



Church of Ireland – Parish Handbook

CHURCH PROPERTY HELD IN TRUST

All select vestry members should be aware of what property is owned by their parish. Property could include land, buildings, money, investments or other assets. It is important to know whether property is held in trust and, if so, whether it is held by the Representative Church Body (RCB) or other trustees.

The status of property will impact how it should be managed by the select vestry and whether it needs to consider trustees and trust documents in decisions relating to the property.

If the parish purchases or receives a gift of property, the select vestry should understand the different ways of holding and managing property in order to make sure they act in the best interests of the parish.

THE CHURCH'S CORPORATE TRUSTEE BODY IS THE RCB

The RCB was established in 1870 as the corporate trustee for the Church of Ireland to hold church property. The majority of churches, graveyards and glebes were, and continue to be, vested in the RCB which holds these premises in trust for parishes. In addition to land and property, the RCB holds endowments and investments in trust for parishes. As a corporate body with wide-ranging statutory powers, the RCB's legal status benefits parishes. The RCB acts in accordance with the *Constitution of the Church of Ireland* and accounts to General Synod in exercising its role.

The recommendation of the RCB is that dioceses and parishes vest property in that body. Vesting the in the RCB protects the assets of the Church, ensures regulation and promotes accountability while still allowing parishes and dioceses access to these assets.

OTHER PARISH TRUSTS

The RCB is not the only trustee for Church of Ireland parishes. Parishes may also have assets vested in other trustees who may be either individuals or corporate bodies. Particular care must be taken to ensure the terms of the trust for the assets are properly followed. Without the defined trustee role, transparency and accountability of the RCB, there can be misunderstandings or uncertainty regarding trusts and the work of trustees. Due to the variety of parish trusts, it is important to note that the following is general guidance only. Please contact the RCB for specific legal advice if required.

WHY ARE TRUSTEES NEEDED?

Where premises or investments are held in trust, it is a requirement that one or more trustees hold the premises or investments in trust for the beneficiaries.

An example of premises held in trust is a parish hall which has been gifted or purchased and is intended to belong to present and future members of the parish. An example of an investment held in trust is where under the terms of a Will, shares are bequeathed or left to a parish. The beneficiaries are usually members of the parish as a collective group.

WHY APPOINT PARISH TRUSTEES RATHER THAN THE RCB?

Where premises or investments are left by a Will for the benefit of a parish, there is not always an express reference to the body or person(s) who are to act as trustee. Depending on the specific wording of the Will, it is often up to the incumbent or the select vestry to decide whether to vest assets in parish trustees appointed for this purpose or in the RCB.

Historical limits on the amount of glebe land which could be vested in the RCB meant some land was vested in other trustees for the parish instead. These limits may no longer apply but the historic trusts set up to hold the assets may still exist.

APPOINTING PARISH TRUSTEES

To avoid uncertainty or disagreement on appointments, it is always preferable that a trust deed or other document sets out the terms governing the appointment of trustees.

PURCHASE OF PREMISES: Where premises are purchased by a parish and are to be vested in parish trustees, the select vestry should instruct the parish's solicitor to prepare a document (known as a trust deed). This document is additional to the purchase deed which vests the premises into the names of the trustees; the trust deed sets out the terms of the trust and usually includes provisions regarding the appointment of trustees.

BEQUEST OF PREMISES: Where premises are bequeathed to a parish, the Will may contain terms referring to the appointment of the original and succeeding trustees. Where this is the case, the Will operates as a trust deed. Where the Will does not specify who the trustees should be, or how they should be appointed, it may be up to the select vestry to decide, and to record in a trust deed.

INVESTMENTS: Where investments are acquired by a parish, and are to be held in trust for a particular purpose, the select vestry may open a specific bank account with authorised signatories for such purpose. It is good practice to ensure two signatories are required. Alternatively, the select vestry may arrange to have shares or other investments which are evidenced by documents, registered in the names of parish trustees. Where investments have been bequeathed to a parish, the Will operates as a trust deed.

SUCCESSORS TO ORIGINAL TRUSTEES: Where parish trustees hold property in succession to the original trustees, but there is no evidence of any trust deed or other document governing the appointment of trustees, it is important to examine the history of trustee appointments. Historic minutes of the select vestry may record previous decisions to appoint, or to ratify the appointment of, trustees. Alternatively, the power to appoint parish trustees may have been exercised by the trustees on the understanding that when a trustee passed away, became incapacitated or intended to retire, the continuing trustees would consult and appoint one or more new trustees. Where records relating to the appointment process for parish trustees can be found, they should be followed.

RECORDING TRUSTEE APPOINTMENTS

PREMISES: In the case of premises placed in trust for the first time, parish trustees formally commence their trusteeship from the date the deed which vests the premises in their names is executed. This deed may take the form of a Land Registry Transfer, or a Conveyance, Lease or Assignment.

