

## GENERAL SYNOD

### THE CHANGING ROLE OF DEANERIES

1. In any episcopal church, the diocese is bound to have a central role. This is not because dioceses were created before territorial parishes or national church structures – though, in England, they were. Nor is it because dioceses have a strong historic identity and command affection and loyalty; though this may well be so in some cases, what matters for Church members generally is their local place of worship and also, perhaps, a sense that they are part of something wider called the Church of England.
2. The reason for the particular importance of the dioceses is set out in paragraph 2.2 of *The Governance of the Church of England and the Anglican Communion* (GS Misc 910). “The diocese is not an aggregation of parishes; rather, it is (in the technical sense) a ‘local church’, of which the diocesan bishop is the ‘principal minister.’ It is not primarily a unit of administration but a portion of the people of God gathered around the diocesan see and its bishop. Dioceses are sub divided into parishes.”
3. The governance structures of the Church of England reflect this pivotal role for the diocese and its bishop who is “the chief pastor of all that are within his diocese, as well laity as clergy and their Father in God.”
4. Parishes, sometimes grouped together into larger benefices, are also key units with their own structures, resources and legal responsibilities. Even where, as in the great majority of cases, their income is not sufficient to require them to be registered with the Charity Commission, all PCCs are charitable bodies and are responsible for the upkeep of local church buildings.
5. At national level the Church of England also has a significant identity and infrastructure. The latter includes three major corporate bodies – the Archbishops’ Council, the Church Commissioners and the Pensions Board – and the General Synod which serves as the Church’s legislature.
6. Given this complex and highly developed set of arrangements it is, perhaps, not surprising that thinking has varied a good deal, both over time and from place to place, over the distinctive role that deaneries might play to supplement what is necessarily done at other levels within the Church of England.
7. The office of rural dean was first recorded in one of the laws ascribed to Edward the Confessor, the dean being appointed by the bishop “to have the inspection of clergy and people from within the district to which he was incumbent... to which end [he] had power to convene rural chapters.”
8. Over subsequent centuries the jurisdiction of the rural dean declined as a result of the development of the office of archdeacon. But by the middle of the nineteenth century rural deaneries had been established by statute and the Ecclesiastical Commission had power to alter their area and to increase or diminish their number.

9. The Synodical Government Measure 1969 created a place for deanery synods in the new synodical structure. The functions conferred upon them were essentially deliberative, though a diocesan synod can delegate to deanery synods functions in relation to parishes in their deaneries, including in particular the determination of how the 'parish share' is to be allocated. Crucially, the lay membership of deanery synods became the electorate for choosing people to serve on the House of Laity of the General Synod.
  
10. Deanery synods survived a recommendation in 1997 for their abolition in the report of the Review of Synodical Government in the Church of England conducted by the group under the chairmanship of Lord Bridge. As part of the follow-up process to the review, a document was produced in 2001 about deaneries more generally. This publication - *Good Practice in Deaneries* (GS Misc 639) - set out some basic principles about working together in deaneries, gave examples of good practice and made some recommendations to help deaneries work more effectively.
  
11. The examples quoted in that document included delegation in some places from dioceses to deaneries of financial, pastoral and clergy deployment responsibilities; the appointment of deanery officers and corporate deanery activities such as worship, seminars and social projects. The pattern was very diverse, reflecting choices reached within dioceses that vary hugely in size, make-up and culture.
  
12. The various arrangements described in GS 639 were in addition to
  - the long standing existence of deanery chapter meetings where clergy meet for fellowship and mutual support; and
  - the historic role of rural (often now area) deans who have certain defined responsibilities under Canon C.23 separate from those conferred on archdeacons by Canon C.22.
  
13. In July 2010 the General Synod debated a motion from the Coventry Synod on the role of deaneries and deanery synods. After debate the motion was passed in an amended form as follows:
 

'That this Synod

  - (a) welcome the wide measure of discretion that each diocese has to determine the extent of any delegation of functions to deaneries;
  - (b) note the increasing range of legal vehicles available to deaneries where it is agreed that a more executive role may help in promoting the mission of the Church; and
  - (c) invite the Archbishops' Council, in consultation with the House of Bishops, to produce updated guidance on available options, with examples of how recent practice has been developing.'
  
