

GUIDANCE TO PAROCHIAL CHURCH COUNCILS ON THE LEGAL POSITION OF MEMBERS AND THE IMPACT OF COVID 19

Many Parochial Church Councils [PCCs] are facing financial difficulties with the closure of churches for public worship. Income receipts have dropped significantly whilst regular outgoings remain for the most part unchanged.

What can PCCs do at the present time to manage their affairs and act responsibly?

First and foremost Covid-19 does not remove the obligation placed on the PCC to function and carry out its affairs as necessary, with PCC members reaching decisions in accordance with their duties as charity trustees.

This guidance briefly outlines the obligations placed on a PCC as a charity and PCC members as charity trustees and highlights good practice decision making. It then provides advice which is Covid-19 related and which PCCs may find helpful to inform their decision making during the pandemic.

PCC members are charity trustees

By way of background and to refresh understanding all PCCs are non-exempt charities. Even if PCCs are 'excepted' from charity registration, by not meeting the threshold currently set by the Charity Commission (income above £100,000 per annum), they still have to comply with charity law.

Therefore all PCC members are charity trustees and must accept ultimate responsibility for directing the affairs of their PCC, ensuring that it is solvent and well-run, and delivering its charitable outcomes.

They have to act reasonably responsibly and honestly and at all times ensure that the actions taken and decisions made are in the PCCs best interests for the advancement of the PCCs charitable purposes of "***promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical***", as set out in the Parochial Church Council (Powers) Measure 1957

The Charity Commission provide helpful guidance on the role and duties of a charity trustee. <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do>.

Other guidance is signposted later in the Additional Sources section

Good practice decision making

Generally if PCCs

- act within their powers – that is:
 - only make decisions which advance, or support activities that advance, the PCCs charitable purposes for the public benefit
 - use the correct procedures – such as set out
 - under the general law
 - in the Parochial Church Council (Powers) Measure 1957 and Church Representation Rules
- act in good faith and only in the interests of the PCC
- adequately inform themselves
- take into account all relevant factors

- disregard any irrelevant factors
- make decisions that are within the range of decisions that a reasonable trustee body would make
- avoid conflicts of interest

the decisions made by the PCC should comply with good practice and withstand scrutiny.

Personal liability of PCC members

A PCC is a statutory corporation with perpetual succession and continues in existence until legally dissolved. This means that a PCC is recognised as having its own legal status and any financial liabilities incurred should be met from the resources of the PCC not those of its individual members. Equally breaches of contract or duty of care are enforceable against the PCC and not against its members.

However members could be held personally liable in certain circumstances:

1. A personal guarantee
2. A failure to act in accordance with a fiduciary duty of care owed to the PCC and its charitable objects, including:
 - a. the duty to protect the assets of the PCC
 - b. the duty to show a reasonable degree of care and skill in the administration of the PCC
 - c. the duty not to receive a financial benefit, whether directly or indirectly, from the PCC
 - d. the duty not to take advantage of knowledge, information or opportunities acquired by virtue of his or her position as trustee; and
 - e. the duty not to put him- or herself in a position where his or her duty to the PCC and his or her personal interests conflict

Members who act in breach of their duties can be held responsible for consequences that flow from such a breach and for any loss the PCC incurs as a result.

If members act in good faith, with reasonable care and skill, avoid personal benefit and do not apply PCC funds for unauthorised purposes, a breach of fiduciary duty should not apply.

Recording PCC decisions

The importance of keeping accurate records of PCC meetings and the decisions taken must always be observed. If a PCC decision is challenged the minutes of the PCC meetings are relied upon as evidence of the basis upon which that decision was reached

Covid-19

The national Church of England website <https://www.churchofengland.org/more/media-centre/coronavirus-covid-19-guidance-churches#na> provides a range of very helpful guidance which is regularly updated and includes FAQs and advice on a broad range of issues including guidance and documents on safeguarding and church buildings and holding PCC meetings during the period of closure. For ease of reference the guidance on PCC meetings and Rule M29 is set out in full in the Additional Sources section

PCCs should:

1. review all the content on the national Church of England website for Covid-19 regularly
2. record when they have done so; and

3. ensure that they have used the same to inform their decisions as necessary.

Please note that responsibility for the decision is that of the PCC and not the national Church and PCCs should work their way through any decision applying good practice as referred to earlier.

Review existing obligations

PCCs should assess their financial outgoings and also make sure that they have copies of any contracts they have entered into, such as contracts of employment, for the hire of rental equipment or provision of services, and review their terms and conditions.

Where there is some concern that the PCC may not be able to continue to meet the contractual obligations under these contracts then the PCC should assess the risk of liability by reference to the express contractual terms and if appropriate seek legal advice.

Seeking help and advice

Where PCCs are unable to meet their obligations such as the payment of insurance or of parish share they should not let matters lie in the hope that the situation will resolve itself.

Action should be taken to formulate a financial recovery plan and to alert Manchester Diocesan Board of Finance to the current difficulty by contacting David Weldon, Director of Finance, as soon as this becomes evident – finance@manchester.anglican.org

Additional Sources

PCC Meetings and Rule M29

“Parochial church councils can, if they wish, meet using virtual means such as Skype or Zoom which enable the members to see and hear each other.

However, care must be taken so that members of a PCC who are unable to participate in a meeting in that way are not excluded from the PCC’s deliberations and decision making. The Chair should take steps to ensure that they are able to participate so far as possible, including where necessary by means of the procedure for conducting business by correspondence set out in rule M29 of the Church Representation Rules.

Following a virtual meeting, decisions such as the authorising of expenditure, entering into contracts or those that require a formal resolution of the PCC should be put in written form and circulated for formal approval under the correspondence procedure in rule M29 (which under Rule 76 can be conducted by email).”

M29(1) The chair of the PCC may, if he or she considers that any business can properly be conducted by correspondence, instruct the secretary of the PCC to send proposals requiring the approval of members to –

(a) each member of the PCC, and

(b) any person entitled to attend the meetings of the PCC under Rule M24(2).

(2) Unless objection to the proposals is received from members in such numbers and within such period from the date of their being sent as the chair of the PCC may specify, the proposals are to be treated at the end of that period as approved by the PCC as if they had been approved at a duly convened meeting.

(3) Where proposals are circulated under this Rule for approval, the secretary must report to the next meeting of the PCC –

(a) whether the proposals were approved, and

(b) if objections to the proposals were received, the number of members from whom they were received.

You may find the following additional sources helpful:

- PCC Accountability – The Charities Act 2011 and the PCC 4th Edition. This book is available in hard copy from Church House publishing or online on the Church of England website. This contains guidance on accounting and reporting for parishes.
- The Church of England website www.churchofengland.org contains copies of the Parochial Church Council Powers Measure (1956) as amended, and the Church Representation Rules, which the Charity Commission has approved as the governing documents of PCCs.
- The Parish Resources site www.parishresources.org.uk supports good stewardship by parishes. It provides guidance for treasurers, independent examiners and also resources for PCC members in their role as trustees.

For more detailed help on specific questions, you should contact the Diocesan Registry by email to jm@mandioreg.co.uk.