums of unrestricted money earmarked by the PCC for specific purposes.

Restricted and designated funds should not be confused. When the PCC earmarks some of its own unrestricted funds for a particular purpose as a designated fund, no legal restriction is created; the money is still legally unrestricted and can be 'undesignated' by the PCC and used for other purposes at any time. If, on the other hand, the PCC receives a sum of money from a third party and that third party (perhaps a grant-maker, donor or testator) specifies that the money is to be used for a specific purpose, a legal restriction – called a 'trust' – is created and the funds may not be used for any other purpose. In the case of such a donation to a PCC, the trust created will almost invariably also be a 'charity.' In accounting terms, it is known as a 'restricted fund.'

For example, suppose the PCC knows that the church's set of *One Hundred and One Harmonious Hymns* will need to be replaced within the next couple of years. The PCC may decide to set aside a sum from its unrestricted funds in order to meet the cost of the books. It would do so by creating a

'Hymnbooks Designated Fund' and earmarking the appropriate amount of its unrestricted reserves. But if a more urgent funding need arose, or if a well-wisher gave the church a set of *Harmonious Hymns* free of charge, the PCC would be free to un-designate the earmarked money and use it for other purposes. If, however, the PCC received a bequest and the will specified that it is to be used to buy new copies of *Harmonious Hymns*, or if The Hymn-Lover's Charitable Trust gave the PCC a grant for the new books, the bequest or the grant would be restricted and the PCC would need to create a Hymnbook Restricted Fund.

A Restricted Fund must also be created if the PCC holds an event (jumble sale, coffee morning), or issues a fundraising appeal, <u>for a specific purpose</u>. Anybody buying jumble or coffee or donating in response to such an appeal has given their money for the purpose to which that appeal relates and the PCC holds the money on trust to spend it accordingly. If the specific purpose to which the appeal relates cannot be carried out (for example, because not enough money is raised, or because circumstances change which make it impracticable to carry out the purpose) this is called 'initial failure'. Because donors will have given money for the specific purpose to which the appeal related it cannot be assumed that they intended their donations to be used for other charitable purposes. Therefore, in cases of initial failure, the donors retain certain rights in relation to the money they have donated. For that reason the Charities Act contains specific provisions dealing with the rights of donors and the application of funds in cases of initial failure.

Where surplus funds remain after the specific purpose for which an appeal was made has been carried out, this is called 'subsequent failure'. In cases of subsequent failure the donors do not retain any rights in relation to the money donated by them and the surplus can be dealt with under a 'scheme' (see section D.6 below). The Charity Commission website contains guidance on 'failed appeals', which covers both initial and subsequent failure, at https://www.gov.uk/government/publications/charity-commission-regulations-failed-fundraising-appeals

→ TIP: Many of the complications that arise in cases of initial and subsequent failure can be avoided if a PCC includes a footnote in its Fundraising Appeal literature (such as leaflets distributed in the pews) stating how any surplus would be utilised, or how the funds raised would be used if the purpose for which they were sought could not be achieved for any reason. Such a statement would usually be to the effect that in those circumstances the funds in question would be used for the PCC's general purposes. For example: 'St Emilion's church is fundraising to buy a new set of hymnbooks, *Divine Ditties for the Devout.* If for any reason we are unable to buy these new hymnbooks, or if there is a surplus left over after buying them, funds raised will be used for the PCC's general purposes.' If the PCC includes a note to that effect, then if the appeal fails or if there is a surplus, the PCC will be able to allocate the money in question to its general fund without needing to worry about these sections of the Charities Act.

If there is a church collection which is publicly advertised as being for another charity (for example, at a wedding or funeral; for the church's mission-link parish; or for Christian Aid during Christian Aid Week), the money collected would be restricted and must be applied by paying it to the other charity in question. Any accompanying Gift Aid would be similarly restricted.

Restricted, unrestricted and designated funds must be accounted for separately in the PCC's annual financial statements. For Receipts and Payments accounts, that means producing separate statements (or columns) for each type of fund. For Accruals accounts, it means using separate columns for each type of fund. The PCC should keep evidence of the restriction (in our hymnbook example, a copy of the will or the award letter from the Charitable Trust) for audit purposes. Any interest earned on the investments of a restricted fund belongs to that same restricted fund and is restricted to the same purposes. By contrast, interest on unrestricted funds (and designated funds, since these are not restricted funds) is unrestricted. Full guidance is contained in Accountability and the PCC (www.churchofengland.org/more/policy-and-thinking/pcc-accountability-guide).

