

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

FRIENDS' CHARITIES: CONFLICTS OF INTEREST

1. A number of unincorporated charitable associations have been established as “friends” of a particular church whose aims or objectives typically include the preservation, repair, maintenance, restoration and improvement of the fabric, furniture, ornaments and contents of that church and its churchyard for the benefit of the public. The underlying basis of such friends’ charities has been to provide a vehicle for building up a supporter base for church buildings amongst those who, while not necessarily interested in their religious purposes, nevertheless value them as heritage and community assets. Such support may involve both financial support and the volunteering of time for fundraising, events organisation and the administration of the friends’ charity. These bodies exist independently of the relevant Parochial Church Council (PCC) which is the body that (subject to the faculty jurisdiction) has the obligation to maintain the church and its churchyard. (Legal ownership of the church and its churchyard is, of course, vested in the incumbent whilst the churchwardens are the legal owners of the church’s ornaments and furnishings.) The constitution of such friends’ charities often provides for the incumbent or priest-in-charge and the churchwardens to be trustees of the charity by virtue of their office, recognising that the only way that such organisations can further their charitable objectives is through the PCC applying the charity’s funds to maintain and implement repairs and improvements to the church and churchyard (subject to the grant of any necessary faculty).
2. In May 2014 the Charity Commission published “Conflicts of interest: a guide for charity trustees” (CC29). This recognises that a trustee’s personal or professional connections can bring benefits to the work of a charity, and often form part of the reason why an individual has been asked to join the trustee body, but that they can give rise to conflicts of interest to which the trustees must respond effectively. A particular type of conflict of interest with relevance in the present context is a ‘conflict of loyalty’, in which a trustee’s loyalty or duty to another person or organisation could prevent the trustee from making a decision solely in the best interests of the charity. As a result of this guidance, concerns have been expressed as to whether it is appropriate for the incumbent and churchwardens to continue to act as trustees of a friends’ charity or whether their role should be relegated to one of being invited to attend and speak at meetings but withdrawing prior to any decision or vote being taken. A further concern is whether a trustee of a friends’ charity should also properly serve on the relevant PCC.
3. Those who entertain such concerns point to the fact that the Charity Commission are clearly very concerned about conflicts of interest and expect charity trustees to identify and address effectively any such conflicts that affect them or their charity. They emphasise that a conflict of interest is any situation in which a trustee’s personal interests or loyalties *could*, or *could be seen to*, prevent the

trustee from making a decision *only* in the best interests of the relevant charity. It is argued that the incumbent and churchwardens are members of a body which seeks funds from the friends' charity and that, when viewed objectively, it is difficult to see that a conflict of loyalty will ever cease. There is said to be the potential for a PCC to be held to ransom by a friends' charity as to the provision of funds for works in relation to which it might be seeking to attach conditions, such as a grant for urgent roof repairs being made subject to the PCC dropping a separate reordering scheme or (in an alternative scenario) the PCC being invited to implement a reordering scheme that the friends' charity might want but the PCC does not.

4. The response to such concerns has been to point to the identity between the aims or objectives of the relevant PCC and the friends' charity and the consequent difficulty in envisaging the possibility of a conflict of interest or loyalty between members of the two bodies. It is pointed out that it is not the role of a friends' charity to debate whether or not a particular project should be pursued; that is said to be the role of the PCC, with the advice of the Diocesan Advisory Committee, and, ultimately, subject to the jurisdiction of the diocesan chancellor. The role of a friends' charity is to consider whether any request for funding falls within the scope of the charity's objects and is one which should be supported and, if so, to what extent and on what basis. It is said to be important that those responsible for initiating and delivering a project should be present during any relevant discussions of a friends' charity to advise on the reasons for, and details of, any proposed works and to answer any questions, and correct any misunderstandings, that may arise. An extremely close working relationship between a friends' charity and the relevant PCC is vital to the effectiveness of the former body because a friends' charity is powerless to achieve its objects unless the PCC is prepared to implement particular projects.
5. We recognise that it is a general principle applicable to all trustees, and others in a fiduciary position, that persons must not put themselves in a position where their duty to the relevant body may conflict with some personal interest (a 'conflict of interest') or some duty owed to another body (a 'conflict of loyalty'). As Lord Cranworth LC observed in *Aberdeen Railway v Blaikie*¹:

“... it is a rule of universal application, that no one, having [fiduciary] duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which may possibly conflict, with the interests of those whom he is bound to protect.”

In *Boardman v Phipps*² Lord Upjohn considered the meaning of the phrase “possibly may conflict” in Lord Cranworth’s “celebrated speech”. Lord Upjohn said that:

“In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some

¹ (1854) 1 Macq 461 at 471.

² [1967] 2 AC 46 at 124 B-C. Lord Upjohn’s was a dissenting speech, but his dissent is not material for present purposes. His observations are cited at page 2 of the Charity Commission’s published summary of its view of the law underpinning its publication CC29.

situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.”

6. In the case of a charitable body, it is important that its trustees act only in the interests of the charity and take their decisions solely in the interests of furthering its charitable purposes. Thus, when an incumbent of a church or members of a PCC act as trustees of a related friends’ charity, they have to make sure that they act solely in the interests of that charity and not of the PCC. It is important, however, to view that fiduciary duty in the light of the similarity, if not the identity, of the charitable objectives of both bodies. CC29 recognises (at page 10 and in Example 4) that although there may be a decision at one charity that also affects another body, the similarity of charitable purpose between the two bodies may mean that any conflicts of loyalty which do occur pose no risk, or only a low risk, to decision-making in the best interests of the former charity, and that the affected trustee(s), having declared their other interest, can then participate in its decision-making. We consider that this is the position in the case of a friends’ charity and the relevant incumbent and PCC members. We do not consider this situation to be analogous to that considered by the Charity Commission in Examples 2 and 5 of CC29 where an individual is a trustee for two charities planning to bid for the same service provision contract. There the two charities are in clear competition with each other so that there is a clear conflict of loyalty. Because the trustee’s decision at either charity could be influenced by the trustee’s knowledge of, and duty to, the other charity this means that he or she cannot fulfil their duty to either charity to make decisions only in its best interests. In the case of an incumbent or PCC member participating in a decision of a friends’ charity, the duty to each body should coincide. In our view, it is sufficient, in order to address any conceivable conflict of loyalty, for a PCC member to declare that membership to the friends’ charity and to disclose the nature of any decision that the PCC may already have arrived at relevant to the decision which is being considered by the friends’ charity. We are not aware that PCC representation on the board of a friends’ charity has given rise to any difficulties in the past. Rather, it reflects the realities of the PCC’s role, recognising the inherently close relationship between a friends’ charity and the relevant PCC, and engendering confidence in subscribers to friends’ charities that their donations are likely to be applied in a timely and effective manner for the benefit of the church and its fabric. Indeed, some subscribers might be deterred from membership of, or contributing to, a friends’ charity if it did not appear to have the support of the church, as evidenced by the incumbent and churchwardens being trustees of the friends’ charity.
7. For the future, it may be sensible for the governing constitutional documents of a friends’ charity to include some provision expressly recognising the inherently close relationship between the charity and the relevant PCC and expressly recognising the need to make the declaration and any disclosure referred to in paragraph 6 above. Alternatively, before a PCC considers supporting the establishment of a friends’ charity, it may wish to consider the simpler route of using a restricted fabric repair fund within the PCC’s control associated with the establishment of a committee of its own (which could include persons who are not members of the PCC) to promote the church building and its fabric as a heritage and community asset.