



Selling land or buildings Guidance for PCCs



DIOCESE OF TRURO

DISCOVERING GOD'S KINGDOM
GROWING THE CHURCH

1. What is this about?

This guidance is for a PCC when considering selling land or buildings. This does not replace the need for legal advice and it does not try to cover every possible eventuality or circumstance that may arise: it gives an overview.

The guidance is issued by the Diocesan Board of Finance (the DBF) and if we are approached to act on behalf of a parish to sell land or property we will expect this guidance to have been worked through.

What this covers:

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2. What is this not about?

There are rules about leasing, letting or otherwise giving permission for someone to use church property, this is not about that. *You will need a lawyer who knows about church property and for long lease arrangements you will need DBF permission.*

There are particular rules about when a Church Hall has its own trustees, and where the trustees want to use it for something new, this is not that. *There is good Charity Commission guidance on this.*

This is also not about selling contents or fittings from a church. *Talk to an Archdeacon or the DAC Secretary quickly!*

2. What are the rules about a PCC selling property?

- A PCC is a charity. Although many PCCs are not required to register with the Charity Commission¹, they must still follow charity law to dispose of assets, (obviously a PCC that is registered also has to do this). The Charity Commission website has specific guidance, search for “CC28 charity sales” - do read the guidance in CC28. A PCC will not usually need Charity Commission consent to sell, but there are some exceptions.
- A PCC cannot usually own property in its own right; the DBF must act on its behalf. This sounds like something that the DBF made up to keep tabs on churches, but no, it is in the Parochial Church Council (Powers) Measure 1956 (the 1956 Measure).
- The 1956 Measure means that usually the DBF will have to give permission before a PCC can buy or sell property. Section 6 of this guidance will tell you what the DBF will ask for.
- Members of the clergy and churchwardens hold public office, members of the PCC are acting as charity trustees. These things mean that the “Nolan Principles” of public life apply to our work. We should make decisions with selflessness, integrity, objectivity, accountability, openness, honesty and showing leadership.

¹ Only PCCs with an annual income of £100,000 or above are required to register with the Charity Commission. However, note that this may change in the near future.

3. The mission of the church.

There is not a simple rule that we can point to that insists that a PCC prays about these decisions or requires you to think about the wider mission of the church. But the clergy and churchwardens will have made promises at their ordination, induction, licensing or commissioning to seek God's will and to serve faithfully. We think that this means that you should set this decision within the wider mission of the church and look beyond the immediate challenges or opportunities that you are facing. The questions that you consider might include:

- How will this decision help our church in the work of discovering God's kingdom, growing the church?
- Have we widened the conversation beyond our own church to include neighbouring parishes and ecumenical partners?
- Does this decision bring us closer to our vision for the church in ten or twenty years' time?
- Does this decision line up with our priorities as a church and the priorities of the deanery and diocese?

Archdeacons will welcome early conversations with PCCs if you are thinking about how best to use your buildings or property, or about whether it is time to sell.

4. Some questions that you need to think about early on.

Why do you want to sell? The PCC should be able to answer this in a straightforward way and you should be able to make clear why the sale is in the best interests of the church.

Do you own the property? This can be harder to prove than one may think. The Land Registry may have a record of the owner - "registered title" - but if not then you will need to work through other documents and may need to "register the title" with the Land Registry before you can proceed. Cornwall Record Office may be able to help with historic records and transactions, but you are likely to need legal advice early on. You may need to provide a Statutory Declaration to prove the PCC's title to the land if no deeds can be found and this can take some time to put together.

Are you able to sell the property? The PCC need to be sure that they have the right and power to sell. For instance, if it was given to the church then the wording of the gift (often written into the Deeds) may say that if you no longer want it you have to give it back.... Or that you can only use it for specific purposes, like a Sunday School, for instance, this may limit what you can do with the proceeds of the sale. Some church property is on the “community right to bid” list as an asset of community value, you would probably know if this applies but the whole list is on Cornwall Council website (or Devon / IOSC websites).

What are the down-sides to selling? The PCC may want to consider questions such as: what will we no-longer be able to do? will we upset the neighbours? will our reputation suffer? will our successors regret our decision? None of these necessarily mean that you do not proceed, but they all need thinking about.

Are we showing good governance? Decisions need to be made by a properly constituted meeting of the PCC with proper notice of the meeting and an agenda sent to members in advance. There will be a proper record or minutes, which will need to show why you have made the decisions (you do not need to record everything that everyone says). It is likely to need at least four steps even if everything goes very smoothly;

- deciding that selling may be the right thing to do (and thinking about why) (including considering whether there is anything the PCC can do to protect its interest in the future value of the property (e.g. if land has development potential)
- getting professional advice
- deciding to act on the advice (pressing “Go” on marketing the property)
- considering and acting on offers (deciding whether or not to press the “Sell to this person” button)

5. When you have decided that selling is the right thing to do (or may be the right thing to do).

5.1 Surveyor's Report

You will need a written report from a qualified surveyor acting on behalf of the PCC. There is a format for these reports; often called a “Charities Act Report” an appropriate surveyor will know about them. This does not commit you to selling, but it does commit you to paying for the report. The PCC should receive the report and consider it before deciding to market (if advised to do so by the surveyor), or the PCC may decide at that point not to proceed.

Part of the report will usually be a valuation (a Charities Act valuation) but there will also be advice on how to dispose of the property. You must have this report before agreeing a sale or other disposal, and you will be expected to follow any guidance on how to market the property. Charity Commission guidance CC28 gives more information about this, including what a “qualified surveyor” means.