It is unlawful (as a 'breach of trust') to use a restricted fund for any purpose other than that for which it was given, except where the Charity Commission has given its express permission or, as described in Section D, where certain circumstances apply.

→ TIP: The PCC Treasurer is advised to be sure that the terms of any restriction are clear when a donation, legacy, grant etc is received, and that documentary evidence of the terms is retained. It is much easier to sort this out at the time than for future generations to try to unravel it years later. If the PCC is unclear how to treat any receipt, it should seek advice from the diocese, an accountant, auditor or lawyer.

B2 The three types of Restricted Funds.

There are three types of Restricted Funds: (i) restricted income funds; (ii) permanent endowment restricted funds; (iii) expendable endowment restricted funds.

i) **Restricted income funds** are funds given for a specific purpose that must be spent on those purposes within a reasonable timescale. The duration of a 'reasonable' timescale will vary, depending on the nature of the funds, and it is up to the PCC to decide what 'reasonable' means in each context. The Hymnbook Restricted Fund mentioned earlier would probably be a restricted income fund.

ii) **Permanent endowment restricted funds** are created when a sum of money is received from a donor who specifies that it must not be spent as if it were income. Usually the donor will instruct that the sum of money (the 'capital' or the 'permanent endowment') must be invested and the income generated must be spent on certain specified purposes.

For example, the PCC may receive a bequest of £5,000 where the will reads: 'I give to the PCC of St Emilion's church, Barchester, the sum of £5,000 to be invested by the PCC and I direct the PCC to use the income generated by the endowment to provide flowers in the church at major festivals.' The PCC would need to create a Flowers Permanent Endowment Restricted Fund to account for the gift, ensure that the sum is invested and not spent, and ensure that the income is used in accordance with the donor's wishes.

There is another type of permanent endowment fund known as 'functional permanent endowment,' which refers to tangible assets such as a piece of land, work of art, chalice etc where the donor requires them to be kept as tangible assets (as opposed to being sold for cash) and used for a specific purpose. For example, a building may be bequeathed to the PCC for the purpose of running a Community Centre in it. The governing document (eg the will) may specify what should happen if the building is sold; if it does not specify and the building is to be sold, a scheme will be required (see Section D.6). Permanent endowment or land is likely to be vested in the DBF and so its consent will be needed before any disposal too.

→ TIP: Where a PCC wishes to sell functional permanent endowment, it should seek advice from the diocese, legal advice or contact the Charity Commission to check that it can do so and that it can apply the proceeds in the way it proposes.

iii) **Expendable endowment restricted funds** are sums of money which *may* be spent in their entirety on the specified purposes (unlike permanent endowment) but do not *have* to be spent on those purposes within a reasonable period (unlike income funds). For example, the PCC may receive a legacy reading: 'I give to the PCC of St Emilion's church, Barchester, the sum of £50,000 upon trust to spend the income, and if it sees fit the capital, on repairs to the church organ.' The PCC will need to create an Organ Repairs Expendable Endowment Restricted Fund for the bequest. It may choose to use the income from the fund for tuning the organ regularly and attending to minor repairs as necessary, but the PCC may also decide to spend some or all of the endowment if the organ requires major rebuilding works (remembering of course that the income flow will be reduced if endowment is spent). Expendable endowment restricted funds are therefore a very useful 'middle way' since they offer the PCC the most flexibility.

Grants are usually restricted income funds and many grant-makers will give a deadline within which the PCC must draw down and spend the grant. With legacies, however, whilst permanent endowments should be clearly identifiable as such, it is not always clear from a will whether a donor intended a gift to be treated as income or as expendable endowment. If, for example, the PCC receives a particularly large legacy which does not specify whether it is to be treated as income or endowment, it may assume that the gift was intended as expendable endowment and may keep it as such. This gives it the flexibility to spend only the income (on the restricted purposes specified in the will) until such time as it feels it would be appropriate to spend some or all of the capital. If there is nothing in the will to indicate that the gift should not be spent in its entirety, the PCC is free to spend it.

