

The Diocese of Southwark

Managing successful Capital Projects

March 2016

Contents

1. To begin with...	4
Communication	4
Begin with VISION	4
The Options' Appraisal	5
Projects are a learning process	6
2. The stepping stones	7
3. Overview	8
Introduction	8
Overview	8
Capital project	8
Approvals process	8
4. Preparing a Project Mandate (PM)	10
Introduction and purpose	10
Completing the PM	10
Submission	10
Costing and accounting	10
5. The Architect's Brief	12
6. Developing a Business Case	14
Introduction	14
What is the Business Case?	14
Business Case Structure	14
Working with the DAC	15
Development of the Business Case over time	15
Stage 1 - Strategic Outline Case (SOC)-the scoping stage.	15
Stage 2 - Outline Business Case(OBC) -the detailed planning phase.	16
Stage 3 - Full Business Case(FBC) - detailed final phase.	18
7. More detail on the contents of a business case	19
The Strategic Case	19
The Economic Case	20
The Commercial Case	20
The Financial Case	200
The Management Case	21
8. The next stages	22
Planning	22
DAC	22
9. APPENDIX 1 PRO FORMA FOR AN OPTIONS APPRAISAL	23

10.	APPENDIX 2 GUIDELINES TO OBTAINING A FACULTY	25
11.	APPENDIX 3 APPOINTING PROFESSIONAL CONSULTANTS	31

1. To begin with...

Your parish has a vision to improve your buildings. We use this guide to help all building projects in the Southwark Diocese. Small simple projects will have short, quick plans. Larger projects (over £1 million) have more detail, carefully anticipating how the building's new character will be different. This guide will help you plan and achieve. Right from the start of an idea, to a fit for purpose building. This guide will help you to:

- Decide and own the process in PCC meetings
- Develop precise and detailed plans from your idea
- Identify and contact Diocesan advisors
- Consult with the congregation and local community
- Prepare the Statement of Need for the Diocesan Advisory Committee
- Foresee difficulties and tackle them
- Manage the design stages
- Secure permissions including Faculty and planning
- Manage capital expenditure
- Celebrate your success

Communication

Some church buildings have been used for hundreds of years. Lots of people have views about building projects. Some make decisions. Some give valuable advice. Others can undermine and delay projects. We want you to be thorough and effective in how you discuss, plan and publicise what you do. Talking and listening to different people will help your project. Some will give you ideas. Others will ask questions which need answers. As you work through the project it will become clearer and stronger.

- The PCC need to know about every step.
- Typically, a working group will be the people who develop the detail.
- The Diocese is the custodian Trustee of all PCC property. A continual dialogue is needed with Diocesan officers; sharing information and giving help and advice.
- The congregation need to know what you are doing why, where and when.
- The local planning authority will need to give formal permission and need to be told how a project is being completed.
- Projects often take longer than anticipated. A clear plan can manage people's expectations. A plan can brief and inspire people who pick up key roles during the project.

Begin with VISION

Your buildings may need capital expenditure, but the best project happens when it is rooted in the parish's vision. Any parish considering making a change to their buildings will have discussed and agreed a Mission Action Plan. Without a Mission Action Plan (MAP) do not start a building project! The Canon Missioner, Stephen Hance has advisors who can help your parish write their MAP. Woolwich and Croydon Areas have Parish Development Officers who can help.

Your vision will explain what you plan to do, and why.

When you have a vision of what you plan; contact your Archdeacon. The Archdeacon, typically will invite the Diocesan Surveyor, Eric Greber and / or the Deputy Diocesan Secretary, Stephen Roberts (who can advise about the Diocesan Advisory Committee (DAC)), to visit the parish. They will advise the parish on what may or may not be achievable. The next stage is the options' appraisal

The Options' Appraisal

This is when you look at possible options. You will need to think through different ways forward: from doing nothing; to doing a small project; to doing a major redevelopment. The greater the variety of options that are looked at, at this early stage the better. It will cost you nothing apart from time and creativity. Keep a careful written record of the reasons for and reasons against each option. Explain why a particular option is chosen over the other ones. You will need the phrases you develop and arguments later on when you write the business plan and the Statement of Need -for a faculty.

