

Churchwardens PCCs & The Law

November 2019

This booklet has been produced to be of assistance to those attending the training events You couldn't make it up! Good Governance in Parochial Ministry. It is not definitive and reference should be made to the original documents to confirm this information or the Diocesan Registrar should be consulted.

Canons of the Church of England: The Duties of Churchwardens and PCCs.

E 1 Of churchwardens

1. The churchwardens of parishes and districts shall be chosen in accordance with the Churchwardens Measure 2001, and any other Measure, Act, or scheme affecting churchwardens.
2. (a) At a time and place to be appointed by the bishop annually, being on a date not later than 31 July in each year, each person chosen for the office of churchwarden shall appear before the bishop, or his substitute duly appointed, and be admitted to the office of churchwarden after -
 - (i) making a declaration in the presence of the bishop or his substitute, that he will faithfully and diligently perform the duties of his office; and
 - (ii) subscribing a declaration to that effect and also that he is not disqualified under section 2(1), (2) or (3) of the Churchwardens Measure 2001.(b) In relation to a filling of a casual vacancy the reference in paragraph (a) above to 31 July shall be construed as a reference to a date three months after the person who is to fill the vacancy is chosen or the date of the next annual meeting of the parishioners to elect churchwardens, whichever is the earlier.
3. Subject to any provision of any Measure, Act, or scheme relating to the resignation or vacation of their office, the churchwardens so chosen and admitted shall continue in their office until they, or others as their successors, be admitted in like manner by the bishop or his substitute duly appointed or, if no person is so admitted by 31 July in the year in question, until that date.
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.
6. In this Canon 'bishop' means the bishop of the diocese concerned.

F 13 Of the care and repair of churches

1. The churches and chapels in every parish shall be decently kept and from time to time, as occasion may require, shall be well and sufficiently repaired and all things therein shall be maintained in such an orderly and decent fashion as best becomes the House of God.
2. The like care shall be taken that the churchyards be duly fenced, and that the said fences be maintained at the charge of those to whom by law or custom the liability belongs, and that the churchyards be kept in such an orderly and decent manner as becomes consecrated ground.
3. It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same.
4. In the case of every parochial church and chapel, a record of all alterations, additions, removals, or repairs so executed shall be kept in a book to be provided for the purpose and the record shall indicate where specifications and plans may be inspected if not deposited with the book.

F 15 Of churches not to be profaned

1. The churchwardens and their assistants shall not suffer the church or chapel to be profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place, nor the bells to be rung at any time contrary to the direction of the minister.
2. They shall not suffer any person so to behave in the church, church porch, or churchyard during the time of divine service as to create disturbance. They shall also take care that nothing be done therein contrary to the law of the Church or of the Realm.
3. If any person be guilty of riotous, violent, or indecent behaviour in any church, chapel, or churchyard, whether in any time of divine service or not, or of disturbing, vexing, troubling, or misusing any minister officiating therein, the said churchwardens or their assistants shall take care to restrain the offender and if necessary proceed against him according to law.

F 16 Of plays, concerts, and exhibitions of films and pictures in churches

1. When any church or chapel is to be used for a play, concert, or exhibition of films or pictures, the minister shall take care that the words, music, and pictures are such as befit the House of God, are consonant with sound doctrine, and make for the edifying of the people.

2. The minister shall obey any general directions relating to such use of a church or chapel issued from time to time by the bishop or other the Ordinary.
3. No play, concert, or exhibition of films or pictures shall be held in any church or chapel except the minister have first consulted the local or other authorities concerned with the precautions against fire and other dangers required by the law to be taken in the case of performances of plays, concerts, or exhibitions of cinematograph films, and the said authorities have signified that the proposed arrangements are a sufficient compliance with the regulations in force as to precautions against fire or other dangers.
4. If any doubt arises as to the manner in which the preceding clauses of this Canon are to be observed, the minister shall refer the matter to the bishop or other the Ordinary, and obey his directions therein.

F 17 Of keeping a record of the property of churches

1. Every bishop within his diocese shall procure so far as he is able that a full note and terrier of all lands, goods, and other possessions of the parochial churches and chapels therein be compiled and kept by the minister and churchwardens in accordance with instructions and forms prescribed from time to time by the General Synod.
2. Every archdeacon shall at least once in three years, either in person or by the rural dean, satisfy himself that the directions of the preceding paragraph of this Canon have been carried out in all the parishes within his jurisdiction.