→ TIP: As ever, if the PCC is in doubt it should seek proper advice from the diocese, a lawyer, auditor, accountant, other appropriate professional or from the Charity Commission.

C Good Stewardship of Restricted Funds

C1. What should the PCC be doing?

As stewards of restricted funds, PCCs should:

a) Ensure that restricted income funds *are* spent and that the endowments of permanent endowment restricted funds are not spent, only the interest or income;
b) Ensure that funds are only spent in accordance with their terms/restrictions;
c) Seek to maximise the impact made by spending the funds;
d) Ensure that any management provisions contained within a restricted fund's trust deed or other governing document are observed;
e) Account for restricted funds properly in the PCC Accounts;
f) Keep the governing documents and other important paperwork of all restricted funds.

Item a) may sound obvious, but PCCs may well have restricted income funds that sit in their accounts year on year and are never spent. That could amount to burying talents in the ground and is not good stewardship.

Below we set out four broad reasons that a PCC may not have been using its restricted funds. We also give practical steps for addressing the first three circumstances. Practical steps for addressing the fourth circumstance, being more substantial, are covered in Section D.

C2. Nobody is quite sure exactly what the restricted fund is for.

If nobody is sure of the exact purposes of a particular restricted fund, it probably means that the original documentation has been lost. Many parishes will have restricted funds whose names – eg the John Smith Memorial Fund – give no clue to their purpose.

→ TIP: It is worth naming restricted funds after the purpose as well as the donor; the John Smith Organ Repairs Memorial Fund, for example.

► What should the PCC do?

The DBF, Diocesan Trusts Officer or Diocesan Registrar may have records. If the fund is a registered charity, the Charity Commission may have records too. If the fund is the result of a bequest, it may be possible to obtain a copy of the original will through a local solicitor, the court at which probate was granted or through local or national archives (see www.nationalarchives.gov.uk for more information). If the fund is a result of a grant, the charitable trust that gave the grant may have a record of the purposes for which it was given. If, after making due efforts (and the amount of effort may be proportionate to the amount of money in question), no evidence of the restriction can be found, but the PCC still believes that the fund was given for specified purposes (even if it no longer knows what those purposes are) then one of the procedures set out in Section D, *Changing the purposes of a Restricted Fund (see Section D.3 below)*, should be followed. (The procedure in Section D.3 requires the PCC to identify new purposes 'similar in character' to the old purposes. Lack of information about the purposes of a fund may mean that it is not possible to identify purposes similar in character to those that are to be replaced; but the requirement that new purposes should be of such a character is only imposed 'so far as is reasonably practicable'.) If, after carrying out research the PCC believes that the fund was not in fact given for specified purposes then the money should be treated as part of the PCC's unrestricted funds. The PCC must keep a record of its searches so that it can prove to auditors, the Charity Commission and others as required that it has attempted, albeit unsuccessfully, to find the original documentation. As ever, if the PCC is in doubt it should seek proper advice from the diocese, a lawyer, auditor, accountant, other appropriate professional or from the Charity Commission.

C3 A reason to spend the restricted funds seems not to have arisen yet.

A restricted fund may sit in the bank for some time before the PCC gets round to using it. This is fine if the PCC has plans to use it at a specified future time, but should not occur by default.

► What should the PCC do?

If the PCC has no definite plans to spend a restricted income fund, it should either make plans to do so, or consider whether any of the provisions in Section D can be used to make use of the fund. If neither of those options is possible then the PCC must apply to the Charity Commission for a scheme. The PCC may use some discretion as to timescale; if for example, Miss Munificent gave a donation a few years ago to take the Sunday School on an outing to Skegness, every effort should be made to make the trip in accordance with the donor's wishes,. If, on the other hand, a legacy was received towards the restoration of the church tower and the tower is still in good repair, it is permissible to retain the funds until such time as they are needed.

C.4 Keeping restricted funds for a rainy day.

Keeping restricted funds for a rainy day is a breach of the PCC's responsibilities as stewards of the funds. The PCC has a duty to ensure that the restricted resources it controls are *spent* in furtherance of the specific purpose for which they were given.

