

ADVICE NOTE ON CATHEDRALS AS CHARITIES

Many of those working in cathedrals are uncertain about the precise nature of a cathedral's charitable status and the role of members of Chapter. This paper provides advice to cathedrals on issues relating to cathedrals' charitable status, the nature of the responsibility borne by Chapter members and their remuneration, and the handling of conflicts of interest on the Chapter. It has been written in consultation with the Legal Office of the Archbishops' Council.

Charitable status of cathedrals

Cathedrals are ecclesiastical corporations, a form of corporation aggregate whose members are committed to spiritual purposes.

Corporations are Common Law entities which exist independent of their members; as such they exist in perpetuity (have perpetual succession); can act as if they were a person so can, for example, sue or be sued in their corporate name; can buy and sell lands and hold them for the benefit of the members of the corporation and their successors; have a common seal which is used to confirm their actions; can make by-laws or statutes for the regulation of their own affairs; and because of the need to supervise corporate acts, have a Visitor.

The Charities Act 2011 s10 states that ecclesiastical corporations fall outside the definition of a charity for the purposes of the Act:

- (2) But in the rest of this Act (apart from Chapter 3 of Part 17) "charity" is not applicable to—
 - (a) any ecclesiastical corporation in respect of the corporate property of the corporation, except a corporation aggregate having some purposes which are not ecclesiastical in respect of its corporate property held for those purposes.
- (3) "Ecclesiastical corporation" means any corporation in the Church of England, whether sole or aggregate, which is established for spiritual purposes.

Cathedrals are not subject to the Charities Acts and are not regulated by the Charity Commissioners. Cathedrals are not 'exempt' or 'excepted' charities. For taxation purposes, Her Majesty's Revenue and Customs treats cathedrals as exempt charities, issuing a number which enables cathedrals to recover sums under Gift Aid. Cathedrals have a charitable purpose (Cathedrals Measure 1999 SI: 'Any person or body on whom functions are conferred by or under this Measure shall, in exercising those functions, have due regard to the fact that the cathedral is the seat of the bishop and a centre of worship and mission'). They are regulated by their Visitor and may also be subject to the jurisdiction of the Court, although this has never been tested.

A cathedral should describe itself as 'an ecclesiastical corporation established for charitable purposes'. It should be noted that cathedrals predate existing charities legislation but are still charities. The HMRC number, issued for tax purposes, is acceptable to those requesting a charity number from a cathedral.

Status of Chapter members

The Cathedrals Measure 1999 S4 provides for the Chapter to be the administrative body of a cathedral, looking after the corporate property, on behalf of the members of the corporation defined in the Cathedrals Measure 1999 as 'the Council, the Chapter and the College of Canons shall be a body corporate with perpetual succession and a common seal (S9(1)(a))'. Chapter members are fiduciaries, responsible for managing the cathedral and its assets for the benefit of the corporation. Fiduciaries are not strictly speaking trustees but can be deemed to have the same position as trustees and be bound by the same rules. Chapter members have responsibilities and liabilities that arise from their role; if they act responsibly, sensibly and reasonably no legal liability will arise.

Payment of Chapter members

Normally, fiduciaries are not allowed to profit from their position but provision can be made in the constitutional provisions of a corporation permitting a fiduciary to profit in specified circumstances, either expressly or by necessary implication. The Cathedrals Measure S21(2) provides for additional sums to be paid to the Dean and two Church Commissioners canons, but makes no express provision for other residentiary canons or the administrator to receive payments out of the corporate income of the cathedral. S4 requires a Chapter to include all residentiary canons (which includes stipendiary canons (S35(1))) and permits the administrator to be a member of Chapter. While no express provision for the remuneration of non-Commissioners' canons or an administrator who is a member of Chapter is made, the overall constitutional arrangements of cathedrals do contemplate that such canons and administrator will receive payment out of the cathedral's corporate funds notwithstanding their fiduciary position and therefore it is in principle proper for them to do so. By contrast, other members of Chapter (such as lay members) can only be remunerated if specific provision is made in a cathedral's Constitution or Statutes authorising such members to profit.

