

**GENERAL SYNOD**  
**LEGAL ADVISORY COMMISSION**  
**PARISHES WITH NO CHURCHWARDENS**  
**OR PAROCHIAL CHURCH COUNCILS**

1. For centuries, churchwardens have had an important place in the workings of the Church of England. Until the development of elected local councils at town and parish levels, the churchwardens and the vestry of the parish had responsibilities in local government as well as in respect of the affairs of the church.

2. Within the church, the churchwardens had responsibilities in respect of the financial affairs of the church and the maintenance of the church and churchyard. The Canons of 1571 set out their duties in these matters (see Canon 5, *Aeditui ecclesiarum et alii selecti viri* (Churchwardens and sidesmen)) but also give to the churchwardens what would now be described as a pastoral leadership role. They were, in the case of wickedness of life on the part of parishioners, to “warn them brotherly and friendly to amend”; and they were also to “search diligently and inquire if any of the parishioners either come not at all to church, or come later or slower at the times appointed by the laws”.

3. Many of the powers, duties and liabilities of the churchwardens and of the vestry in respect of church matters were transferred to parochial church councils on 1 July 1921 (see now the Parochial Church Councils (Powers) Measure 1956, s.4), but churchwardens continue to play an important part in the life of a parish. They are “to be foremost in representing the laity and in co-operating with the incumbent” (Canon E1, para.4) and in practice meet frequently with the incumbent to deal with parish matters and play a leading role in the church community and in the work of the parochial church council. Where there is no incumbent or where the incumbent, having responsibility for several parishes, lives elsewhere, the churchwardens are seen even more clearly as the leaders of the local church.

4. Parochial church councils have a key role in the governance of parishes. It is the duty of the minister and the council to consult together on matters of general concern and importance to the parish, and the council is to co-operate with the minister in promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical (Parochial Church Councils (Powers) Measure 1956, s.2(1),(2)(a)).

5. Churchwardens and parochial church councils are thus key elements in the life of the parish but circumstances can arise in which the whole or a major part of the normal structure of leadership and governance in a parish ceases to exist. In an extreme case of acute pastoral breakdown or where a parish for some reason ceases to be viable, there may be no church electoral roll, no churchwardens, and no elected members of the parochial church council. In less extreme circumstances, one or more of these normal elements of parish life may be missing. The Commission was asked to advise on the practical issues which then arise.

**Action by the bishop**

6. Rule 53(5) of the Church Representation Rules provides:

In the case of an omission in any parish to prepare or maintain a roll or form or maintain a council or to hold the annual meeting, the rural dean upon such omission being brought to his notice shall ascertain and report to the bishop the cause thereof.

7. It is clearly intended that the bishop will take whatever remedial action is open to him, and the provision just quoted forms part of a rule which sets out the powers the bishop may use, whether he learns of the situation from the rural dean or in some other way. The

usefulness of the powers depends on there being, or being again, people willing to operate the system.

8. Rule 53 of the Rules provides in relevant part:

- (1) In the carrying out of these rules in any diocese the bishop of such diocese shall have power:—
  - (a) to make provision for any matter not herein provided for;
  - (b) to appoint a person to do any act in respect of which there has been any neglect or default on the part of any person or body charged with any duty under these rules;
  - (c) so far as may be necessary for the purpose of giving effect to the intention of these rules, to extend or alter the time for holding any meeting or election or to modify the procedure laid down by these rules in connection therewith [with certain exceptions not here material]
  - (d) Subject to paragraph (1)(c) of this rule, in any case in which any difficulties arise, to give any directions which he may consider expedient for the purpose of removing the difficulties.
- (2) The powers of the bishop under this rule shall not enable him:—
  - (a) to validate anything that was invalid at the time when it was done;
  - (b) to give any direction that is contrary to any resolution of the General Synod.

9. Under these powers, the bishop could order the revision of the parish's church electoral roll and appoint a person to carry out the duties of the electoral roll officer; could fix a date for an annual parochial church meeting; and could give directions to resolve any issues as to how many persons were to be elected. It would seem that the bishop could not deprive the incumbent of his or her right to preside at any meeting (this not being an Extraordinary Meeting within rule 23). The powers under rule 53 do not extend to the election of churchwardens, but corresponding provision is made in section 10 of the Churchwardens Measure 2001.

10. These powers are of no avail if there is nobody able and willing to operate the system. In such a case, what difficulties arise in the absence of churchwardens and/or a PCC?