There are exceptions; as has already been explained, permanent endowment funds must not be spent, but the interest upon them must be spent as instructed in the governing document. There may be occasions where the interest is allowed to accumulate for a specific purpose or where it is considered better to delay the project to which the money is restricted for a year or two. Alternatively, the PCC may be in the process of seeking Charity Commission advice as described in Section D. These sorts of situations are all perfectly acceptable; what matters is that the PCC has taken a conscious, justifiable decision (which may need to be referred to in the notes to the Accounts). However, the funds should not be allowed to accumulate as the default option.

It should be noted that generally reserves and reserves policies relate to unrestricted funds and do not apply to most restricted funds. However, whilst it is prudent to hold some unrestricted reserves for anticipated and unforeseen needs, the proverbial rainy day will not be sufficient justification here either. See our guidance on managing reserves at
www.parishresources.org.uk/pccs/managing-reserves/

►What should the PCC do?

Legally, this is the simplest circumstance to address; the PCC must spend its available restricted income funds (unless it has taken a justifiable decision to delay expenditure) in accordance with the governing document and within a reasonable timescale. As already mentioned, the duration of a 'reasonable' timescale will vary, depending on the nature of the funds, and it is up to the PCC to decide what 'reasonable' means in each context. Culturally, however, this can be one of the hardest to address, especially if some members of the PCC have something of a hoarding instinct. The PCC should view these restricted funds as an opportunity to expand or further their mission, and seek to spend them joyfully accordingly.

C5 It is not possible to spend a restricted fund on the purposes for which it was given.

In some cases it may not be possible to spend a restricted fund. For example, perhaps a coffee morning was held to raise money to send a member of the congregation to a specific country for a specific project, but a civil war broke out in that country and so the project was unable to go ahead. Alternatively, there may be permanent endowment fund whose interest is to be used towards the upkeep of the old rectory, but the rectory has since been sold, or a fund to provide bursaries to a college that has now closed. Returning to our earlier example of a bequest for buying new copies of *Harmonious Hymns,* it may be that the book is no longer in print.

►What should the PCC do?

The PCC's options under these and similar circumstances are given in Section D.

D Good Stewardship of Restricted Funds

D.1 Reviewing the PCC's Restricted Funds
D.2 Transferring a Restricted Fund to another charity
D.3 Changing the Purposes of a Restricted Fund
D.4 Changing the Administrative Powers or Procedures applying to a Restricted Fund
D.5 Spending the Permanent Endowment of a Restricted Fund
D.6 Applying for a Scheme

D1 Reviewing the PCC's Restricted Funds

The first step is for the PCC to conduct a thorough review of its restricted funds if it has not already done so. It might be helpful to use a checklist or draw up a table like this one:

Name of Restricted Fund	*Type of Restricted Fund*	*Purposes of Restricted Fund*	*Documentation Proving Restriction?*	*Plans to spend funds made?*
Hymnbook Restricted Fund	Restricted Income Fund	Buying new set of *Harmonious Hymns*	Grant Award letter from Hymn-Lovers' Trust, 20/11/2007; in Treasurer's file	New books to be bought for Easter 2009.
Janet Smith Flowers Memorial Fund	Permanent Endowment Restricted Fund	Flowers for major festivals	Will of Janet Smith, 17/02/2001; in Treasurer's file	Endowment invested with CCLA. Interest used to buy flowers for festivals
Organ Repairs Restricted Fund	Expendable Endowment Restricted Fund	Repairing organ as necessary	Will of John Smith, 05/06/2000; in Treasurer's file	Interest used for tuning. PCC agreed to use some of endowment for repairs next year if unable to raise funds through grants.
Diocese of Machakos Restricted Fund	Restricted Income Fund	Proceeds of fundraising for our mission link diocese	Proceeds of monthly coffee mornings held in aid of Machakos Diocese	Balance transferred to Diocese of Machakos annually at year end
Church Community Centre	Restricted Income Fund	To rebuild church hall as multi-purpose	a) proceeds of leaflet appeal	Project scheduled to begin in Autumn 2008, assuming all funds

Restricted Fund		community centre	b) Grant from CCF; award letter in treasurer's file c) Lord Richenough's donation; letter in treasurer's file.	raised and planning permission granted by then.
St Emilion's C of E School Restricted Fund	Permanent Endowment Restricted Fund	Income to pay School Chaplain's stipend	Will of Josiah Smith, 19/08/1872, in Treasurer's file	??? St Emilion's School was closed in 2003.