14. In the light of that debate staff of the Archbishops' Council have consulted diocesan secretaries on how the situation has developed since the last national document was produced 10 years ago. The survey produced 27 substantive responses.
  
15. Of these, 24 gave one or more examples of people being appointed to work in deaneries, either as administrative officers or in areas such as mission and youth work. Many were part time positions where the post holder also had parochial responsibilities.

16. In most cases either the diocese and or parish/benefice, operating on behalf of others in the deanery, acted as employer and banker, with the dioceses or the other parishes providing the funding. There were hardly any examples of separate legal vehicles being set up at deanery level.
17. In 16 dioceses deaneries were significantly involved in clergy deployment matters and in 9 dioceses deaneries had a substantial role in relation to pastoral reorganization. In 13, deanery mission plans were a major feature of diocesan strategic planning. In 12 dioceses, deaneries were substantially involved in calculating and or responsible for allocating parish share. But in only 4 dioceses did deaneries have a substantial role in holding and allocating funds.
18. These findings are consistent with those of *A Survey of the significance of the role of deaneries in the dioceses of the Church of England* which was undertaken by an independent group (known as the “Church House Deaneries Group”) in 2010. This was a survey addressed to bishops who were asked to assess the importance of the deanery in several different areas. A number of bishops saw deaneries as most relevant to the collection of parish share and deployment of clergy, and to a slightly lesser extent in relation to mission initiatives.
19. Precisely because the deaneries, unlike dioceses and parishes, are not a fully fledged operational level within the Church of England with their own corporate and administrative capacity it is important that, where they do take on significant functions, especially financial responsibilities, they do so in a way that is orderly.
20. It is also important that, so far as possible, simple, pragmatic solutions are adopted. The Church of England is already an extraordinary complex institution and is not visibly in need of a further proliferation of legal entities.
21. Attached to this note are two annexes, one prepared by the Legal Adviser and one by the National Stewardship Officer which explain the options that exist where deaneries conclude that their circumstances are such as to necessitate the creation of a new charitable body. There are currently three possible mechanisms, with a fourth due to become available in the course of this year. The note from the Stewardship Officer explores possible ways of getting work done at deanery level without having to establish separate charities.

WILLIAM FITTALL  
SECRETARY GENERAL

May 2011

## Establishing a distinct deanery based charity

### *The status of deanery synods*

Parochial church councils ('PCCs') are charities (even if, because their income does not cross the registration threshold, they are not registered with the Charity Commission). In contrast, deanery synods are not charities, since they are not established for exclusively charitable purposes.

Thus whilst there is no objection to a deanery synod holding modest funds (and in that connection opening a bank or building society account) for the purpose of defraying its operating expenses, it is undesirable for it to hold and/or receive substantial funds, since they will be liable to tax. (A deanery synod cannot claim Gift Aid by reference to the charitable status of the PCCs of the parishes in the deanery since it is a legally distinct entity.)

### *Establishing a distinct charitable entity*

If it is desired to run a deanery based activity through a charitable vehicle (eg in order to raise funds from donors with the benefit of Gift Aid) some other body than the deanery synod will need to be used.

In some cases it may be possible for that body to be a PCC – provided that the activity in question can be said to further the PCC's charitable purposes (a matter on which legal advice should be taken if the position is unclear). If this route is followed, the funds in question will represent a 'restricted fund' of the PCC and, as such should not be used for other purposes of the PCC and should be accounted for in the PCC's accounts. The restricted fund can be managed either by the PCC itself or by a committee established by it for that purpose (which, under the Church Representation Rules, can include persons who are not members of the PCC).

Alternatively, the funds of a deanery based activity might be held by the diocesan board of finance. Similar considerations arise in that connection to those arising where a PCC holds such funds.

