

GENERAL SYNOD
LEGAL ADVISORY COMMISSION
PAROCHIAL CHURCH COUNCILS

1 This Opinion addresses certain specific points concerning the membership of Parochial Church Councils ('PCCs'), financial matters including loans and the giving of security, and the powers and duties of PCC committees.

Membership

2 A resolution of an Annual Parochial Church Meeting ('APCM') to make the elected members of the PCC consist of, say, six persons of each gender as a permanent arrangement would be unlawful as it would be beyond the powers conferred on the APCM by the Church Representation Rules ('CRR').

3 Vacancies occurring amongst the representatives of the laity during the year must be filled in accordance with CRR r48(1). However, the PCC would be duly constituted even if such vacancies were not filled (CRR, App. II, para. 17).

Co-options

4 A clerk in Holy Orders, or an actual lay communicant (as defined by CRR r54(1)) of sixteen years or upwards, even if not on the roll of the parish, can be co-opted as a member of the PCC by the PCC itself (CRR r14(1)(h)) even though a clerk in Holy Orders or a lay person whose name is not on the roll of the parish cannot be elected to the PCC as a representative of the laity (CRR r10(1)). The disqualification from membership under rule 14(3)(c) (which applies to those who are disqualified from being charity trustees under the Charities Act 2011 and those who are disqualified by the bishop from serving on the PCC under the Incumbents (Vacation of Benefices) Measure 1977 (as amended): CRR r 46A) applies to co-opted members in the same way as to all other members of the PCC.

5 The number of co-opted members may not exceed one-fifth of the representatives of the laity who are elected by the APCM to the PCC, or two persons, whichever is the greater (CRR r14(1)(h)). It should be noted that representatives of the laity elected to the deanery synod are not included for the purpose of this calculation.

Term of office of PCC members

6 Unless the annual meeting decides that all representatives of the laity elected to the PCC should face re-election each year, one third of those representatives retire from office in every year. The representatives to retire at each subsequent annual meeting shall be those who have been longest in office since last elected. As between representatives elected on the same day, those to retire shall be selected by lot unless they agree otherwise among themselves (CRR, r.16).

PCC office holders

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- (a) Although there is nothing in the CRR or the 1956 Measure to prevent one person from combining the offices of secretary and treasurer of the PCC, the arrangement is not desirable.
- (b) A PCC can appoint its officers for such term as it thinks fit. In the absence of any provision to the contrary the appointment terminates at the first meeting of the PCC held after the APCM following the officer's appointment.
- (c) Although persons who are not members of the PCC may be remunerated for acting as secretary or treasurer, members may not (CRR, App. II, para. 1(d) and (e)).

PCC agenda

8 Agenda of the meetings of the PCC are governed by CRR App II para 4. Best practice dictates:

- (a) Notices of motion should contain the words of the motion proposed to be moved, but notices fairly indicating the purport of the words may be accepted.
- (b) Matter which is defamatory, scandalous or entirely outside the functions of the PCC ought not to be put on the agenda paper.

Chairman of PCC

9 The chairmanship of the PCC is dealt with in CRR App II paras 1(a) and (h), 5 and 11. Under rule 11, in the case of an equal division of votes at a meeting of the PCC, the chairman has a second or casting vote. But the chairman's right to give a second or casting vote at meetings of a committee of the PCC depends upon any rules of procedure which the PCC itself may make. It is

doubtful whether in the absence of any such rules the chairman of a committee can claim any similar right to that of the chairman of the PCC. A chairman who has a casting vote may not refrain from voting until the votes have been counted and then give his or her original vote and casting vote together.

PCC minutes

10 PCC minutes are subject to CRR App II para 12. In addition, a resolution which is not ultra vires cannot be deleted subsequently from the minutes though subsequent resolutions can express disagreement with or rescind former resolutions. Should it become apparent that a resolution of the PCC was unlawful because it was not within the PCC's powers the matter should be addressed at a subsequent meeting and dealt with in the minutes of that meeting.

Loans to a PCC

11 There is no doubt that a PCC may borrow money. Section 4 of the Parochial Church Councils (Powers) Measure 1956 confers on the PCC the powers that were formerly exercisable by the vestry with respect to the affairs of the church and the powers the churchwardens formerly had with respect to the financial affairs of the church. Both the vestry and the churchwardens had the power to borrow money: see the discussion of the position in *Re St Peter, Roydon* [1969] 1 WLR 1849, 1854-55 and the authorities cited there. Moreover, section 7 of the 1956 Measure confers a power on the PCC to frame an annual budget "and to take such steps as they think necessary for the raising and collecting of such moneys". The scope of that power is wide enough to include raising money by way of loan.