#### **Absence of one or more churchwardens**

11. There are several ways in which it can come about that parishes are without churchwardens. A meeting of parishioners to elect churchwardens must be held each year (Churchwardens Measure 2001, s.4), though in certain circumstances one churchwarden may be appointed by the minister (Churchwardens Measure 2001, s.4(5)). Since no one can be forced to act as churchwarden, nor to stand for election, nor to be admitted after election, nor to remain in office longer than the rules as to resignation require, it follows that from time to time there may be either no-one elected, no-one admitted or no-one remaining in office as churchwarden of a specific parish. A vacancy as to one of the two usual posts of warden in the parish simply leaves one to do the work of two, and to bear all the legal responsibilities and duties alone, but there is no general rule applicable to the situation where there is none in post at all. In some parishes, local custom has concentrated in the hands of churchwardens tasks which could very properly be undertaken by other members of the congregation. This may both impose over-heavy demands on churchwardens and also discourage others from agreeing to serve as churchwardens.

12. Since the PCC and its officers have the general responsibilities for the management, financing and operation of the church in pursuance of its mission, it may be thought that in the absence of any holders of the post it is part of the role of the Incumbent and PCC to make working arrangements. The incumbent, having the cure of souls for the parish, should be able to rely on the support of the PCC in this. Those arrangements will mean (a) trying to find

persons willing to take the practical burdens of the role until it proves possible to elect a churchwarden (either at the next annual meeting or at special meeting called for the purpose; casual vacancy caused by the death or resignation of a churchwarden appointed by the minister may be filled by the minister (Churchwardens Measure 2001, s.4(8))), and (b) ensuring that the essential practical tasks of the churchwardens are carried out by someone until at least one of the posts can be filled.

13. There is no legal principle or provision which requires that this be an additional burden of any specific officer or of the PCC as a whole, and therefore the various responsibilities can be addressed as being susceptible of different and individual means of fulfilment, according to the available resources both personal and financial. In some parishes, there may be deputy churchwardens in post. This may occur where there are two or more churches or places of worship in a parish, the offices being created under either a scheme establishing district church councils (Church Representation Rules, r.18) or a pastoral scheme establishing a team ministry for the parish (Mission and Pastoral Measure 2011, s.34 and Sch.3 para.4). In some parishes deputy or assistant churchwardens are elected or appointed informally to assist the churchwardens in particular ways. The absence of churchwardens does not require any of these deputy churchwardens to take on the legal duties of churchwarden nor does it enlarge the powers and duties of those deputies holding office under a scheme.

*A. Duties as officers of the Ordinary.*

14. Canon E1, para.4, which has already been quoted in part, provides:

The churchwardens when admitted are officers of the bishop. They shall discharge such duties as are by law and custom assigned to them; they shall be foremost in representing the laity and in co-operating with the incumbent; they shall use their best endeavours by example and precept to encourage the parishioners in the practice of true religion and to promote unity and peace among them. They shall also maintain order and decency in the church and churchyard, especially during the time of divine service.

15. The meaning of the provision that on admission churchwardens are “officers of the bishop” is not self-evident. It has long been held that the bishop or the archdeacon must admit to office a duly elected churchwarden and has no discretion in the matter as the churchwarden is “substantially a temporal officer” (see *R v Rice* (1697) 5 Mod Rep 325; *R v Sympson* (1724) 2 Ld Raym 1379; *Phillips v Fish* (1726) 8 Mod 382) but in *R v Bishop of Sarum* [1916] 1 KB 466 Ridley J, giving the judgment of the Divisional Court, said:

“It would not be correct to conclude from these authorities that there are no duties in the performance of which a churchwarden acts for the Ordinary and subject to his control. Thus, in *Fuller v Lane* (1825) 2 Add 419 at p.425) Sir John Nicholl in the Arches Court of Canterbury, in dealing with pews in a parish church, said: “The distribution of seats rests with the churchwardens, as the officers, and subject to the control, of the Ordinary.” ... There may be other such duties in the performance of which the churchwarden is not independent of the Ordinary, but we do not think that such a relationship in respect of one particular duty or of several particular duties can affect the general rule laid down in the authorities.”

16. Canon F7, para.2, reflects the law as stated in *Fuller v Lane* and declares that in allocating seats among the parishioners the churchwardens act for this purpose “as the officers of the Ordinary and subject to his directions”. There is no similar declaration in respect of the other duties of churchwardens.

