

Cathedrals: the role of churchwardens in parish church cathedrals

1. The Commission has been asked to advise on the role, powers and duties of churchwardens where the parish church is, or forms part of, a cathedral. In this Opinion, a parish church of that kind is referred to as a 'parish church cathedral', the Cathedrals Measure 2021 is referred to as 'the 2021 Measure' and the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 is referred to as 'the 2018 Measure'.

2. The functions of churchwardens are found in the Canons, statute law (including Measures) and the ecclesiastical common law. In a few cases, there are express provisions as to the position in parish church cathedrals.

3. Canon E 1 ('Of Churchwardens'), especially paragraphs 4 and 5, is of particular importance. As amended by Amending Canon No. 20, those paragraphs read as follows:

'4. 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.

5. 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.'

4. Churchwardens are given specific statutory functions in relation to the institution of disciplinary proceedings against a priest or deacon (Clergy Discipline Measure 2003, s10) and the consecration of churchyards (the 2018 Measure, s89). The functions of churchwardens under the Incumbents and Churchwardens (Trusts) Measure 1964 are excluded in the case of parish church cathedrals (see the definition of 'parish' in s1). Likewise, their functions under the provisions of the 2018 Measure relating to terriers, inventories and the annual fabric report are also excluded in the case of parish church cathedrals (see s55(4)). The duties of churchwardens under section 11 of the Parochial Registers and Records Measure 1978 are limited to records 'in parochial custody' but, by implication, those duties do not apply to parish church cathedrals; only certain provisions of that Measure do apply to such cathedrals and section 11 is not one of them.

5. The common law functions of churchwardens derive largely from the law as to visitations, but the archdeacon's jurisdiction over cathedrals was abolished by the Cathedrals Measure 1963 (repealed, but not so as to revive the jurisdiction). The churchwardens have no specific responsibilities where there is a visitation of a cathedral by the bishop under section 10 of the 2021 Measure (nor did they have any such responsibilities under the equivalent provision in section 6 of the Cathedrals Measure 1999).

6. The constitution of the Chapter of a parish church cathedral made under the 2021 Measure may, for example, provide for the appointment of the churchwardens as non-executive members of the Chapter. And the statutes of the Chapter may, for example, give additional functions to the

churchwardens but may not remove powers or duties given to the churchwardens by canon or statute law.

7. It is also worth noting that section 41 of the 2021 Measure permits the making of a scheme for a parish church cathedral to cease to be a parish church. The scheme could include, among other things, provision to modify the application of the Churchwardens Measure 2001 to the cathedral.

8. Apart from the statutory functions mentioned in paragraph 4 of this Opinion, the principal functions of churchwardens in parish church cathedrals are derived primarily from Canon E 1. The question on which the Commission has to advise is whether these functions are affected by any other relevant legal provisions.

(a) to act as an officer of the bishop

9. Canon E 1 formerly described the churchwardens as officers 'of the Ordinary' and it was possible to argue that the Ordinary in a cathedral was someone, or some body, other than the bishop. The idea that churchwardens of parish church cathedrals were in a special category was reinforced by the practice of admitting churchwardens to office during the archdeacon's visitation, given the exclusion of cathedrals from the archdeacon's jurisdiction (though churchwardens may also be admitted during a special visitation of the cathedral). The current text of Canon E 1 describes the churchwardens as officers 'of the bishop' and paragraph 2 of that Canon and section 6(1) of the Churchwardens Measure 2001 require the admission of churchwardens to be at their appearance before 'the bishop or his substitute duly appointed'. This may well be the archdeacon, but he or she will be acting under Canon E 1 and the 2001 Measure, and not Canon C 22 which deals with visitations. As such an officer, a churchwarden has a *locus standi* to communicate with the bishop on matters of concern to the parish.

(b) to represent the laity and encourage the parishioners in their religious duties

10. These duties seem as relevant in parish church cathedrals as they are in other parishes.

(c) to maintain order and decency in the church and churchyard

11. That this function applies in the case of parish church cathedrals seems clear, and this view is reflected in the Opinion of the Commission on **Cathedrals: disturbances during services and admission to episcopal enthronements and other services**.

12. It will be for the Chapter of a cathedral, as part of their general duty under section 11(1) of the 2021 Measure to direct and oversee the administration of the affairs of the cathedral, to decide what meetings may appropriately be held in the cathedral, but this applies to organised meetings. The reference in paragraph 1 of Canon F 15 to 'meetings' would include, for example, a gathering of people to play poker in a quiet corner of the cathedral; the churchwardens would have power to close the poker game.