Where the purposes of a restricted fund are not known and the documentation proving them cannot be found after due searching, the guidance in Section C2 should be followed.

Where no plans have been made to spend funds, the PCC should make plans to do so where possible. See Sections C3 and C4. The PCC should also make sure that the plans are followed through!

This may leave some restricted funds, such as the St Emilion's C of E School Fund above, where the purposes are known and documentation exists, but it seems impossible to spend them. The rest of this section sets out the options available to the PCC under the Charities Act 2011 in these and other similar circumstances.

The sections below refer to a number of different forms on the Charity Commission's website. It is worth noting that when completing the section 'Charity name' on these forms, this means the name of the restricted fund rather than the name of the PCC (because each restricted fund is usually a charity in its own right). In these forms, the term 'trustees' means the members of the PCC, assuming the restricted fund is a fund under the PCC's trusteeship. You may wish to read Chapter 3 of *PCC Accountability: The Charities Act 2011 and the PCC* available from www.churchofengland.org (search for PCC Accountability) if you are unsure about whether a particular fund does come under the PCC's control.

D2 Transferring a Restricted Fund to another charity

Charity Commission Guidance Notes:
www.gov.uk/guidance/how-to-transfer-charity-assets

This provision allows the PCC to transfer a restricted fund to another charity. As has already been noted, each of a PCC's restricted funds is a charity in its own right. This provision will, therefore, be most commonly used where the PCC wishes to consolidate its restricted funds by transferring the sums in one (or more) of its restricted funds to another of its funds that exists for a similar purpose. This does not change the purposes of the restricted fund but means that it can be transferred and that funds can be rationalised. Suppose, for example, that the PCC holds 4 restricted funds, one 'for young people,' one 'for outreach to young adults,' one 'for mission to youth' and one 'for charitable work with young people.' Since these are all for broadly similar purposes, the PCC might wish to transfer the last three to the first and make just one fund. This will simplify accounting and make the sum total of funds available for youth work clearer, and so make it easier to plan and use the funds for their intended purpose. Alternatively, it may be that a new Youth Outreach Charity has been set up in the area. If the PCC feels that this new Charity could use the funds more productively for youth work than the PCC could itself (for example, the new Charity may have a Youth Centre and trained Youth Workers), the PCC might prefer to transfer all four funds to the new Charity.

Transferring simple restricted funds:
If the fund in question is not a permanent endowment fund, the PCC may be able to transfer it to another charity with similar purposes simply by donating the entire balance to the other charity (on the basis that it is being applied in furtherance of the objects of the first charity), rather than needing to follow the procedures below.

- The PCC must first be satisfied that it is in the interests of the restricted fund in question to transfer it to another charity, ie that the transfer will enable the fund to be used more effectively for its intended purpose;
- The restricted fund in question (eg the Outreach to Young Adults Restricted Income Fund) must have had gross income of less than £10,000 in the last financial year;
- There must not be any land forming part of the restricted fund;
- The receiving charity (eg the Young People's Restricted Income Fund) must be a registered charity or a charity not required to be registered (e.g. a fund held by the PCC that does not exceed the registration limit);
- The receiving charity must have charitable objects that include an object 'substantially similar' to the purpose of the restricted fund. If the restricted fund is a permanent endowment fund, all (instead of just one) of the receiving charity's objects must be 'substantially similar' to the restricted fund's purposes;
- The receiving charity should have confirmed in writing that it is willing to accept the restricted fund.