17. It is clear that part of the “duties as are by law and custom assigned to” churchwardens and part of their role as officers of the Ordinary is the duty to ensure that the Bishop is made aware of matters of which he in his episcopal role might reasonably be

expected to know so that he may address them as bishop. Under this heading the churchwardens are expected to take part in the answering of the articles of enquiry (which are specifically addressed to the Minister and churchwardens) at visitations and to be parties in any faculty matters. More directly they must see that any duties to the bishop are performed, and not participate in any action which is contrary to their office vis-à-vis the bishop. They have a general duty to report matters of factious impact on the parish, such as serious breakdowns in pastoral relationships.

18. One task that may fall to be undertaken during the absence of a churchwarden is the answering of articles of enquiry. Rather than expect the minister to deal with this alone (in the absence of churchwardens he or she will already be even busier), it is desirable that the answers be produced by someone else willing and able to bring the information together. That person would not be authorised, however, to present those answers to the Archdeacon, so the responsibility for this would remain with the Incumbent. Outside the specific context of the visitation process, the parochial church council has power to make representations to the bishop with regard to any matter affecting the welfare of the church in the parish (Parochial Church Councils (Powers) Measure 1956, s.7(v)). The archdeacon will also have the task of ensuring that the bishop is adequately informed in matters of concern where the incumbent is not able or willing to ensure this is done.

19. Canon F13, para 2 makes it the responsibility of the minister and churchwardens to ensure that faculties are obtained when needed. The minister and churchwardens of the parish concerned are the usual petitioners in any faculty application (Faculty Jurisdiction Rules 2013, r.4.2(b)), but others having a sufficient interest in the matters may petition (Faculty Jurisdiction Rules 2013, r.4.2(d)). In the absence of churchwardens it is perfectly proper for other persons to be the named petitioners; parishes are not prevented from applying for faculties merely because they have no churchwardens or indeed are in vacancy. The usual form used in faculty matters (Form 3A in Sch.3 to the Faculty Jurisdiction Rules) is for “proceedings started pursuant to resolution of parochial church council”; the resolution will validate the representative character of the persons petitioning on their behalf, including the case in which there are no churchwardens.

#### *B Duties relating to the parish*

20. Canon E1, para.5 provides:

In the churchwardens is vested the property in the plate, ornaments, and other movable goods of the church, and they shall keep an inventory thereof which they shall revise from time to time as occasion may require. On going out of office they shall duly deliver to their successors any goods of the church remaining in their hands together with the said inventory, which shall be checked by their successors.

21. Although in one early case (*R v Rice* (1697) 1 Ld Raym 138) churchwardens were said to be a corporation, it is now clear that they are a “quasi-corporation” for certain purposes, which purposes include the holding of property (*Withnell v Gartham* (1795) 6 Term Rep 388, 101 ER 610; *Fell v Charity Lands Official Trustee* [1898] 2 Ch 44, CA; *Kensit v Rector and Churchwardens of St Ethelburga, Bishopsgate Within* [1900] P 80). Although there is no direct authority, this implies that the property remains vested in the body of churchwardens, even if none is in office, by analogy with the position of a corporation with no current members. However, the parochial church council is responsible for the care maintenance preservation and insurance of the goods and ornaments of the church as well as of its fabric (Parochial Church Councils (Powers) Measure 1956, s.4(1)(ii)(b)). Canon F14, Of the provision of things appertaining to churches, provides further:

The things appertaining to churches and chapels, and the obligations relating thereto, and to the care and repair of churches, chapels, and churchyards referred to in the foregoing Canons shall, so far as the law may from time to time require, be provided and performed in the case of parochial churches and chapels by and at the charge of the parochial church council.

On the appointment of any new churchwardens they will acquire the property in the chattel contents of the church immediately they are admitted.

22. Many small items needed by a church (stationery, candles, drawing paper for the use of children, organ or choir music) are acquired by whoever has taken responsibility for the relevant activity with the express or implied authority of the PCC and a churchwarden is not necessarily involved. The care of the items in question is clearly a matter for the PCC, so that the absence of churchwardens will create no lacuna in that aspect of the responsibility for them.

23. Any disposal of chattels must be authorised by faculty and what has been said above about who may petition is relevant here. The petitioners in such cases need not include the churchwardens, even though title is vested in them. A sale or other disposal can be by any person whom the Court identifies for the purpose (or in special circumstances by an officer of the Court itself).