You will typically need to advertise the property on the open market, and it is a good idea to set a date (or a series of dates) on which the PCC will meet to consider any offers received, or whether to simply convene every time an offer is made. The PCC could decide to delegate to a smaller sub-group who have responsibility to consider and recommend an offer for acceptance by the PCC.

5.2 Lawyers

You may already have worked with lawyers to get this far, for instance to prove that you own the property, or to guide you through the decision-making process. If not, then you will need to instruct a lawyer to act for you in the sale. The choice of lawyer is up to you, but you will need to have identified them before you market the property and to help you to prepare the paperwork (there is quite a bit of it).

The DBF lawyers are Veale Wasbrough Vizards (VWV's contact details are below) and you may choose to instruct them, it is fine for them to act for the PCC and the DBF.

You do not have to use VWV, but if you choose a different provider make sure that they are familiar with acting for charities, and ideally have worked with PCC sales in the past. We have found that PCC and DBF both using VWV can help avoid confusion between the seller and buyer as well as speeding things up.

5.3 Deciding to sell

Having marketed the property and hopefully receiving offers, the PCC will decide whether to sell to a particular purchaser. The PCC is under an obligation to sell on the "best terms reasonably obtainable" for the PCC.

If the highest offer by an agreed date is more than the valuation offered by the surveyor, and the original reasons for wanting to sell still apply, then agreeing to sell should be straightforward. The PCC will need to pass a formal resolution, see below for some of the things that you may wish to include.

You should not sell to a "connected party" without the prior consent of the Charity Commission - CC28 tells you who that is, but it includes PCC members, donors to the PCC, employees of the PCC or close relatives of any of them, or companies controlled by them. If you choose to, then you will need an order from the Charity Commission to allow you to do so.

You should usually sell for at least the market value and the highest offer. If the surveyor's report suggests that the property be marketed, for instance, for £100-120,000, but after three months on the market the highest offer is £80,000 then you may seem to have a problem. However if you have followed the advice of the surveyor in marketing, then they may be willing to issue a certificate revising their view of the market value to allow you to sell in line with the highest offer received.

If you want to sell for less than the market value, or for less than the highest offer (and there may be a good, justifiable reason for this), then we recommend that you seek legal advice and consider Charity Commission guidance.

6. The role of the Diocesan Board of Finance

In most cases, the DBF will hold the legal title for the property on behalf of the PCC. The PCC is managing trustee and is responsible for the upkeep and management, and also receives any income or benefit. The DBF do not usually get a cut of any sale proceeds, but the PCC is expected to cover the DBF costs, usually from the proceeds of the sale.

The DBF takes the view that the PCC is in the best position to decide on what to do with its own assets, we will not usually want to “second-guess” your decision to sell, but we do have to be confident that the PCC have acted lawfully and reasonably.

We recommend that if you are thinking about how to use your buildings or property that you speak with your Archdeacon early on.

Once you are ready for the DBF to act, we will expect to see evidence of something like the following sequence of actions and decisions:

- An initial discussion by the PCC about the use of the land or building and how it relates to the mission of the church and why disposal is being considered. We will look to see that you have thought about the points in parts 2,3 and 4 of this paper.
- Evidence that the PCC has considered the Charity Commission guidance on disposing of land or property, this could be noted in a PCC minute.
- Confirmation that ownership and any trust obligations have been settled (you will need this as soon as you market the property anyway)
- A copy of the surveyor's report and confirmation that the PCC are acting within its advice.
- Confirmation that the PCC has achieved best value, is not selling to a connected party, and have accepted the highest offer.
- A signed copy of the final resolution of the PCC when they decide to sell, typically including something along the lines below:

The PCC of *St Landed Church, Landed*, resolved at its meeting held at *Landed Hall*, on *1st January 1831*,

- The decision to sell *Church House, Church Lane, Churchtown, Landed*, for £1million to *Mrs Up Country-Type, of Up Country House, London*.
- To appoint *Messrs Antelope, Lion and Basset Hound LLP* as solicitors to act in connection with the sale and to be responsible for payment of charges etc.
- To indemnify Truro Diocesan Board of Finance from and against all legal costs and other expenses or liability incurred in connection with the transaction.
- To confirm that the Surveyor's Report, in compliance with the Charities Act 2011, has been received, considered and acted on, and is available for submission to the DBF.
- Signed by the Chair of the meeting and two members

7 Getting Help

Selling an historic asset is a complex job; it can take a lot of time and will need attention to detail and a systematic approach. The support of someone with experience in charities disposing of property will be very useful for the PCC throughout the process; this could be someone who is a member of the PCC or someone from the wider community.

The PCC will also need the professional support of at least two appropriately qualified advisors (and possibly more than two). These are the surveyor (5.1 above) and a lawyer to support the conveyancing (5.2). In each case, choosing advisors with the relevant experience as well as sufficient qualifications is important.

The PCC may want detailed advice on how to get best-value for the property, for instance on questions of whether to sell with planning permission, or how to deal with concerns or enquiries from neighbours.

The DBF no longer has an “in-house” property team, and we do not have anyone on the staff who is qualified to give detailed guidance to a PCC on charity law or the procedures for selling property beyond what is set out in this guidance. We strongly recommend the support of a competent legal advisor, ideally with church property experience but at least with charity experience.

We recommend the Charity Commission website as a good place to start, CC28 gives a thorough account but is not written specifically for PCCs.

8 Contact details

VWV; the DBF lawyers 0117 925 2020 / truroregistry@vww.co.uk
www.vww.co.uk

Contacts: Laura Chesham for Charity guidance;
Sarah Outram for Property advice.

The Charity Commission

<https://www.gov.uk/government/organisations/charity-commission>

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