Procedure for merging restricted funds
i) The PCC must ensure that it is satisfied that the proposed transfer is in the best interests of the purposes of the restricted fund;

ii) The PCC must identify a suitable receiving charity. In most cases that will simply be another fund of which the PCC is trustee. (In other cases, which are likely to be rare but for example in the case of the new Youth Outreach Charity mentioned above, the PCC should speak or write to the trustees of that charity inviting them to accept the fund. The PCC should obtain confirmation in writing that the receiving charity is willing to accept the restricted fund. If the PCC proposes to divide the fund between two or more charities, all receiving charities must confirm their consent in writing, including their consent to the proportion each will receive.)

iii) The PCC must pass a resolution resolving to transfer the fund to the chosen charity. The resolution must be passed by a two-thirds majority of the PCC.

iv) You then need to determine whether the Charity Commission is required to approve the transfer. There is a flowchart to help you do this at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/703075/How_to_transfer_charity_assets.pdf If so, the PCC must notify the Charity Commission of the transfer using the online form at forms.charitycommission.gov.uk/charity-commission-enquiry-form/

v) The Charity Commission must respond within 60 days of receiving the resolution (although it aims to respond within 15 days). If it approves the resolution, it will give the PCC the date on which the resolution will come into effect (which will usually be 60 days after the Commission's receipt of the resolution). If it does not immediately approve the resolution, it may need further information from the PCC or direct it to display a Public Notice of the proposed transfer, or object on other grounds. Under those circumstances, the PCC must follow the Charity Commission's directions – for example, by providing additional information or displaying a Notice for a specified length of time in a specified location.

vi) Once the resolution has come into effect, the PCC can transfer the restricted fund to the receiver charity. In the case of consolidation of different funds held by the PCC, the transfer would only be a 'paper transfer', the PCC's accounts showing money going from one or more of its funds into another of its funds. The property transferred remains subject to the same restrictions on expenditure, such that a fund that was held as permanent endowment must continue to be held as permanent endowment by the receiving charity. The receiving charity must apply the property for purposes that are substantially similar to those of the transferring charity (unless that would not be a 'suitable and effective' method of applying the property, in which case the trustees of the receiving charity may then wish to follow some of the other procedures set out in section D below).

Where the transfer is away from the PCC, the receiver charity should be made aware of the purposes of the restricted fund, and any restrictions on expenditure. The PCC will probably wish to send all accounting records, bank statements etc to the receiver charity at the same time. The receiver charity must keep records for the usual 7-year period (ie bank statements from 2012 must be kept until 2019).

vii) If the fund being transferred is a registered charity, the PCC must inform the Charity Commission once the transfer has been completed, so that it can be removed from the register. The online form for doing this is at section 6.4 of the above page.

Incumbent and Churchwardens' Trusts (Vicar and Warden Trusts)

Some churches will have 'vicar and warden trusts.' These are restricted funds of which the incumbent and the churchwardens are the trustees, instead of the PCC, and often relate to maintenance of church buildings, education or relief of poverty. See pages 24 and 25 of PCC Accountability: The Charities Act 2011 and the PCC, available from www.churchofengland.org (search for PCC Accountability) for more information on these trusts.

If the trust is for activities which are in practice carried out by the PCC and if the conditions above are satisfied, this section of the Charities Act could be used by the vicar and wardens to transfer the trust from themselves to the PCC. The procedure would be exactly the same, except the vicar and wardens would pass the transferring resolution rather than the PCC, and the PCC would be the receiving charity.

If the diocese (DBF) is the custodian trustee of any of these Vicar and Warden Trusts (meaning that it holds the funds on behalf of the managing trustees), it will need to be involved in effecting the actual transfer of the funds to the receiving charity.

D3 Changing the Purposes of a Restricted Fund

(For Charity Commission Guidance Notes, search online for Charity Commission CC36)

This provision allows the PCC to change the purposes or terms of a Restricted Fund, However, the new purposes must, 'as far as is reasonably practicable, consist of or include purposes that are similar in character to those that are to be replaced.' This is because the provision is intended to make sure that a Fund can be used fully, not to change the essence of the Fund altogether. For example, suppose the PCC has a restricted fund formed by a bequest where the will reads: 'the PCC shall use the bequest to buy a new set of *Divine Ditties for the Devout* for use in St Emilion's church' but *Divine Ditties* is no longer in print. The provision could be used to change the purposes of the Fund to read 'the PCC shall use the bequest to buy a new set of hymnbooks for use in St Emilion's church' since this change would be 'similar in character' to the original purposes. More broadly, if the church has just bought itself a new set of hymnbooks and so will have no need for a new set for the foreseeable future, it could instead use this provision to change the purposes of the Fund to allow it to be used for purchasing other equipment or materials associated with worship. This would be similar in character 'so far as is reasonably practicable' to the original purposes and would mean that the PCC could then use the Fund to buy new kneelers, incense, tambourines or other items associated with worship. It will be seen that this provision does give the PCC a reasonable amount of scope to ensure that it is using its restricted funds productively. However the PCC could not use this provision to change the terms of the Fund to something completely different such as funding a mission to Myanmar.