24. The more significant responsibilities are those under section 5 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, first to compile and maintain terrier and inventory and log book in relation to the church and its contents (as to which see also Canon F17) , and then to make the annual inspection and reports to the PCC. Churchwardens are required to carry out these duties “in consultation with the minister” but the primary responsibility is that of the churchwardens.

25. It is plainly very desirable in order to safeguard the church’s property that the records are up to date and that an annual process of inspection and updating is carried out. In the absence of churchwardens, the PCC should consider finding a person willing to carry out these specific functions without being a churchwarden. Strictly there would be no default by the PCC or of a person so nominated if the report were not completed, as long as some effort were made to find a means of producing the report, or the records on which it might be based. A person nominated in this way by the PCC could properly sign the statement required by s. 5(5) of the 1991 Measure verifying the contents of the terrier inventory and log book but should in so doing make it clear that he or she was acting on the authority of the PCC and not as churchwarden. The same applies to the duty under Canon E1, para 5 for the checking of the inventory each year.

26. The churchwardens’ canonical duty under Canon E1, para. 4 and Canon F15, para 2 of maintaining order in the church and the churchyard especially during the time of divine service is one they share with sidesmen (Canon E2, para 3). It is supported by section 2 of the Ecclesiastical Courts Jurisdiction Act 1860 which makes it an offence to be guilty of riotous, violent, or indecent behaviour in any parish or district church or chapel of the Church of England whether during the celebration of divine service or at any other time, or in any churchyard or burial ground. Any person may take steps to report any such offence but only the churchwardens will have the statutory power of arrest under s.3 of the Act. In practice, the absence of a churchwarden may not demand special provision for this role.

27. The same applies to seating of congregations, which as has already been noted is a responsibility of the churchwardens as officers of the Ordinary (Canon F7, para. 2). Most of this work is done by sidesmen, and it rarely needs the authority of the churchwarden to achieve any required solution.

28. Processing of collections is a serious duty, and is generally regarded as something for which the churchwardens have a responsibility as part of their care for the goods of the church. It is often carried out by other members of the congregation, and particularly by PCC treasurers or sidesmen. The function in this case is what matters, and the real need is the identification of someone – even in the last resort the minister – to ensure the duty is fulfilled in any given case.

29. It is the duty of churchwardens “with the advice and direction of the minister” to provide sufficient bread and wine for the Holy Communion. This duty again may in practice also be discharged by some other member of the congregation acting as a sacristan, and the minister will naturally be careful to ensure that proper provision is made even if there is no churchwarden.

30. Generally, the PCC’s responsibility for the well-being of the parish in general should lead it to find people to carry out the duties as needed. Sometimes the carrying out of the functions has already been shared by the churchwardens with other members of the Council or even the congregation as a whole.

#### *C. Membership of the PCC*

31. As members of the PCC the churchwardens bear no greater legal responsibility than other PCC members, though they commonly take a leading role in its meetings. In the absence of churchwardens, others will need to take their places on the Standing Committee, and there will be extra work for the minister, so the PCC should be motivated to identify people to assist in responding to enquiries (such as the articles of enquiry at visitations), and in carrying forward through the PCC any amendment of whatever failings are discovered.

#### *D. Trusteeship of local or parochial trusts*

32. The position of churchwardens as trustees of specific trusts is not ecclesiastical law but trust law. There are general principles which give the Courts power to fill gaps in the legal responsibilities and a more general power still which enables the court to give directions as to how specific issues may be resolved. Proper legal advice should be taken for these purposes.

#### **Absence of a parochial church council**

33. Although it is provided in rule 53(3) of the Church Representation Rules that “no proceedings of any body constituted under these rules shall be invalidated by any vacancy in the membership of that body or by any defect in the qualification, election or appointment of any members thereof”, and an identical provision applying to PCCs is found in Appendix II to the Rules, para.17, those provisions are not adequate to deal with the case in which there is no council at all or a council consisting only of the minister, there being no elected or ex officio members.

34. In the latter case, the minister might seek to argue that he or she can hold and constitute a meeting of the PCC and take decisions in its name. In the context of company and insolvency law, it is well established that one person cannot be a “meeting”, except in the exceptional case in which a meeting of a class (e.g. of preference shareholders) is required and there is only one person in that class (see the examination of the issue, with full examination of the authorities, in *Re Altitude Scaffolding Ltd* [2006] EWHC 1401 (Ch)). The Church Representation Rules contain nothing to justify an exception to the normal meaning of “meeting” in the parish context.