Before taking the decision to establish a new charitable entity, those concerned will need to take account of the various implications of doing so. They include the following:

- Those responsible for the administration and management of the charity (the 'charity trustees') will be subject to various general legal duties in that capacity, including the duty to act prudently, to protect the assets of the charity (eg by putting suitable financial controls in place) and to avoid any form of 'personal benefit' (except where it is authorised by the charity's governing document). The Charity Commission produces helpful guidance on the duties of charity trustees, including its booklet *The Essential Trustee*, available on its website at [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk).
- Additionally, the charity trustees will need to comply with the requirements as regards reporting and accounting by charities (detailed guidance on which can again be found on the Commission's website).

- Lastly, if the new entity is to claim Gift Aid, it will need to comply with HMRC's 'Fit and Proper Persons' test - not, in itself, a significant task, but an additional administrative requirement that needs satisfying. Doing so will require the new entity to hold signed declarations from all the charity trustees and any 'managers' responsible for claiming tax reliefs or for significant spending. As the new entity will not be a PCC, it will not be entitled to use the simpler procedure HMRC has approved for PCCs.

Situations in which there may be a case for establishing a distinct charity include the following:

- where it is desired to give responsibility for the administration of the fund to persons appointed by a number of PCCs in the deanery;
- where a funding body makes it a condition of the making of a grant that it be paid to a distinct charity; and
- where it is desired to appeal to the public for funds and it is thought prospective donors may be more willing to give to a body which is not part of the Church's formal institutional structure.

#### *Types of legal structure for a distinct charitable entity*

Where it is desired to establish a distinct charitable charity, that can be done using any of three basic types of legal structure – with the possibility of a fourth type of legal structure becoming available in the course of 2011.

The simplest form of legal structure is that of a **trust**, which can be created quite straightforwardly by executing a trust deed and can be administered subsequently by its trustees with the minimum of procedural formality. A trust-based structure is likely to be most appropriate in cases where the charitable fund is intended to be administered by a small group of people and without employing staff or engaging in trading. It is particularly suitable where the function of the fund is essentially concerned with the making of grants.

A significant disadvantage of a trust-based structure is that it does not confer limited liability on the trustee body, so that in principle they can run face the possibility of 'personal liability'. That is to say, whilst the trustees have an implied indemnity which allows them to resort to the assets of the trust in order to discharge the liabilities they incur as trustees, if and in so far as those assets are insufficient to defray the liabilities the trustees will have to use their own assets to do so.

A second form of legal structure is that of an **unincorporated association** (or 'society'). This will be administered by a committee or council of management. But, additionally there will normally be a body of members whose functions will include the election of the members of the committee / council.

This type of structure is accordingly appropriate where it is desired to have not just a body of trustees to administer the charitable fund but also a wider body of supporters (who will often undertake activities such as fund raising on behalf of the charity).

Again, however, an unincorporated association does not have limited liability, with the consequence that the committee members and other members of the charity can be personally liable for its debts in the event of its assets being insufficient to meet them.

The third form of legal structure currently available is that of the **company limited by guarantee**. As in the case of the unincorporated association, responsibility for administering a limited company is divided between its directors and its members – although they can be one and the same. Thus in principle this form of structure is equally appropriate whether or not it is desired to give a role to others beyond the immediate circle of those responsible for administering the charity.

A company represents a legal entity distinct from its members and directors, so that any liabilities it incurs are its own. Thus, whilst members agree to contribute a nominal sum to the funds of the company in the event that it is wound up, they are generally protected against personal liability. The limited company is accordingly seen as the most suitable form of legal vehicle to adopt where a charity intends to engage in activities (such as trading or the employment of staff) which could involve the generation of significant liabilities.

However, limited companies must be administered in accordance with the requirements of the Companies Acts, which involve a degree of procedural complexity. Furthermore, they involve regulation by the Registrar of Companies in addition to regulation by the Charity Commission.