One way to do this is for small groups to generate separate options and for the PCC to look at each in turn.

An effective Options Appraisal will help you decide:

- A. The diverse factors to include in the project.
- B. If you should do the project.
- C. The best way to carry out an agreed project.

All Option Appraisals will have these stages:

1. Explain what you hope to achieve in the long term.
 - a. Typically you will set 3 objectives.
2. Set out different ways in which the objectives could be achieved.
 - a. These are options; every appraisal includes a 'Do Nothing' option.
3. Assess the costs and benefits of each option;
 - a. identify the pros and cons of each option
 - b. quantify and value each argument as far as possible;
 - c. Include any risks
 - d. Explain any sensitivities;
4. Review the full set of options and develop an argument for the best use of resources.
 - a. Do not just focus on the lowest initial costs.
 - b. Remember to check your judgements in relation to your objectives and vision.
5. Set an overall time scale.

Please remember to keep this as how you came to the plan you finally come up with is important. You will need the story of your choices both for the business plan and for the DAC and the statement of need.

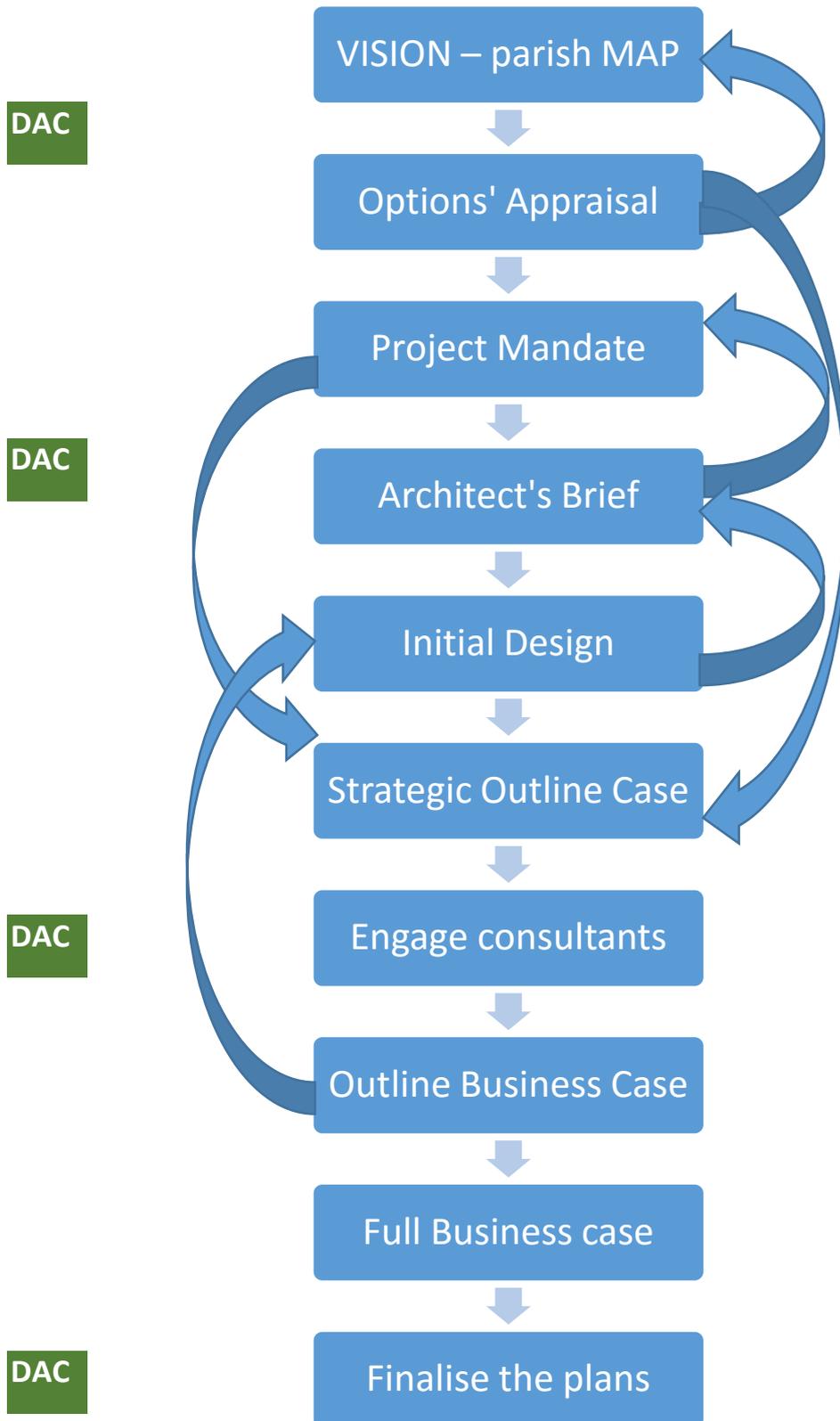
A pro forma is provided in appendix 1

The next step will be to start the business planning.

Projects are a learning process

We want to outline what happens as you move from start to finish. Projects never quite work like this. Imagine the dialogue- particularly in the design stage. Moving from a parish vision to a completed building isn't swift. People have ideas, make suggestions, have conversations, we learn about materials and techniques that create opportunities. So, project designs get revised, simplified, improved, turned round, and re-thought. Time spent in preparation prevents poor projects. Talk, doodle, and visit other projects. Search, listen and dream before committing to a scheme. Do the maths: how many hours have how many people worked on this idea? How many years do you hope the building will be useful? It is expensive to make changes later.

2. The stepping stones



3. Overview

Introduction

This is intended as a guide to help parishes who hope to develop Capital projects as part of their Mission Action Plan. We ask parishes to use this process to access Diocesan advice and resources.

