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*"Proclaiming the Word and Work of God"*

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**CIRCULAR NO. 3**

To: All Churchwardens

cc: Archdeacons

Dear Colleague

**Conflict of interest and letting of church property to "Connected Persons"**

We have had advice recently on this matter from the Diocesan Registrar, which I hope will be of assistance generally in parishes that have church property for rent.

It is sometimes the case that a parish has a property, for example a curate's house (usually vested in the Board as Custodian Trustee with the PCC acting as Managing Trustee for day to day matters) that they wish to let out in the short term until a curate is appointed. Provided there are no trust terms associated with the property that would preclude such a letting, the Board would usually consent to this as long as there is a PCC resolution approving the tenancy, and proper advice is obtained on an appropriate rent and tenancy terms under Section 36 of the Charities Act 1993 (Section 36).

However, there is also a requirement under the Charities Act 1993 that Charity Commission consent will be required if the letting is to a "connected person." This means anyone connected to the PCC or the Board, including a trustee, employee or officer of those charities, or a relative of any such person or a company controlled by them. (In fact, the new Charities Act 2006 has widened this definition to include a business partner of either a trustee or any person who currently is regarded as a "connected person.") So if, for example, a PCC member wishes a relative of theirs to rent the temporarily vacant curate's house, then prior Charity Commission consent will be needed as this would constitute a letting to a "connected person."

Further, in these circumstances there are issues of conflict of interest that may also need to be addressed in the following two areas:

1. The person who advises on an appropriate rent and rental terms for the Section 36 Report:

If the tenancy is for a term of more than 7 years, a written report is needed under Section 36 Charities Act 1993 from a qualified surveyor who is a member of RICS (Royal Institute of Chartered Surveyors) or ISVA (Incorporated Society of Valuers and Auctioneers). However, if it is for not more than 7 years, as is more likely in these circumstances, then the PCC may take advice from a person “reasonably believed to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition” under s36(5), which could be someone from the congregation.

This can cause difficulties, however, where a letting is to be to a connected person, as it needs to be ensured that everything is seen to be carried out in an appropriate and impartial manner by the PCC. The Diocesan Registrar has therefore suggested in a case of a connected person letting that a sensible route may be, even for tenancies of less than 7 years, still to get advice for the Section 36 Report from a professional surveyor with professional indemnity cover, even though this may not technically be needed. This will, of course, have financial implications, but would ensure the PCC is protected.

2. PCC discussions and the involvement of the PCC member connected to the prospective tenant:

Usually PCC members who have a conflict of interest on any PCC matter will withdraw from the decision-making. However, the Charity Commission has taken the view that, in addition to this, it would in these circumstances be “best practice” (i.e. not a strict legal requirement but would be best adhered to) that such PCC member should also not take part in any of the discussions surrounding the proposed tenancy and its authorisation.

These requirements for letting church property also apply to a sale, and are fully set out in the Diocesan Guidelines on Leasing/Selling Church Property, which can be obtained on request from this office, or downloaded from the Diocesan website at [www.rochester.anglican.org](http://www.rochester.anglican.org) under Parish Resources – Legal.

ADDENDUM 2012:

The new Charities Act 2011 has changed section numbers from the previous Charities Acts, so please note that A SECTION 36 REPORT WILL NOW BE A SECTION 119 REPORT

Yours sincerely

G R Marsh  
**Assistant Diocesan Secretary**