F18 Of the survey of churches

Every archdeacon shall survey the churches, chancels, and churchyards within his jurisdiction at least once in three years, either in person or by the rural dean, and shall give direction for the amendment of all defects in the fabric, ornaments, and furniture of the same. In particular he shall exercise the powers conferred upon him by the Inspection of Churches Measure 1955.

Parochial Church Councils: Purpose, Membership, Meetings

The membership of the PCC is set out in the ***Church Representation Rules 2020*** following the amendments made in the ***Church Representation and Ministers Measure 2019*** and the ***Church Representation Rules (Amendment) resolution 2019***.

In brief the membership consists of:

- the parish priest and other licensed clergy;
- the churchwardens (and any churchwarden elected but not yet admitted);
- the Deanery Synod representatives
- the elected lay members (the number of which depends upon the size of the electoral roll);
- co-opted members (up to two people usually, more when there is a larger electoral roll – but no more than a fifth of the ordinary elected members of the PCC)
- any Reader whom the Annual Meeting decides should also serve on the PCC
- representatives on the Diocesan and General Synods who are not also for any other reason on the PCC of their parish.

It is good practice to have clear information setting out terms of office and any scheme that provides for eg. the appointment of deputy wardens. The 2019 Measure introduces Model Rules for PCCs which may be amended by a prescribed process but otherwise are the rules by which PCCs operate.

It is also good practice to have clear job descriptions for any office holder – bearing in mind the formal rules that may relate to these.

1. The Purpose of PCCs

Parochial Church Councils (Powers) Measure 1956

(1) It shall be the duty of the minister and the parochial church council to consult together on matters of general concern and importance to the parish.

(2) The functions of parochial church councils shall include:

- (a) co-operation with the minister in promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical;
- (b) the consideration and discussions of matters concerning the Church of England or any other matters of religious or public interest, but not the declaration of the doctrine of the Church on any question;

- (c) making known and putting into effect any provision made by the diocesan synod or the deanery synod, but without prejudice to the powers of the council on any particular matter;
- (d) giving advice to the diocesan synod and the deanery synod on any matter referred to the council;
- (e) raising such matters as the council consider appropriate with the diocesan synod or deanery synod.

(3) In the exercise of its functions the parochial church council shall take into consideration any expression of opinion by any parochial church meeting.

2. Annual Meetings

Including changes made by in the Church Representation Rules 2020.

Electoral Roll

The Electoral Roll shall be revised every year (except in the year when a new roll is produced).

The revision of the roll of a parish must be completed at least 15 days, but no more than 28 days, before the annual parochial church meeting.

Model Rules

Part 9 of the Church Representation Rules 2020 sets out model rules for the governance of each parish

Scheme for amendment

Under 12 (1) The annual parochial church meeting or a special parochial church meeting may make a scheme to amend or supplement, or to replace (either as a whole or in part), the Rules in Part 9 in so far as they apply to that parish. Such a scheme must be forwarded to the Bishop's Council for approval

Date of Annual Meeting

M1 (1) In every parish, the Annual Parochial Church Meeting (referred to in this Part of these Rules as "the annual meeting") must be held in the period which begins with 1 January and ends with 31 May.

M2 (2) The period for the public display of the calling of the annual meeting must include the last two Sundays before the day of the meeting.

M2 (3) The annual meeting must be held at a place in the parish unless the PCC decides otherwise.

Voting at Annual Meeting

Single Transferable Vote

M10 (1) The annual meeting may resolve that the election of parochial representatives of the laity (whether to the deanery synod or to the PCC or to both) is to be conducted by the single transferable vote system.

(2) A resolution under this Rule is valid only if it is approved by at least two-thirds of those present and voting at the meeting; and it does not take effect until the next annual meeting.

(3) Where a resolution under this Rule is passed, the election is to be held in accordance with the rules for the time being in force under the General Synod's Standing Orders; and those rules have effect for that purpose with whatever modifications are necessary.

Postal voting

M11

(1) The annual meeting may resolve that a person entitled to attend the meeting and vote in the election of parochial representatives of the laity may apply on Form M2 for a postal vote.

(2) A resolution under this Rule is valid only if it is approved by at least two-thirds of those present and voting at the meeting; and it does not take effect until the next annual meeting.

