

PROCEDURE FOR SALE OF PCC LAND

This memorandum relates to the sale of PCC land. There are requirements similar to those set below if a PCC wishes to lease, mortgage or otherwise dispose of land.

1. PCC power of sale

PCCs as such cannot own land : the legal owner is usually The Exeter Diocesan Board of Finance Limited (EDBF) as custodian trustee, while the PCC is the managing trustee and has the powers of management. The PCC as managing trustee will take the initial decision to sell property.

Unless the trust deed states to the contrary, the sale proceeds can be used by the PCC for the purchase of another property or for investment or for general ecclesiastical purposes. It is advisable therefore that the terms of the trust should be checked at an early stage, to ensure that there is a power to sell and that there are no particular restrictions on the use of the sale proceeds.

2. EDBF consent to sale

A : Generally the consent of EDBF to a sale is required under Section 6(3) of the Parochial Church Councils (Powers) Measure 1956. However consent is **not** required if the value of the transaction does not exceed (i) the PCC's annual unrestricted income as shown in its most recent annual accounts or (ii) £250,000, whichever is the lower. Consent is also not required for a lease granted by the PCC for seven years or less.

B : If consent **is** required, the PCC should provide EDBF with a brief written statement of its reasons for the proposed disposal. Consent will normally given provided that EDBF is satisfied that the sale is in the best interests of the trust and the parish, that the terms are satisfactory and that no breach of trust will be caused by such a sale.

C : **Whether or not** consent is required, EDBF will need to be a signatory to any deed and will instruct Michelmores as its solicitors to approve documentation and to advise on the matters mentioned in paragraph 2B. It is diocesan policy for all costs in relation to custodian trustee matters to be borne by the managing trustee as the initiating party, and the PCC may therefore wish to consider appointing Michelmores as its legal adviser with a view to minimising costs.

3. Charities Act 2011

Whether or not EDBF consent to the sale is required, the provisions of the Charities Act 2011 will apply because land held by EDBF as custodian trustee is charitable property. Therefore any sale of the property prima facie requires the consent of the Charity Commission. However, if the PCC complies with the relevant provisions of the Charities Act (summarised below), it does not need to obtain consent from the Charity Commission.

The consent of the Charity Commission is not required if:

- (1) the sale is made to a person who is not a “connected person” (e.g. a trustee, officer or employee of the charity or a close relation of such a person) and
- (2) a satisfactory report has been obtained from a qualified surveyor.

Before entering into any agreement for sale the PCC must:-

- obtain and consider a written report on the proposed sale from a surveyor who is conversant with the Charities Act 2011, suitably qualified (as defined in section 119(3) of the Act), and instructed by the PCC and acting exclusively for it;
- advertise the proposed sale for such period and in such manner as the surveyor has advised in his report – unless he has advised that it would not be in the best interests of the charity to advertise the proposed sale;
- decide that it is satisfied, having considered the surveyor’s report, that the terms on which the sale is proposed to be made are the best that can reasonably be obtained for the charity.

The report to be made by the qualified surveyor must contain certain information. This includes a description of the land and its location, whether the buildings are in good repair, advice as to the manner of disposing of the land so that the terms are the best that can reasonably be obtained for the charity, whether the surveyor advises that it would be in the best interests of the charity to advertise the proposed disposition (or, where his advice is that it would not be in the best interests of the charity to advertise it, his reason for that advice), and the current value of the property having regard to its current state of repair and current circumstances.

In **all** cases the EDBF will require to see the surveyor’s report.

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