The methodology broadly follows the processes established by central government when looking at public spending and the recommended business case methodology is the “5 case model” already widely used in health and familiar to other government departments and public spending bodies.

Overview

Capital projects are important because they are about the long term presence of the Church of England in south London. This isn't something to let a few people decide on their own. Church governance structures and Charity law expect that historic resources are used and developed in ways which are transparent and accountable.

The relationship between Diocese and parish is a mutual one

- The Diocese is the custodian trustee of all PCC property. This means while the PCC is free to develop their property the Diocese as the custodian trustee must also be involved.
- The parish knows the situation on the ground.
- The Diocese deals with capital projects every year and has experts.
- The parish can imagine how the future might be improved.

The business case will be developed in conjunction with the officers of the Diocese (see below), setting out the scope, the need, the significant milestones, the risks involved and the financial plan. It will also demonstrate how it fits into the vision of the Parish as expressed in the Mission Action Plan.

Capital project

Any scheme will need to go through the process for a Capital project if it is likely that the spend on a building will be above £80,000 or the scheme involves the disposal, or change of use of a property.

Approvals process

All capital expenditure on property under the stewardship of the Diocese requires approval by the Diocesan Secretary, or may be delegated to the Deputy Diocesan Secretary (DS). This process relies getting teams to develop Business Cases. These are essential in developing your MAP, and not just an add-on.

In reviewing a Business Case, teams will seek to make a judgement as to whether the project is affordable, in line with the objectives of the local Mission Action Plan and Value for money (VfM). PCCs will also have to take note that as Charitable Trustees they fulfil their duty to Charitable Law. In forming this judgement, teams will need to consider the balance of risks associated with the project. Therefore developing a Business case should be an iterative process, undertaken with local leaders, in order to develop satisfactory proposals. The approvals process will be based around a number of steps which will be described in more detail later on this guide however , in general there will be 4 steps :-