The constitutional arrangements envisaged by the 1999 Measure do not contemplate any paid staff or officers other than the residentiary canons and the administrator being members of Chapter. That being so, there is no basis for saying that the exception to the general rule that a fiduciary may not profit applies in relation to another paid member of staff or officer being on the Chapter. A fiduciary who makes an unauthorised profit is liable to account for it to the body to whom he owes fiduciary duties. In the event of a dispute and legal proceedings, paid members of staff and officers may be required to reimburse the cathedral such sums as they have received by way of salary etc. since they became members of Chapter. While such proceedings may be unlikely, the mere fact of the possibility of the individuals in question having to account is serious and a cathedral should not knowingly put someone in such a position. The only way in which a cathedral could properly have paid staff and officers other than canons and the administrator on the Chapter would be if its constitution specifically provided that if any such person were appointed to the Chapter they could continue to receive salary etc. An argument could be made that the provisions of the 1999 Measure are wide enough to permit a cathedral to make such provision in its constitution, given that the exercise of the power to amend the constitution is subject to a requirement for the consent of a third party (i.e. the bishop). However, having paid staff or officers on the Chapter substantially increases the scope for conflicts of interest to arise in the course of the Chapter's business. Constitutional arrangements ought to be structured so as to avoid or minimise, rather than increase, the scope for conflicts to arise.

Chapter members' standing

There are rules which prohibit certain people from being Chapter members. The Cathedrals Measure 1999 S4 provides for Chapter members to be disqualified:

- (4) A person shall be disqualified from being a member of the Chapter if he is disqualified from being a charity trustee under section 72(1) of the Charities Act 1993 and the disqualification is not for the time being subject to a waiver by the archbishop of the province concerned under subsection (5) below in respect of that Chapter; and a member who becomes disqualified by virtue of this subsection shall cease to be a member.

On appointment, Chapter members should be asked to confirm that they are not disqualified by virtue of having been convicted of an offence involving dishonesty or deception, either bankrupt or subject to an IVA, been removed as a charity trustee by the Charity Commissioners or the High Court, or been disqualified as a company director. They should also be required to inform the Dean or Chapter Clerk if they are subsequently disqualified. Best practice would be to ask Chapter members to declare each year that they are not disqualified, but this may be too onerous for some Chapters.

Managing conflicts of interest

As duties of fiduciaries do not differ greatly from those of charity trustees, the Charity Commission's 'A Guide to Conflicts of Interest for Charity Trustees' (<http://www.charity-commission.gov.uk/supportingcharities/conflicts.asp>) is a good reference document (although the information about seeking authority from the Commission will not apply). The Guide recommends that there should be a policy for managing conflicts of interest and a register of interests (listing members other interests so that potential conflicts can be identified). The advice is that a member should declare that a conflict exists in respect of an agenda item and withdraw from discussion and decision making for that item.

Those members of Chapter who are remunerated can and should take part in discussions on Chapter matters concerning remuneration and not to do so would be an abdication of their corporate responsibility. In those particular circumstances, participation in discussions is made inevitable by the Constitution and Statutes and is not a matter of personal choice. (Nevertheless it would still be advisable for the conflict of interest to be acknowledged and declared.) On the other hand, if a member of the Chapter has a conflict of interest that does not arise out of the particular constitutional arrangements that apply to cathedrals (e.g. in respect of a contract the Cathedral proposed to enter into with a relation of the member) then the member concerned should not take any part in the discussions or decision-making in relation to that matter.

Cathedrals with choir schools or other schools where a member or members of Chapter are school governors may face conflicts of loyalty, particularly if the school is independent of the Chapter but a tenant in Chapter property. It is important that consideration is given to how a Chapter member should behave in respect of discussions at Chapter and at governors' meetings. Ideally, the scope for such conflicts should be avoided by not appointing Chapter members to the governing bodies of organisations that have contractually-based relationships (or other relationships where conflicts of interest are likely to arise) with the Cathedral. It is essential that a cathedral maintains an arms length relationship with a school that is a separate legal entity or any charities with which it works closely and that all agreements are negotiated on commercial terms. For example, if a school is not sustainable without subsidy by the Chapter, perhaps because it cannot pay a commercial rent for the Chapter property it occupies, then the Chapter can decide to make

a grant to the school for the amount needed, showing this in its accounts to ensure that the financial relationship is transparent.

Insurance

Those Chapters that take out Directors or Trustees and Officers Insurance should only do so on appropriate advice. Such insurance covers liability for breaches of trust to the corporation arising from accidental negligence or ignorance.

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