Conditions:

- The PCC must first be satisfied that it is in the interests of the restricted fund in question to change the purposes of the fund, ie that changing the purposes will enable the funds to be used more effectively.
- The restricted fund in question must have had gross income of less than £10,000 in the last financial year.
- There must not be any 'designated land' forming part of the restricted fund (advice should be sought as to whether any land forming part of such a fund is 'designated land').
- The proposed new purposes must (so far as is reasonably practicable) be or include purposes similar in character to the original purposes.

Procedure:

i) The PCC must ensure that it is satisfied that the proposed change of purposes is in the best interests of the restricted fund;

ii) The PCC must identify suitable new purposes, remembering that they must – so far as is reasonably practicable – be 'similar in character.'

iii) The PCC must pass a resolution resolving to change the purposes. The resolution must be passed by a two-thirds majority of the PCC.

iv) The PCC must send inform the Charity Commission of the proposed changes, using the online form provided (www.gov.uk/change-your-charitys-governing-document) along with a simple statement explaining their reasons for passing the resolution.

v) The resolution will come into effect 60 days after the date on which the PCC's resolution is received by the Charity Commission UNLESS the Commission asks for further information from the PCC or directs it to display a Public Notice of the proposed transfer, or objects to the resolution. Under those circumstances, the PCC must follow the Charity Commission's directions – for example, by providing additional information or displaying a Notice for a specified length of time in a specified location.

vi) Once the resolution has come into effect (ie after 60 days or as notified by the Commission if it requires more information, Public Notice etc), the PCC can record the new purposes of the restricted fund and use it accordingly.

D4 Changing the Administrative Powers or Procedures applying to a Restricted Fund

(For Charity Commission Guidance Notes, search online for Charity Commission CC36)

This provision allows the PCC to change the administrative procedures of a restricted fund. It does not allow the PCC to change the purposes of the fund; it is intended merely to allow administrative procedures to be simplified. For example, suppose the will of Mrs Janet Smith relating to the Janet Smith Flowers Memorial Fund reads: 'I give to the PCC of St Emilion's, Barchester, the sum of £2,000 and I direct the PCC to invest this sum and use the interest to buy flowers to decorate the church for major festivals. The full PCC shall meet in order to choose the flowers by unanimous decision.' The PCC is likely to conclude that the requirement for the full PCC to choose unanimously is not conducive to the effective administration of the fund. It could therefore pass a resolution to delete that administrative requirement. It could not, however, pass a resolution under this provision to allow incense to be bought in place of flowers.

Alternatively, perhaps the PCC holds a Restricted Fund established by a long-ago legacy called 'The Clergyman's Fund for Saving the Souls of the Destitute Lower Classes,' which is to be used to assist those most in need in the parish. It will probably prefer to rename the Fund more politically correctly and could use this provision to do so. If the PCC wanted to change the purposes of the fund (ie how the money can be spent) as well as the name to something 'similar in character' but slightly less archaic (or in the Mrs Janet Smith example, substitute 'incense' for 'flowers'), that would need to be done separately under the provisions in Section 74C of the Charities Act, set out in section D3 above.

The conditions and procedure for this provision are very straightforward. The PCC must simply pass a resolution resolving to change the administrative powers or procedures as required, and the resolution takes immediate effect. The PCC must of course be satisfied that the resolution relates only to the administration of the fund and not to its essential purposes.

If the PCC is using this provision for a restricted fund that is also a registered charity it must inform the Charity Commission of the change, using the online form provided in section 3.3 of the CC36 notes (link at the top of this section).