The deed may contain no reference to the fact the named individuals are trustees or that the premises are held in trust. For legal reasons, it is general practice that trusts and trustees are not disclosed in the title deeds for premises. The fact that individuals act as trustees and that the premises are held in trust should not be in dispute provided the fact of the trust is detailed in a separate document, usually the trust deed. This may be a deed specific to particular premises or, as in the case of diocesan trustees, may be a trust deed governing different premises.

Where premises are vested in the RCB, the existence of a trust can be implied by the corporate trustee status of the RCB. In circumstances where premises are held by parish trustees, it is not uncommon to find there is no trust deed. In such cases the fact of trusteeship and the terms of the trust have to be

established from different sources, including the account from which any purchase monies were originally paid and the minutes of select vestry meetings.

INVESTMENTS: Where investments evidenced by documents are held in trust for a parish, those documents, such as share certificates or otherwise, should be in the names of trustees for the parish capable to act in accordance with the select vestry's instructions. In the case of certain documents, it may be possible to recite on the face of the document, that the investment is held in trust for a parish. In cases where this is not possible, the vestry should ensure that all documents evidencing the investment are retained in the possession or under the control of the parish at all times.

WHAT HAPPENS ON THE DEATH OR RETIREMENT OF A PARISH TRUSTEE?

PREMISES: It is necessary to execute a Land Registry Transfer, Conveyance or Assignment, in which the death or retirement of the parish trustee is recorded and the continuing (and retiring, in the case of retirement) trustees convey title to the new trustee(s).

INVESTMENTS: The relevant financial institution should be contacted to determine precisely what documents must be submitted to notify the institution of the death or retirement and to appoint new trustees for the investment.

Where there is a separate trust deed, it is recommended that in addition to the specific documentation in respect of the property or investment, the trustees should also execute a Form of Appointment, recording the death or retirement and the appointment of new trustees. The Form of Appointment should be retained with the trust deed and the title deeds or investment documents for future reference.

WHAT HAPPENS IF NO TRUSTEES CAN BE FOUND?

If no trustees can be found, it is necessary to examine any trust deed or other documents, to confirm who has the power of appointing new trustees. If the select vestry has this power, or has previously exercised it, they may (in consultation with the institution for any investment) be in a position to appoint replacement trustees in respect of deceased trustees.

In the case of incapacitated trustees, specific advices should be sought from the parish's solicitor, as the circumstances of each case, and the role of the incapacitated trustee or his/her legal representatives (where applicable) will differ.

Difficulties may be encountered if no parish trustee is in a position to execute documents, for example, to convey title to new trustees or to sign investment documents. In this case, the select vestry may need to establish the dates on which trustees passed away and approach the personal representative of the last living trustee to ask that person to be party to a deed vesting property in new trustees and in certain instances, to a Form of Appointment. Any such action would be subject to the terms of any trust deed or other governing document.

If there is no personal representative available to execute documents, further legal advice should be sought as the matter may involve an application to Court or to the relevant statutory body to authorise the appointment of new trustees. In cases where the whereabouts of trustees are unknown, or all trustees are incapacitated and unable to execute any deed, further advice should be sought from the parish's solicitor.

Legal advice and Court applications can involve considerable expense to parishes which could be avoided where premises or investments are vested in a corporate trustee such as the RCB or in parish trustees who are kept up to date and take an active role in carrying out their duties.

PARISH TRUSTEE DUTIES AND RESPONSIBILITIES

The principal duty of parish trustees is to act in accordance with the terms of the trust under which the trustees were appointed. In the absence of a trust deed or other governing document, this is a duty to act at all times in the best interests of the parish as the beneficiary. Where a trust deed or other document exists, this duty may be supplemented by additional duties set out in the document.

A trustee should not participate in any decision making process affecting the premises where there is a conflict of interest involving the trustee. Trustees may not delegate their work to someone else but may seek professional advice where it is required for the proper exercise of their role. Trustees should not misuse information in their possession as trustee and should not profit from their office to the detriment of the beneficiary.

RELATIONSHIP BETWEEN PARISH TRUSTEES & THE SELECT VESTRY

Under the *Constitution of the Church of Ireland*, the select vestry has a defined role in managing a parish. Even if premises or investments are vested in parish trustees, in practice it may be the select vestry which makes day-to-day decisions involving the management of trust premises or investment. Examples of this management include insuring premises, approving expenditure for repairs, deciding whether to realise investments or determining whether actions comply with the terms of any trust deed or other governing document.

The roles of parish trustees and the select vestry should aim to be complementary, particularly as it is common for parish trustees to also be select vestry members. If there is a dispute between parish trustees and the select vestry, it is the parish trustees who hold the asset in trust for the parish and therefore it is the parish trustees who exercise all duties, rights and responsibilities (subject to the trust deed or other governing document). These normally include the right to make decisions concerning the asset which the trustees determine to be in the best interests of the parish, the right to sell the asset at the discretion of the trustees and the duty to account to the parish for the proceeds of sale.