(3) Where applications for a postal vote have been received by the date specified in the notice convening the next annual meeting and the number of candidates nominated exceeds the number of seats to be filled, that annual meeting must appoint a presiding officer; and the person appointed may not be a candidate in the election.

(4) At that annual meeting, a voting paper must be given to each person present who is entitled to vote; and completed voting papers must be returned into the custody of the presiding officer before the close of the meeting.

(5) The presiding officer must ensure that each person who has applied for a postal vote on Form M2 is given a voting paper within seven days of the close of the meeting.

(6) A vote is counted only if it is given on a voting paper— (a) which is marked in the manner indicated on the paper, (b) the back of which is signed by the elector, and (c) which is returned to the presiding officer within 14 days of the close of the meeting.

M12 (1) The result of an election held at the annual meeting, or which involved postal voting in accordance with a resolution under Rule M11, must be announced as soon as practicable by the presiding officer.

M37 In those cases where at their annual meetings two or more related parishes have agreed to form a Joint Parochial Church Council, the annual meetings are then held jointly.

3. PCC Membership and Meetings

Membership

M15

(1) The members of the PCC are:

- (a) every clerk in Holy Orders who is beneficed in or licensed to the parish,
- (b) any clerk in Holy Orders who is authorised to chair meetings of the PCC under Rule M26,
- (c) any deaconess or lay worker licensed to the parish,
- (d) if the parish is in the area of a benefice for which there is a team ministry, every member of the team,
- (e) the churchwardens of the parish,
- (f) any person chosen as a churchwarden of the parish but not yet admitted to office as such,
- (g) any deputy churchwarden who is an ex officio member under a scheme under Rule M34 or M35,
- (h) if the annual meeting decides that one or more of the readers licensed to the parish or to an area including the parish whose names are on the roll of the parish should be members, the reader or readers in question,
- (i) every person whose name is on the roll of the parish and who is a lay member of a deanery synod, a diocesan synod or the General Synod,
- (j) the elected representatives of the laity, with the number being determined under paragraphs (8) and (9), and
- (k) any clerk in Holy Orders, or any actual communicant aged 16 or over, whom the PCC decides to co-opt as a member, with the number being determined under paragraph (10).

(8) The number of representatives of the laity for the purposes of paragraph (1)(j) is—

- (a) if there are no more than 50 names on the roll, six;
- (b) if there are more than 50 but no more than 100, nine;

(c) if there are more than 100, a further three per hundred names and, where the number of names on the roll is not divisible by 100 without fraction or remainder, for the fraction or remainder, up to a maximum of 15.

(9) The annual meeting may by resolution vary the number of representatives there would otherwise be for the parish under paragraph (8); but a resolution under this paragraph does not take effect before the next annual meeting.

(10) The number of members under paragraph (1)(k) is either two or any greater number which does not exceed one-fifth of the number of members under paragraph (1)(j).

M16

(1) A person who is a member of the PCC under Rule M15(1)(j) (representatives of laity) holds office as such for a period which

(a) begins with the conclusion of the annual meeting at which the person was elected as a representative of the laity, and

(b) ends with the conclusion of the third subsequent annual meeting.

M17

(1) A person who is a member of the PCC under Rule M15(1)(f) (churchwarden elect) holds office as such for the period which

(a) begins when the person is chosen as churchwarden, and

(b) ends when the person is admitted to the office of churchwarden (at which point the person continues as a member, holding office as such under Rule M15(1)(e)).

(2) A person who is a member of the PCC under Rule M15(1)(h) (readers) holds office as such for the period which

(a) begins with the conclusion of the annual meeting at which it was decided that the person should be a member, and

(b) ends with the conclusion of the next annual meeting, unless it is decided at that meeting that the person should continue to be a member.

Officers of the Council

Chair and vice-chair

M19

(1) The minister is the chair of the PCC.

(2) The PCC must elect a lay member as vice-chair; and the vice-chair acts as chair and accordingly has the powers vested in the chair

- (a) where there is no minister,
- (b) where the minister is absent or unable to act for some other reason, or
- (c) where the minister invites the vice-chair to act as chair.

Secretary and treasurer

M20 (1) The PCC may appoint one of its members as secretary; but if it does not, it must appoint some other fit person.

(2) The secretary has the following functions

- (a) to have charge of all the documents relating to the current business of the PCC other than the roll of the parish (unless the secretary is also the electoral roll officer);
- (b) to keep the minutes;
- (c) to record all resolutions passed; (d) to notify his or her name and address to the secretary of the deanery synod and the secretary of the diocesan synod.

