

RE-ISSUED CIRCULAR NO. 11

Email To: All Incumbents, Churchwardens and Archdeacons

From: Legal Liaison Officer

Date: March 2012

THIS CIRCULAR IS BEING RE-ISSUED AFTER RECEIPT OF ADDITIONAL LEGAL ADVICE. PLEASE SUBSTITUTUE IT FOR THE PREVIOUS CIRCULAR NO. 11.

Re: Use of Church Halls as Village Halls – Albemarle Schemes

We have recently become aware that there are some church halls in the diocese which are managed by a Management Committee, where church use is no longer the predominant use. The question arises, what are parishes to do in these circumstances?

The problem arises where the Trust document establishing the use allowed for these halls stipulates that use must be for ecclesiastical or church purposes only. Changes of use may have subtly occurred over the years, so that a church hall which is now used for village purposes could be in use in breach of the Trust terms on which the hall was founded. This could mean that inadvertently the hall Trustees/Management Committee (i.e. those set up under the Trust document to carry out the Trust terms) are operating in breach of their Trust objects, so contravening their duties as Charity Trustees. In some situations where there has been “slippage” over the years from church-only use of a church hall to non-church use, it may be that the Management Committee has lost contact with the church as the Management Committee no longer contains PCC members. Here it will be important for the PCC to check the Trust provisions governing the church hall and make the Management Committee aware of them as necessary. It will also be important for the PCC to deal with this sensitively as there may be pastoral issues arising where this “slippage” has occurred.

It may be that a church hall, being used as a village hall (i.e. for non-church purposes) is no longer needed for church purposes, although may be needed occasionally; or there may not be enough funds to maintain the hall; or the hall is also needed by the community for additional uses e.g. a youth centre, or centre for the elderly; then unless the charity's Trust document allows use of the property for non-church purposes as well, the Management Committee cannot simply allow the hall to be used for other charitable purposes. It is important in these circumstances to check the Trust terms to see what is allowed.

What can the PCC do?

If any of the above circumstances exist, the PCC will need to consider:-

- (a) If the hall is no longer needed at all by the church, the PCC should take professional advice about selling the hall at the best price reasonably obtainable. As the hall will usually be held by the Board of Finance (the Board) as Custodian Trustee, then the Board's consent will be needed for this. The PCC will also need to check there is a power to sell the property in the Trust document, otherwise Charity Commission authority will be needed.

- (b) Alternatively, if the parish wishes to lease a church hall with church-use-only trusts, whilst still retaining some use for themselves, then application must be made to the Charity Commission for an Albemarle Scheme. (This will not be needed where the Trust document allows non-ecclesiastical use as well, which is why it is so important to check the Trust terms carefully). The Albemarle Scheme will authorise a lease of the property to a village hall charity using or wishing to use the hall, but with user rights reserved to the church. The village hall charity trustees will normally be responsible for the repair and maintenance of the property under the lease and the rent payable is reduced to reflect this. However, this lease can only be made after the Albemarle Scheme has conferred a power to lease the premises.

Further, church halls are usually held by the Board, as Custodian Trustee, with the PCC as Managing Trustee, and consent will be needed from the Board.

What is the benefit of an Albemarle Scheme?

The purpose of granting a lease under an Albemarle Scheme is for the PCC to retain the use of the property at certain times. A lease of this type also preserves the building, whether through maintenance covenants or the charging of a proper rent, for future generations, should it once again be needed for church purposes. In the meantime, it brings into full use an under-used property which perhaps cannot be properly maintained or improved to modern standards; or simply regularises a situation where the hall has been used for non-ecclesiastical purposes in breach of the Trust terms.

Advice can be sought from the Charity Commission by email on

enquiries@charitycommission.gsi.gov.uk /
by phone on 0845 3000218
or contact the Diocese.

ADDITIONAL ADVICE

We have received some helpful additional advice on an issue raised by a parish currently considering application for an Albemarle Scheme, as follows:-

The Diocesan Solicitor, Mr Nicholas Thomas of Blain Boland, was asked to advise on the meaning of “charitable purposes” where a Trust Deed for a hall states that it must be used “for any ecclesiastical and charitable purposes within the meaning of the PCC (Powers) Measures 1921 and 1949”.

Specifically, Mr Thomas was asked whether use of a hall for private and commercial functions only could be a “charitable purpose” such that use of a hall for this objective would be permitted, so obviating the need for an Albemarle Scheme.

The advice given was that use of a hall for private and commercial functions cannot be a “charitable purpose”, notwithstanding the fact that the fees paid for such events may be used for “ecclesiastical and charitable purposes”.

Trust Deeds therefore need to be checked to see what actual use of the building is permitted, and if the use of the hall falls outside of what is specified, then an Albemarle Scheme should be established as set out.

Mrs. Nikki McVeagh

This Circular can also be found on the Diocesan website under Legal. Guidance Notes and Forms. Circulars.