Because the limited company is recognised as not being an entirely satisfactory form of legal structure for charities, it is proposed to introduce a new form of legal structure exclusive to them which, whilst having the benefits of limited liability, is subject to regulation only by the Charity Commission and will also operate within a more straightforward procedural framework than do limited companies. This new form of legal structure, the **charitable incorporated organisation**, should become available for adoption by new charities in the course of 2011. Further information is available on the Charity Commission's website.

Given the range of legal structures available, any deanery contemplating establishing a new charity should give careful consideration as to which is the most appropriate form of legal entity for the purposes they have in mind. Before proceeding it may be desirable to seek advice from lawyers experienced in charity law. Whether or not such advice is sought, anyone considering establishing a charity is strongly recommended to consult the range of advice available in that connection on the Charity Commission's website. The Commission produces comprehensive advice on the process of registering a charity, including its booklet *CC22 – Choosing and Preparing a Governing Document*. The Commission also produces several model governing documents, currently comprising a model memorandum and articles of association for a limited company, a model trust deed to establish a trust and a model constitution to establish an unincorporated association.

LEGAL OFFICE  
April 2011

### **The implications of synods holding funds or undertaking other financial functions**

This annex outlines some of the practical and other implications of deanery synods holding funds. In summary, a deanery holding funds will inevitably face a number of practical issues and costs, and should therefore verify that the benefits of holding funds outweigh these. Annex A identifies some of the circumstances in which a deanery may wish to establish a separate entity, although there will be many instances where a deanery can engage collaboratively in mission without needing to establish a separate charitable entity.

1. Any body holding funds needs to have an appropriate infrastructure, reporting and approval mechanism. The legal requirements will depend upon the precise form that the deanery entity takes, but is likely to require:
  - (a) The appointment of a treasurer to oversee the funds.
  - (b) Setting up a bank account, with appropriate signatories and identity checks.
  - (c) Production of annual accounts, and for any charitable entity, having such accounts independently inspected (whether by an independent examiner or an auditor).
  - (d) Clarity on who has authority to spend the money.
  - (e) Arrangements for the management of any conflicts of interest.

This will inevitably require some level of additional volunteer effort and cost. If the funds in question represent a small fund to defray expenses occurred by the Synod, this is relatively simple; the work becomes more significant as the budget grows.

2. Where the deanery synod becomes a channel for parish share contributions, there is a risk that this delays the receipt of funds by the diocese, and therefore requires a greater level of reserves to be held, or debt interest incurred, to compensate for adverse cash flows. A more effective solution where the deanery does want to monitor their parish share contributions is for cash to flow directly to the diocese, but for receipts to be notified back to the deanery treasurer.
3. The funding model is pertinent. If the deanery wishes to engage in a project that requires funding, this funding will typically come from a range of sources: parish contributions, grants and individual donations. If the funding is exclusively from parish contributions (i.e. costs are divided up between parishes within the deanery), then it may be sensible for one parish to act as banker for the deanery, by setting up a restricted fund in order to ring-fence the money. Alternatively, the diocese may be willing to perform a similar role. Where staff are employed, it would normally be appropriate for them to be employed by the parish or diocese acting as 'banker'.
4. If an ongoing level of individual donations are required, there will inevitably be competing pressures between the needs of the parishes within the diocese, and the needs of the deanery project - risking confusion of message, or some parishes feeling unwilling to promote the deanery project because of its own financial pressures. This is less of an issue if the project simply requires an initial fundraising target to be reached, and the deanery believes this can be achieved in a single appeal.

5. There is a risk that a deanery holding funds will increase the total level of reserves held within the Church. Already, for example, reserves are held at three levels against the payment of clergy. Parishes may hold a reserve to enable them to meet parish share contributions; dioceses will hold some level of reserves to compensate for shortfalls in parish share, and the Commissioners hold funds to ensure clergy can be paid even if a diocese is late with a monthly contribution. Whether this is a significant issue will depend upon the level of reserves the deanery feel is appropriate.

John Preston  
National Stewardship Officer  
April 2011

**Published by the General Synod of the Church of England  
and on sale at the Church House Bookshop**

**31 Great Smith Street, London SW1P 3BN**

***Copyright © The Archbishops' Council 2011***

**£2**