(3) The PCC may appoint one of its members as treasurer or two or more of its members as joint treasurers; but if it does not, it must

- (a) arrange for the office of treasurer to be discharged by such of the churchwardens as are members of the PCC or, if only one of them is a member, by that one solely, or
- (b) appoint some other fit person.

(4) Where the person appointed as secretary or treasurer is not a member of the PCC, he or she does not become a member merely as a result of holding the office in question but may be co-opted under Rule M15(1)(k) if there is a vacant co-opted place.

Electoral roll officer

M21

(1) The PCC must appoint a person as electoral roll officer to act under its direction for the purpose of carrying out its functions with regard to the roll of the parish.

(2) The electoral roll officer accordingly has charge of the roll of the parish and must keep it up to date in accordance with these Rules.

(3) The person appointed under paragraph (1) need not be a member of the PCC and may also be the secretary.

Independent examiner or auditor

M22

(1) If the annual meeting does not appoint an independent examiner or auditor to the PCC, or the person appointed is unable or unwilling to act, the PCC must appoint some other fit person.

(2) A person appointed under paragraph (1) must not be a member of the PCC.

Meetings of Council

Meetings: time and place

M23 (1) Each year, the PCC must hold a sufficient number of meetings to enable the efficient transaction of its business.

(2) The chair must convene each of those meetings.

(3) The chair may at any other time convene a meeting of the PCC; but if the chair does not do so within seven days of receiving a demand for such a meeting signed by at least one-third of the members of the PCC, those members may themselves immediately convene a meeting.

(4) A meeting of the PCC is to be held at such place as the PCC directs or, in the absence of such a direction, as the chair directs.

Meetings: attendance

M24 (1) A person is entitled to attend a meeting of the PCC only if

(a) the person is a member of the PCC, or

(b) where the parish is in the area of a group ministry, the person is entitled to do so under paragraph (2).

((2) and (3) refer to Group Ministry)

(4) The PCC may invite such other persons to attend its meetings as it wishes.

Meetings: notice

M25 (1) At least ten clear days before a meeting of the PCC (other than one convened under paragraph (8)), notice of the meeting must be displayed

(a) in the case of the parish church or, where there is more than one church in the parish, each of those churches, on or near the principal door, and

(b) in the case of each building in the parish licensed for public worship, in a location readily visible to members of the congregation.

(2) A notice under paragraph (1) must

(a) specify the time and place of the meeting, and

(b) be signed by or on behalf of the chair or other persons convening the meeting.

(3) At least seven clear days before a meeting of the PCC (other than one convened under paragraph (8)), notice of the meeting must be given to— (a) each member of the PCC...

(4) A notice under paragraph (3) must

(a) specify the time and place of the meeting,

(b) be signed by or on behalf of the secretary, and

(c) contain the agenda of the meeting, including any motions or other business proposed by members of which the secretary has received notice.

Meetings: Quorum

M27

(1) The quorum for a meeting of the PCC is (subject to paragraph (2))

(a) one-third of its members, or

(b) in the case of a meeting convened under Rule M25(8) (emergency etc.), a majority of its members.

(2) A meeting of the PCC is quorate only if the majority of the members present are lay persons.

(3) Business which is not specified in the agenda for a meeting of the PCC may not be transacted at the meeting except with the consent of at least three-quarters of the members present; and at a meeting convened under Rule M25(8), the only business which may be transacted is that specified in the notice convening the meeting.

(4) Business at a meeting of the PCC is decided by a majority of the members present and voting.

(5) In the case of an equality of votes at a meeting of the PCC, the chair has a second, casting vote.

(6) A meeting of the PCC may adjourn its proceedings to such time and place as the meeting may decide.

Business by correspondence

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.

Standing Committee

M31

(1) The PCC has a standing committee constituted in accordance with this Rule.

(2) If there are more than 50 names on the roll of the parish on the date on which the annual meeting is held, the standing committee is to consist of

(a) the minister,

(b) each churchwarden who is a member of the PCC or, if there are more than two, such two or more of them as are appointed by the PCC by resolution, and

(c) at least two other members of the PCC appointed by the PCC by resolution, the number of whom must be at least equal to the number of churchwardens who are members of the committee under sub-paragraph (b).