Step	Documentation	Approval
1	<p>Project Mandate (PM) Short report from the relevant Archdeacon that registers that a Business case may need to be developed in due course.</p>	<p>No external spend at this stage. Reviewed with DS and, if approved, the project can move to the next stage of developing a SOC.</p>
2	<p>Strategic Outline Case (SOC) First iteration of the Business Case designed to set out the strategic context of the proposal as part of the local Mission Action Plan and to establish the Case for Change. This is where the work of the options appraisal with outline costings and a preferred option for discussion fits in.</p>	<p>Very limited external spend at this stage to understand any site restrictions etc. and set the boundaries of the project Reviewed with the DS and, if approved the project can move to the next stage of developing an OBC.</p>
3	<p>Outline Business case (OBC) Second iteration of the business case designed to identify the preferred option, identify the key financial and commercial issues and how the project can best be managed.</p>	<p>Establish a budget for external spend to develop the construction plans based on the preferred option with full financial analysis and understanding of the commercial issues related to the construction. Summary sent to the Archdeacon for information.</p>
4	<p>Full Business Case (FBC) Completion of the Business Case and preparation of the construction contracts ready for signature by the DS</p>	<p>Final report presented to DS and the Archdeacon for approval together with the relevant construction contract.</p>

At any point the Diocesan Secretary can ask a parish to rethink a Business case that represents a poor strategic option, is unaffordable or represents poor value for money, or may simply ask for more clarity around the case before approval to move to the next stage. The Diocesan Secretary will act closely with the Archdeacon in making these decisions and seek to work closely with the PCC.

4. Preparing a Project Mandate (PM)

Introduction and purpose

The Project Mandate (PM) represents the very first stage of any potential capital project and tells the Diocese that, in the judgement of the area Archdeacon, a capital project is needed. The form should explain, in a few paragraphs,

- What do you want to do
- How does it relate to your Mission Action Plan
- What is your preferred scheme
- What's the time table

Ultimately for a project to be approved there must be a compelling case for change that can then be taken through the business case process and ultimately result in a successful capital project.

The outline of the form is attached below .

Completing the PM

The copy form below includes, in each section, a few guidance notes as to the level of content and detail required to be understood at this stage. These notes are not designed to be prescriptive as it is accepted that each project will be unique.

Where the incumbent or Archdeacon has already had discussions with the interested and affected parties then copies of any correspondence should be attached, particularly copies of minutes of meetings where support for any preliminary proposals have been noted.

Submission

Then the Incumbent and Churchwardens can sign and submit the form together with any supporting documentation to their Archdeacon, who will discuss this further if necessary with the PCC.

In larger capital projects the Archdeacon will refer it to the Diocesan Secretary will then review and then give approval to proceed to the next step of preparing a Strategic Outline Case (SOC).

Where Parishes are investing capital into their Church Buildings or any buildings under faculty regulations before submitting to the DS, an initial approach to the Secretary to the DAC will be made.

Costing and accounting

It is anticipated that this part of the process would be completed without incurring any external cost in terms of advice fees. It is primarily there to identify the issues and to see if a Capital Project should be developed at this stage to resolve those issues or whether another approach may resolve the issue without involving capital spend.



Project Mandate

PROJECT TITLE Project ref
.....

<p>1 PROJECT DESCRIPTION</p> <p><i>Description of Issue to be resolved.</i> <i>How does the project fit into the Mission Action Plan?</i></p> <p><i>People who will be impacted/benefit from any scheme</i></p>
<p>2 PREFERRED OUTCOME</p> <p><i>Description of the preferred outcome and possible timetable</i> <i>Impact of preferred option on MAP</i></p>
<p>3 PROPERTY AFFECTED</p> <p><i>Address of all properties affected with brief outline of state and condition</i></p>
<p>4 PARTIES INVOLVED and why</p> <p><i>Local incumbent</i> <i>Local PCC, local authority, Parish Council,</i> <i>DAC</i> <i>Potential outside funding bodies</i> <i>Indication of level of support for proposed project</i> <i>Indication of level of expectation from parties involved</i></p>
<p>5 RISKS</p> <p><i>Identify possible local covenants, restrictions, groups opposed to preferred outcome, groups that might be adversely affected by the outcome or any other risks to the successful resolution of the issue identified in 1 above.</i></p>
<p>6 PRIORITY</p>

Submitted by

Diocesan Officer or Incumbent and Church wardens

Archdeacon of:

Authorised to proceed

Diocesan Secretary

5. The Architect's Brief

Once the project mandate has been accepted, then you need to brief your architect.