12 Money can be borrowed from anyone willing to lend it to the PCC and upon any terms that may be agreed, including the giving of security. The Commission considers that the view expressed by Chancellor Forbes in *Re St Peter, Roydon* that a PCC could not give security for a loan was wrong. The Chancellor only considered – presumably because that is the way the arguments of counsel were framed – the position under section 4 of the 1956 Measure (Powers vested in council as a successor to certain other bodies). No consideration was given to section 7 and the wide power it confers on the PCC to "take such steps as they think necessary for the raising" of moneys. Nor was any consideration given to section 5. Section 5 empowers a PCC to acquire any property real or personal for any ecclesiastical purpose affecting the parish and "to manage, administer and dispose of" any such property. A power to dispose of property includes a power to charge that property. Section 6 – which requires any land belonging to a PCC to be vested in the diocesan authority – was amended by the Ecclesiastical Property Measure 2015 and now expressly provides in subsection (3) for the PCC to charge such property provided that it obtains the consent of the diocesan authority to its doing so unless the consideration on the transaction is less than the amount specified in, or determined in

accordance with, the order made by the Archbishops' Council under subsection (4A). The giving of such a charge also requires the consent of the Charity Commission unless that requirement is disapplied by section 124(2) of the Charities Act 2011 where the advice referred to there is obtained and considered. Apart from giving security by way of a charge, a PCC can give any security it pleases by way of bond or covenant to repay a loan either in one lump sum or by instalments or otherwise and such bond or covenant would be binding on the PCC, even though its members might change, to the extent of moneys in its hands as a corporation available for the purpose for which the money was borrowed. A loan can be accepted from, amongst other sources, the diocesan board of finance if willing to lend on such terms, consistent with the duty of prudence, as may be agreed (see PAROCHIAL CHURCH COUNCIL: LEGAL POSITION OF MEMBERS). As the members of a PCC are charity trustees, an interest-bearing loan from a member of the PCC would infringe the rule against benefits to charity trustees described in the Opinion on PAROCHIAL CHURCH COUNCIL: LEGAL POSITION OF MEMBERS.

13 If a PCC has property which it can mortgage to secure its overdraft with a bank, a legal mortgage of such property can be given with the necessary authorisation (see above). In the absence of such property it is unlikely that any document executed by the PCC alone would be acceptable to a bank. Members of the PCC are under an obligation to see that the PCC's debts are duly paid. PCC members should not commit the PCC to any liabilities that they do not believe the council will be able to honour. If a particular item of expenditure is essential, and can only be funded by an overdraft, the better course would be to spread the burden of personal guarantees as widely as possible amongst the worshipping community.

Contract between PCC and member

14 As regards contracts between a PCC and any of its members, see the opinion on PAROCHIAL CHURCH COUNCIL: LEGAL POSITION OF MEMBERS.

Power to make donations to non-parochial objects

15 Whilst it should be remembered that the members of the PCC are charity trustees and have a duty to exercise their duties responsibly, in view of the PCC's widely expressed functions under the 1956 Measure (as amended) a PCC has power as a matter of law to subscribe a reasonable part of its general funds to any charity the objects of which are such as to further any part of "the whole mission of the Church". The "mission of the Church" for this purpose comprises not only religious objects in the narrow sense, but also the Christian duty of relieving the poor, the sick and others in need. Provided this requirement is met, the charity need not be one which operates within the parish or under which the parish or individual parishioners may benefit. Indeed, funds may be given to a non-charity, provided that they are to be used by it to

further the "mission of the Church" in some way. An example of this would be where funds are given to a legal entity created by a deanery synod to support the work of a youth worker employed by it. However, a PCC would be well-advised to seek advice, whether from the Diocesan Registrar or the Charity Commission, before giving funds to a non- charity. The PCC should also have regard to the advice issued by the Charity Commission "Grant funding an organisation that isn't a charity" which is available on its website.