(3) If there are no more than 50 names on the roll of the parish on the date on which the annual meeting is held, the standing committee is to consist of

(a) the minister, and

(b) at least two other members of the PCC (each of whom may, but need not, be a churchwarden) appointed by the PCC by resolution.

(4) The PCC may by resolution remove a person appointed under paragraph (2)(b) or (c) or (3)(b).

(5) A member appointed under paragraph (2)(b) or (c) or (3)(b) holds office for a period which begins with the date of appointment and ends with the conclusion of the next annual meeting (subject to the possibility of the member's removal under paragraph (4)).

(6) The standing committee may transact the PCC's business between meetings of the PCC; but the standing committee

(a) may not discharge a duty of the PCC, and

(b) may not exercise a power of the PCC which is subject to the passing of a resolution by the PCC or compliance by the PCC with some other requirement.

(7) If the PCC gives the standing committee any directions as to the exercise of its power under paragraph (6), the committee must exercise the power in accordance with those directions.

PCCs as Charity Trustees

PCCs are charities established by the Parochial Church Councils (Powers) Measure 1956, which sets out the purpose of the PCC as "promoting in the parish the whole mission of the Church".

The rest of the PCC's 'constitution' is the *Church Representation Rules 2020*

As the annual income of most PCCs will be over £100,000 they should be registered on the Charity Commission website.

The Charity Commission's 6 core principles for charity trustees are as follows:

1. Ensure your charity is carrying out its purposes for the public benefit

This is following the objects i.e. Mission, and it is essential to ensure that money is still being spent for public benefit – church is not a private club

2. Comply with your charity's governing document i.e. PCC Measures and Church Rep Rules – and the wider law

i.e. Church law, charity law and the range of other laws e.g. health and safety, safeguarding, employment (if applicable), planning etc

3. Act in your charity's best interests

i.e. making sure that you act for the church and not any conflicting interest, e.g. a related school; ensure the decisions are yours not those influenced by others

4. Manage your charity's resources responsibly

For the charity's purposes, following proper procedures to ensure affordability, proper investment, proper value and security against theft/fraud.

Church law requires an inventory and quinquennial inspection as part of this duty.

5. Act with reasonable care and skill

According to your ability and experience e.g. a lawyer or accountant would be expected to have more knowledge and skill than someone without a professional background.

So far as possible seek to have people with relevant skills – and to train up those who do not have such skills or background.

6. Ensure your charity is accountable

Accountability is to the law, the parish and the wider purposes and public benefit of the charity.

Decision making is collective (The vicar does not always know best!)

Whilst the PCC Measure requires 'co-operation' with the vicar, all votes carry the same weight.

If you do not feel that you have sufficient information on which to base a decision or assess whether action has been taken properly, then you are entitled to ask for more information. That includes information about finances.

Making decisions as a trustee

Decisions should be made by majority, collectively and in accordance with governance documents, for example with respect to the quorum required.

When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances
- RECORD decisions accurately.

When trustees can be personally liable

It's extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, if they cause a financial loss by acting improperly
- to a third party that has a legal claim against the charity which the charity can't meet

NB PCCs do not have limited liability because they are not companies. You can take out insurance to indemnify trustees against any allegation of breach of duties.

To help to assess and demonstrate whether you are fulfilling your duties adopting policies about the following areas of work can help:

- Public benefit – how do you help the public and how are you open to the public?
The statement should be included in the PCC's annual return to the Charity Commission.
- Conflicts policies and managing those with influence
- Reserves policy – Balance of using funds prudently so that can meet costs for 6-12 months if something goes wrong BUT also show that you are spending your money for the purposes of the charity

- Ensure you have adequate insurance
- Recruitment policies for volunteers, staff, trustees – ensure adequate skills
- Banking mandates and financial controls in order
- Complaints and grievance policies
- Data Protection policies
- Expenses, gifts and hospitality
- Risk assessment and safeguarding

Resources

Web

Diocesan Websites – especially for DAC and Registry contacts

Church of England

www.churchofengland.org

Church Representation Rules 2020

www.churchofengland.org/about-us/structure/churchlawlegis/church-representation-rules/church-representation-rules-online.aspx

also available as a published booklet from 30th November 2019.

Parish and PCC Resources

www.parishresources.org.uk

PCC Accountability, Annual Reports and Accounts.

www.churchofengland.org/clergy-office-holders/pcc-information/pcc-accountability.aspx

also available as a published booklet PCC Accountability: The Charities Act 2011 and the PCC 5th edition