You may have a good working relationship with your inspecting architect and so want to work with him or her. If it is a bigger project you will want to have several architects making a bid with their ideas of how they could fulfil your vision. The brief sets out what you want to do in the broadest terms. You then ask your chosen architects to present their ideas to the PCC or a properly authorised sub group, for you to choose one with which you can develop your partnership.

It is an important relationship and more is said in appendix 3. The architect has to take your ideas and scope them into reality. You need to know you can develop a good working relationship with them.

This is your first attempt at trying to communicate your vision to your architect. Once your Archdeacon has agreed the Project Mandate, it is the pro forma that will enable you to develop the Architect's Brief

It may help to have a congregational morning in preparation for this and the same advisors as for a MAP could help you facilitate this.

It should talk about:

- the people (you), your dreams, resources, concerns, SWOT [strengths, weaknesses, obstacles, threats]
- priorities, must haves, would be nice to have, what isn't important
- the site, its attributes, orientation, size, slope, vegetation
- where the building might go, its relation to access, services, views, sun
- the building, why a building at all, how small can the building be made
- what the building might contain and what links to what
- talk about budget realities
- consider the process of securing the building, your work, your organisation,
- trades peoples' work, builders, and the support professionals and bureaucrats
- and how you would want to involve these in getting the solution on the ground
- what lifecycle changes of the family may the building need to adapt to
- what things might happen later and be usefully be allowed for in
- what 'feel' is expected, building style, material preferences, disposition

It is unwise to give a technical brief [room A x metres by y metres] or to be didactic about siting or functional relationships. This path leads to ordinary solutions and misses opportunities.

It is normal for the architect's scheme to come out quite differently to what you may envisage. After all, the decades of experience in problem solving and unique solutions can see possibilities you will never have seen.

It is this design from first principles that brings together the cost effective capital works and low environmental impact and running costs of the projects shown in the 'projects' section of this web site.

Don't be surprised that your first attempt at a brief will be short on capturing the real issues you do know are there buried in your head.

The sketch design and design development phases are where your level of knowledge rises through the discussions with the architect, and thus your ability to flesh out your brief.

This is an iterative process, with reviews and feedback loops at regular stages.

Many 'people' obstacles have to be overcome in converting a brief to a habitable building.

Many of your choices are set by cultural predisposition, particularly how you yourself grew up.

Expect the design process to challenge your presumptions.

It asks you instead to consider each element of the project from a 'value for money' stand point, where the benefits and problems are identified, and merit is established.

6. Developing a Business Case

Introduction

Once the Diocese have identified, through the Project Mandate process, that there is a potential need for capital spend to resolve an issue then a working team needs to be formed to develop an Business case. The Archdeacon will work with the parish to form a team to develop the business case. This may include officers, and will include members of the PCC and other parishioners with the appropriate gifts, and other advisors paid or voluntary. Help will be offered by the Archdeacon to find a mentor from a parish who has successfully completed a project.

What is the Business Case?

The Business case is a management tool in the shape of a written report that is developed over time as a living document as the proposal develops. The Business case keeps together, and summarises, the results of all the necessary research and analysis needed to support decision making in a transparent way. In its final written form it becomes the key document of record for the proposal, also summarising the objectives, the key features of implementation management and arrangements for post implementation evaluation.

Business cases can cover a wide range of types and levels of spending. Each case will be developed to reflect the type of proposal being considered. The effort Teams expend on developing the proposal should be proportionate to the likely costs and benefits.

The business case will also provide the evidence for any submission to the DAC in the Statement of Need.

Business Case Structure

Each Business cases can be broken down into 5 different aspects which need to be reported on and which are interconnected but distinct. The Business case should enable the Diocese and other stakeholders to ascertain that proposals: the best approach to each section is to answer a series of questions:

- are supported by a robust Case for Change - the Strategic Case;
Is this the right thing to do? (the options appraisal will help you on this)
Why are you doing it? What's the need?
- optimise Value for Money - the Economic Case;
Is this the best use of money and does it deliver what you want?
Are there other ways of doing it and why didn't you use them?
- are commercially viable - the Commercial Case;
If you are selling property, are you getting a good price?
- are financially affordable - the Financial Case;
How can you afford it?
- can be delivered successfully - the Management Case.
Do you have the skills to and how will you deliver the project?
What other help might you need?