16 It is important that a PCC takes all reasonable steps to ensure that funds it donates to third parties are in fact applied for the intended charitable purposes. Particular care may be needed where the funds are to be applied for the support of a Christian worker who is not employed by a charity. Failure to restrict expenditure to charitable purposes could lead to the loss of tax relief on the sums misapplied and expose the members of a PCC to claims for breach of trust. Difficulties of this kind are unlikely to arise where a donation is made to a registered charity. But care is required where funds are paid to a body which is not a charity, including bodies situated outside the United Kingdom. In such cases the advice of the Legal Advisory Commission is that, as a minimum, the donation should be accompanied by a covering letter stating that the donation should only be used exclusively for the charitable purpose for which the PCC wishes it to be applied and requesting the donee's acceptance of that restriction.

Standing committee and other committees of PCC

CHAIRMANSHIP OF STANDING COMMITTEE

17 The standing committee of the PCC is governed by paragraph 14 of Appendix II to the CRR. The incumbent (although the chairman of the PCC (see CRR App II para 1(a)) and thus an ex officio member of the standing committee of the PCC) is not the ex officio chairman of the standing committee, but would normally act as such. The vice-chairman of the PCC (see CRR App II para 1(b)) is not an ex officio member of the standing committee.

POWERS AND DUTIES OF STANDING COMMITTEE AND OTHER COMMITTEES

18 The standing committee, between the meetings of the PCC, has power to "transact the business" of the PCC, subject to any directions which the PCC may have given it (CRR, App. II, para. 14(b)). This is a wide power which enables the standing committee to carry on the routine work of the PCC between the meetings and to deal with most matters of real urgency.

19 But the powers of the standing committee are not as wide as those of the PCC itself. First, the committee may not act outside any directions given to it by the PCC. Secondly, it may not act in relation to matters that are outside the competence of the PCC whose business it has power to transact. Thirdly, the power to "transact the business of the council" is not the same as a power to

exercise any and every function which the PCC itself has. The import of the expression “transact the business of the council” is that the power is concerned with taking decisions in relation to the PCC’s activities, affairs and dealings and includes such matters as entering into contracts, taking decisions as to the implementation of recommendations contained in the report prepared under the Inspection of Churches Measure 1955, deciding how to address emergency situations and responding to consultation with the PCC which cannot wait until its next meeting.

20 It is not open to the standing committee to exercise functions which provisions in Acts of Parliament, Measures or Canons specifically confer on the PCC. It would not, for example, be within the powers of the standing committee to take decisions which are required to be taken at a meeting of the PCC under section 11 of the Patronage (Benefices) Measure 1986 (i.e. preparing a statement as to the conditions, needs and traditions of the parish, appointing two lay members of the council to act as representatives of the council in connection with the selection of an incumbent, etc.). Nor, for example, would it be open to the standing committee to agree to enter into a contract of employment with a member of the PCC under section 3A of the Parochial Church Councils (Powers) Measure 1956 as that section requires the council to be satisfied of certain matters before such a contract may be entered into by it. And it is not open to the standing committee to take decisions which require a resolution of the PCC, for example the delegation of functions to a district church council, the appointment of members to the standing committee, or the making of a request for an enquiry into the pastoral situation in a parish under section 1A of the Incumbents (Vacation of Benefices) Measure 1977. Because persons may be co-opted to the PCC only “if the parochial council so decides” (CRR r14(1)(h)), the standing committee has no power to co-opt persons to be members of the PCC. Any resolution to petition for a faculty, or to apply to the archdeacon for a licence for temporary minor re-ordering, also needs to be passed by the Council itself.

21 In addition to the standing committee, the PCC may appoint other committees for the purpose of the various branches of church work in the parish (CRR, App. II, para. 15). Any committee is similarly accountable to the PCC, and may perform such functions as may be given to it by the PCC.

MEMBERSHIP OF COMMITTEES

22 The PCC is obliged to appoint members to the Standing Committee in addition those of its members who are ex officio members of that Committee (CRR App II para 14). The PCC (but not the Standing Committee or any other committee) may appoint other committees (CRR App II para 15). Under CRR App II para 14, members of the standing committee must be members of the PCC. So far as other committees are concerned persons who are not members of the council may be included (CRR, App. II, para. 15), and it is within the competence of a PCC to include as members of such committees persons who are not qualified to be on the electoral roll.

23 The incumbent is ex officio a member (but not ex officio chairman) of all committees (CRR, App. II, para. 15). The secretary of a PCC is not a member ex officio of any committee appointed by the PCC. However, it may be convenient that the secretary should attend some committees, in which case the PCC may consider it appropriate to include the secretary as a member. Churchwardens are ex officio members of the standing committee (see above), but not of any other committee unless expressly included by the PCC.

(Revised May 2003)

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