13. Under section 12(2)(d) of the 2021 Measure, the duties of the dean include the maintenance of good order and proper reverence in the cathedral. The dean will exercise this power through vergers and other members of the cathedral staff, but this seems in no way inconsistent with the continuation of the churchwardens' independent functions in respect of good order and decency.

14. On this point, Canon F 7 should also be noted. Paragraph 2 provides that in parish churches it is, in general, for the churchwardens 'to allocate the seats amongst the parishioners and others in

such manner as the service of God may be best celebrated'. This is a significant duty for churchwardens in parish churches and there is nothing in the Canon to suggest that the duty does not apply in the case of a parish church cathedral. However, it is submitted that, in such a case, the churchwardens' duty under Canon F 7 would in practice be subject to the dean's duty under section 12(2)(d) of the 2021 Measure (referred to in paragraph 13 of this Opinion). Local arrangements on matters such as safeguarding will also have a bearing on the practical effect of the churchwardens' duty under Canon F 7.

(d) to hold the plate, ornaments and other movable goods of the church

15. Paragraph 5 of Canon E 1 is clear in its terms: the plate, ornaments and other movable goods of the church vest in the churchwardens. It is often assumed that in parish church cathedrals all property is vested in the cathedral itself, but there is no provision to that effect in the 2021 Measure (or any other Measure).

16. Section 11(1)(f) of the 2021 Measure gives the Chapter the duty of managing 'the property vested in the cathedral'; but that does not extend to property vested in the churchwardens. The duty under the same provision to ensure that necessary repairs and maintenance are carried out to 'the contents' of the cathedral is a particularisation of the more general duty to avoid any doubt there might otherwise be as to the scope of that general duty.

17. Section 2 of the Care of Cathedrals Measure 2011 deals with works and transactions which require approval under that Measure. As amended by the 2021 Measure, it refers to 'any object the property in which is vested in the Chapter or which is in the possession or custody of the Chapter...'

18. There seems little doubt that the Chapter has possession and custody of the plate, ornaments and movables of the cathedral church. But that is not inconsistent with the continued vesting of legal title in the churchwardens. The position is analogous to that in other parishes, where the legal title is vested in the churchwardens but the PCC accepts responsibility for insurance, repairs and general safekeeping.

19. Paragraph 5 of Canon E 1 requires the churchwardens to keep an inventory of this property. Section 49 of the 2018 Measure amplifies this requirement but does not apply to parish church cathedrals (see s55(4)). That exclusion of parish church cathedrals from the statutory provision suggests, but does not strictly require, that the Canon be interpreted as limited in the same way. In the case of all cathedrals, the Chapter has a duty under section 24(1) of the Care of Cathedrals Measure 2011 to compile and maintain an inventory, but this is limited to objects which the fabric advisory committee considers to be of architectural, archaeological, artistic or historic interest; it does not cover all the movables (for example, service books) which would be in a full parish inventory. For that reason, section 24(1) cannot be regarded as strictly inconsistent with the duty in respect of an inventory imposed on churchwardens under Canon E 1. There is no duty on Chapters to compile and maintain full inventories, and it would be anomalous were the churchwardens of parish church cathedrals to be required to keep them. However, it is submitted that this point could helpfully be clarified by an amendment to the Canon or Measure.

Duties assigned 'by law and custom'

20. There remains the reference in paragraph 4 of Canon E 1 to 'such duties as are by law and custom assigned to' churchwardens. This language is a convenient way of referring to matters which may well change over time (or, at least, it is submitted that that is the intention of the

reference even though it does not include wording such as ‘from time to time’). For example, the churchwardens formerly had a role *ex officio* in the process of appointing to a vacant benefice but now do so only if appointed as the parish representatives. Currently the reference will include the legal duties referred to in paragraph 4 of this Opinion though, for the reasons given there, many are inapplicable in the case of parish church cathedrals. More generally, churchwardens may well be trustees of local trusts.

Summary

21. Some legislation dealing with the functions of churchwardens excludes parish church cathedrals from its scope; to that extent, the powers and duties of churchwardens in cathedral parishes are more limited than in other parishes. However, the provisions of Canon E 1 and Canon F 15 remain applicable to churchwardens in cathedral parishes save that, for the reasons given in paragraph 19 of this Opinion, the duty to keep an inventory may be regarded as inapplicable.

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