All of these aspects are important however, the importance of each aspect will vary from proposal to proposal depending upon its nature and complexity. Some less complex business cases, particularly those not involving significant new building or new systems may need little or nothing by way of a commercial case and require a less complex management case.

There are more details and questions that might help in preparing the business case in section 7.

Working with the DAC

As the business case is being developed so the parish will work with the DAC in a similar iterative cycle developing their plans, first with a sub-committee and then with the full committee of the DAC. The DAC should not be given a fait accompli but should be part of the design process. The DAC holds a great deal of experience and wisdom parishes should want to use. The DAC particularly will want to know about your options appraisal, knowing what you have not decided to do, helps to understand why you are doing what you are doing.

Development of the Business Case over time

Once the Project Mandate has been considered and approved by the DS, the team can start to develop a Business case. The business case develops iteratively overtime, often in 3 distinct stages, with more detail being provided at each stage.

Stage 1 - Strategic Outline Case (SOC)-the scoping stage.

The purpose of the SOC is to confirm the strategic context of the proposal; to make a robust “*case for change*”; and to provide an early indication of the proposed way forward (but not yet the preferred option), having identified and undertaken analysis on a wide range of available options, together with indicative costs. At this stage, you might expect:

- the Strategic Case - completed in full but may be revised later;
- the Economic Case - completed to the long-list of alternative options stage, with a recommended way forward (£) and an initially recommended shortlist for further examination at OBC stage;
- the Commercial Case - addresses the fundamentals of any potential Procurement and Deal;
- the Financial Case - discusses the likely affordability of the proposed Scheme; and,
- the Management Case - outlines how the project will be set up and managed and how risks are identified and mitigated,

Format

The Business case is developed as a single document (with appendices as required) that includes as much information as can be made clear at this stage. It should be set out with an Executive Summary, followed by separate sections for each aspect of the case.

Financial

To be able to explore the issue identified in the Project Mandate, and to scope out the options and the indicative costs, should not require any significant spend of professional fees. At the point that the Project Mandate is approved the team may wish to request a budget to clarify any legal issues (restrictions) that may apply to the site, or to explore any other ways in which the scope of the Business might be restricted in any way.

Presentation

When the team feel that the Business case has been sufficiently developed such that the strategic issues are fully articulated, the long list of options has been explored and a preferred way forward has been articulated and costed, then the Team will be ready to present the case to the DS for authority to move to the OBC stage. This is not a tick list exercise and it will be for the team to make the judgement that they have enough information and have prepared a good enough (compelling) case that it is time to move to the next stage, recognising that this will then require the committing further resources in terms of cash and time.

Approval

Based on the evidence in the document the DS can approve the parish team to go to the next stage and a budget should be presented and approved for this which indicates the costs involved and the timing of such costs.

Stage 2 - Outline Business Case(OBC) -the detailed planning phase.

At this stage for a larger and more complex project, you will or may need help from professional consultants. Alongside your architect you may wish to have a project manager who will help you keep an eye on everything and provide the more technical financial and buildings advice you need at this stage as your business plans develop.

The purpose of the OBC is to revisit the SOC in more detail and to identify a preferred option which demonstrably optimises Value for Money. It also sets out the likely Deal; demonstrates its affordability; and details the supporting Procurement Strategy, together with management arrangements for the successful rollout of the Scheme. At this stage, you might expect:

- the Strategic Case - revisited;
- the Economic Case - completed
- the Commercial Case - outlines envisaged Deal structure/s and key contractual clauses and payment mechanisms;
- the Financial Case - contains a detailed analysis of affordability and any funding gaps and how you will bridge them;
- the Management Case - develops in more detail how the scheme will be delivered with an outline of the proposed programme/project management plan.

Format

The Business case is further developed and updated to include the information required for this stage. In terms of the development of the case this is the detailed stage, having already had the strategic direction approved.