D5 Spending the Permanent Endowment of a Restricted Fund

Charity Commission Guidance Notes at
https://www.gov.uk/guidance/permanent-endowment-rules-for-charities

This provision allows the PCC to spend a small permanent endowment restricted fund IF the PCC is satisfied that the purposes of the fund can be better fulfilled by spending the endowment as well as the income. Suppose, for example, the PCC has a permanent endowment restricted fund formed by a bequest received in 1850, and the interest is to be used for regular maintenance works to the church bells. The interest generated by the bequest may no longer be sufficient to pay for maintenance works at today's prices, and so the PCC may find that the permanent endowment restriction hinders the effective use of the fund. It could therefore resolve to spend the endowment if it meets the conditions below. This provision does not enable the PCC to change the purposes on which the income or endowment may be spent.

Conditions:

- The fund must have a market value of less than £10,000 and a gross income in the last financial year of less than £1,000 (unless it was not given by one particular individual, by one particular institution or by a group of individuals/institutions acting together for a common purpose. If it was not given by any of these (for example, if it was the result of a general collection in church or in the street), it will still qualify even if it is over the £10,000 limit).
- The PCC must be satisfied that it is in the interests of the restricted fund in question to spend the permanent endowment.

Procedure:

i) The PCC must ensure that it is satisfied that the proposed expenditure of permanent endowment is in the best interests of the restricted fund, ie that the fund can be used more effectively if the endowment can be spent as well as the income;

ii) The PCC must pass a resolution resolving that the permanent endowment of the fund in question may be spent. They should also minute the reasons for doing this -

iii) The resolution takes immediate effect so the PCC may then spend the endowment in accordance with the purposes of the Fund.

What if the endowment is larger?

What happens if the PCC has a permanent endowment fund given by an individual / institution with a market value above £10,000, so that the procedure set out above is not valid, but the PCC believes that the purposes of the Fund could be more effectively fulfilled if the endowment were available to be spent as well as the income? The PCC may still pass a resolution, but the resolution does NOT come into effect until the Charity Commission has consented to it. This is because more money is at stake and the Commission will want to be satisfied that the resolution is appropriate. The procedure would therefore be:

i) The PCC must ensure that it is satisfied that the proposed expenditure of permanent endowment is in the best interests of the restricted fund, ie that the fund can be used more effectively if the endowment can be spent as well as the income;

ii) The PCC must pass a resolution resolving that the permanent endowment of the fund in question may be spent.

iii) The PCC must send a copy of the resolution to the Charity Commission along with a simple statement of their reasons for passing it using the online form at the bottom of: www.gov.uk/guidance/permanent-endowment-rules-for-charities

iv) The Commission will notify the PCC of its consent or otherwise within three months from the date of the Commission receiving the resolution. If the Commission does not immediately consent, it may require the PCC to provide further information or to display a Public Notice of its proposal to spend permanent endowment (this will typically be to allow potential beneficiaries to object to the proposals). In those circumstances, the PCC must provide information and comply with the Commission's directions as required, and may not spend the endowment unless and until the Commission consents.

What if the permanent endowment restricted fund is a functional fund, ie it consists of land, buildings or other tangible assets other than financial investments?

The possibilities here are very much context-specific and so the PCC is advised to read the Charity Commission's Guidance 'CC28: Disposing of Charity Land,' and to seek professional advice as necessary. If a functional permanent endowment such as a work of art or chalice was expressly given to the PCC 'on trust in perpetuity,' it is unlikely to be able to dispose of it under the above provisions.

D6 Applying for a Scheme

If the PCC has restricted funds which are too large to come under the provisions in D.2 – D.5 above or for some other reason cannot be handled under those provisions, it may wish to apply to the Charity Commission for a Scheme. A Scheme is a legal document that, once executed by the Charity Commission, has the power to change the terms or other aspects of a restricted fund. The circumstances under which PCCs might want to apply for a Scheme vary and the process is more protracted, and so it is not covered here.

Guidance on the whys, wherefores and procedures are available from the Charity Commission's website. You should start with Section 4 of the Commission's publication CC36 – search online for Charity Commission CC36.

E Useful Links

PCC Accountabilty can be purchased from Church House Bookshop or downloaded from www.churchofengland.org/more/policy-and-thinking/pcc-accountability-guide .

A range of guidance on parish finance and stewardship is available at www.parishresources.org.uk.

The Charity Commission's website www.gov.uk/government/organisations/charity-commission has guidance on a range of relevant topics.