35. Section 3 of the Parochial Church Councils (Powers) Measure 1956 provides:

“Every council shall be a body corporate by the name of the parochial church council of the parish for which it is appointed and shall have perpetual succession.”

The position is that the council as a corporate body continues to exist, even if it has no members.

36. This situation is much more familiar in the case of the corporation sole of the incumbent, and there are numerous statutory provisions dealing with property vested in a benefice which is vacant as to the serving of notices and the taking of action on behalf of the vacant benefice. There seem to be no equivalent provisions in respect of the corporation aggregate which is the parochial church council, no doubt because any land held or acquired by the council is vested in the diocesan authority under section 6 of the Parochial Church Councils (Powers) Measure 1956.

37. A number of practical issues could arise were there to be no council. How would the council’s obligations in respect of the keeping of accounts, the maintenance and insurance of the fabric of the church building and its goods and ornaments, and the care and maintenance of the churchyard be discharged? In respect of property vested in the diocesan authority, can any dealings be entered into in the absence of a PCC? How if at all could the diocesan authority enforce its rights to indemnification under section 6(4) of the 1956 Measure? Where the council is a registered charity, how can the obligations flowing from such registration be discharged? Can any cheques be drawn on any bank account in the name of the council, or bank mandates renewed or cancelled?

38. There are provisions in the 1956 Measure which may assist. Section 9 provides in part as follows:

(2) If any act required by this Measure to be done by any person is not done within such time as the bishop may consider reasonable it may be done by or under the authority of the bishop.

(3) In the event of a council and a minister being unable to agree as to any matter in which their agreement or joint action is required under the provisions of this Measure, such matter shall be dealt with or determined in such manner as the bishop may direct.

39. Subsection (3) seems to be limited to the appointment of parish clerks and sextons, and the allocation of collection money, both under s.7 of the Measure which uses the phrase “power jointly with the minister” in these cases. Subsection (2) appears to be much broader in scope, especially if “person” is given its usual meaning and is therefore taken to include the PCC, a legal person. Much depends on what is covered by “any act required by this Measure to be done”. The Measure confers a number of “powers” on the PCC (e.g. to acquire property, to frame a budget) and describes its “functions”; these provisions do not “require” acts to be done. The relevant provisions which do impose duties are

s.4(1)(ii) as to duties previously owed by the churchwardens with respect to:

(a) The financial affairs of the church including the collection and administration of all moneys raised for church purposes and the keeping of accounts in relation to such affairs and moneys;

(b) The care maintenance preservation and insurance of the fabric of the church and the goods and ornaments thereof;

(c) The care and maintenance of any churchyard (open or closed)...

s.4(2) as to any duties under enactments imposing duties on churchwardens, vestries or church trustees; s.6(4) as to the duty to keep the diocesan authority indemnified; and

s.8(1) as to the provision of financial statements to the annual parochial church meeting.

40. If a matter can be brought within these provisions, the bishop could give appropriate directions, but it will be seen that not all the issues raised above can be resolved in this way. Moreover, it is far from clear whether actions by the bishop would enable anyone to draw on the funds (if any) of the PCC; even if this could be implied, the diocese might well find that a bank would not release funds without some assurance that the diocesan board of finance would give an undertaking by way of indemnity.

41. A power which can be, and has been, used to rescue this type of situation is in section 80(2) of the Charities Act 2011. This provides that:

The Commission [i.e. the Charity Commission] may by order made of its own motion appoint a person to be a charity trustee—

(a) ...;

(b) if there are no charity trustees, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

(c) if there is a single charity trustee, not being a corporation aggregate, and the Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;

...

42. Before exercising this power, the Commission must give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address in the United Kingdom; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address in the United Kingdom (s.82). Once an order is made, a copy is sent to the charity concerned and each charity trustee (s.86). For the purposes of these provisions, "charity trustees" is defined (in s.177) as "the persons having the general control and management of the administration of a charity", a definition which covers the members of a PCC. Presumably were the affairs of a parish to recover so that an election to the PCC in the normal fashion became possible, the trustees appointed by the Charity Commission would stand aside. It would be normally be desirable for the Commission's order to make provision for such an eventuality.