Financial

On approval of the SOC the budget will have been established for the proposals to be fully explored. In practical terms the OBC stage will require the validation of the selected (preferred) option and working up of any drawings to the point that outline planning has been received for the scheme. Also that all other figures such as sale receipts, legal and marketing costs and other issues are well understood and supported with evidence etc.

Presentation

When the team feel that the Business case has been sufficiently developed such that OBC is capable of fully articulating the case for (possibly) significant capital expenditure then the Team will be ready to present the case to the DS and the Archdeacon for authority to draw up the contracts to Buy/build the scheme.

Approval

In the case of PCC capital projects under Faculty jurisdiction the PCC will formally submit the plans for advice. If the DAC recommends to the Chancellor he should grant a Faculty then the project shall go to the DS and the Archdeacon to approve the project to the next stage.

This can provide the DS with the necessary authority to then sign the final contractual documents presented at Full Business Case stage, provided that no significant issues have arisen between OBC and FBC stages.

Stage 3 - Full Business Case (FBC) - detailed final phase.

This takes place within the procurement/building phase of the project, following detailed negotiations with potential service providers/suppliers but prior to the formal signing of contracts and the procurement of goods and services. This is usually the stage at which final Diocesan approval is required.

The purpose of the FBC is to revisit the OBC and record the findings of the subsequent procurement activities; together with the recommendation for an affordable solution which continues to optimise value for money, and it sets out detailed arrangements for the successful delivery of required goods and implementation of services from the recommended supplier/s. At this stage, you might expect:

- the Strategic Case - revisited and revised if required.
- the Economic Case - the findings of the procurement included in the analysis and recorded;
- the Commercial Case - the recommended Deal written-up;
- the Financial Case - affordability and funding issues resolved;
- the Management Case - the detailed plans for delivery and arrangements for the realisation of benefits, management of risk; and post evaluation are recorded.

Format

The Business case is further developed and updated to include the information required for this stage. In terms of the development of the case this is the final stage at which all of the proposed contractual documentation should be ready and available to be signed by the DS on behalf of the Diocese.

Financial

On approval of the OBC the cost of the scheme will be fully known (within certain boundaries) and the FBC needs to set out the final numbers and legalities of the proposal and the final risk assessments and sensitivities.

Presentation

When the team feel that the Business case has been sufficiently developed such that all of the commercial contracts have been prepared the FBC can be presented to the DS for final clearance.

7. More detail on the contents of a business case

The Strategic Case

The strategic case sets out the rationale for the proposal and makes the “case for change” at a strategic level. It should show how the proposal will fit with the Diocesan strategic plan for Mission and Ministry and how it may interact with any other programmes, e.g. the fit with published Church of England policy.

The case must clearly state the issue to be resolved or the objectives of undertaking the scheme, which are themselves to be delivered in “SMART” terms, that is, that the objectives are :

- Specific,
- Measurable (delivery / achievement can be objectively Monitored),
- Achievable,
- Relevant,
- Time constrained.

As well as the main benefits, the associated risks, constraints and dependencies of the proposal should also be considered at a high level and how they are to be managed should be outlined. Lessons learned from previous experience in this area should also be briefly set out.

Carefully articulating the “case for change” in the SOC, such that it is **compelling**, is by far and a way the most important element in any business case. As the development of the case through its 3 phases is an iterative process with the OBC relying on the work originally done at the SOC stage, any failure to get the SOC stage clear may provide the team with issues to be resolved later on.

Some questions that might be helpful in considering the strategic case

Explain how what you want to do in your parish joins up with the bigger picture. Each parish is an expression of the national church’s commitment to a ‘Christian presence in every community.’ Your parish is a public asset for people who live nearby, and so it is important to explain how what you plan joins up with other changes, or long term plans. **Explain your plan** in relation to:

1. Church strategy
 - a. How does it fit with the 5 Marks of mission?
 - b. Explain how it fits with the Diocesan strategic plan for Mission and Ministry.
 - c. How is it part of another Church of England policy?
 - d. Is there another Biblical or theological argument that has called you to this plan?
 - e. Attach your Mission Action Plan as an appendix.
2. Parish resources
 - a. List the key people in the parish, the incumbent and the PCC. Next to each name add their age and how long they have been active in the ministry of your parish.
 - b. Explain how your parish has been building the strengths of your ministry team. You might list the training you have done, or describe new projects you have tried out.
 - c. Describe the property precisely. Start with these 5 areas and take photos to illustrate.
 - i. What is its current state and condition?
 - ii. Make an accurate map.
 - iii. Summarise the quinquennial report.

- iv. Estimate the value for restitution purposes, and its open market value.
 - v. List any encumbrances, charges or covenants on the land, property or trees.
3. The characteristics of the changing population of the area
 - a. When the current site was set up, what sort of population and lifestyles did it expect to serve?
 - b. What is the parish like now? (Use national census data to be precise)
 - c. Describe the aspects of contemporary life that make the old arrangements difficult.
 - d. Explain how the improvements you want to make will meet the new needs.
 4. Public plans
 - a. How does this project meet the Local Authority planning policy?
 - b. Explain any links to London Strategic plans.
 - c. Explain any links to other strategies being worked on at national or international levels.

The Economic Case

The economic case is the essential core of the business case. This section assesses the economic costs and options.

Explain how the changed facilities will make a difference to the finances of the parish:

1. Set out the improved service you can offer.
2. Who is this likely to attract? How many do you estimate?
3. Outline the changed running costs. How does this compare with current outgoings?
4. Outline any change in financial income from current income.
5. Set out the changes in income and spend. Explain how the new economy is an improvement.
6. Why are these changes a financial benefit for the wider church (Deanery and Diocese)?
7. Set out the other options you considered and summarise their economic impact.

The Commercial Case

The commercial case is concerned with issues of commercial feasibility and sets out to answer the question "can the proposed solution be effectively delivered through a workable commercial deal or deals?" The first question, therefore, is what procurement does the proposal require, is it crucial to delivery and what is the procurement strategy? The procurement strategy should be clearly set out in the commercial case and the ownership of any assets should be clearly defined and key contractual issues identified and explained, together with the proposed solution.

The allocation of risk must be clearly explained and the business case should include a risk table showing risk allocation and the steps which are being taken to mitigate risk. Any personnel implications also need to be fully explained. The commercial case should show key contractual milestones and delivery dates and should clearly set out the agreed accounting treatment.

The Financial Case

The financial case is concerned with issues of affordability, and sources of budget funding. It covers the lifespan of the scheme and all attributable costs. The case needs to demonstrate that funding has been secured and that it falls within appropriate spending limits

Issues in addition to the proposal's affordability are:

- does the financial case identify and fill any funding gaps,
- does it contain provision for dealing with the financing of any time or cost overruns,
- does it fully explain and estimate any contingent, or longer term, liabilities that may result from the proposal?

You explain how the money for the changes proposed by the project will balance. In particular:

1. What money has been found for the costs?
 - a. List and explain gifts of money.
 - b. Name sources of grants. List the contact details and explain progress in securing the money. Write down any conditions on how the grant can be spent.
 - c. Explain any long term commitments that may be used to balance the budget.
2. What is the project going to cost? Set out a full budget.
 - a. What will materials cost?
 - b. What will labour cost?
 - c. What will permissions cost?
 - d. How much are professional fees?
 - e. What contingencies have you allowed for? How much?
3. Set out a cash flow with dates:
 - a. When is money coming in?
 - b. How much on each occasion?
 - c. Which the bills need paying? When?
 - d. Check it all matches the Gant diagram.

The Management Case

The management case is concerned with the deliverability of the proposal and is sometimes referred to as programme management or project management case. The management case must clearly set out management responsibilities, governance and reporting arrangements, if it does not then the business case is not yet complete. The management case should include a delivery plan with clear milestones which relate to but are at a more detailed level than contractual milestones. The management plan should also include a contract management plan and arrangements where contracts are required. There should be a contingency plan with arrangements and plans for risk management and a risk register. You should also consider whether the business case has been appropriately signed-off within the organisation.

1. Write an **aim**. Sum up in one short paragraph what the whole project is about. You might even have a sentence that says it all.
2. List the **objectives** that will have to be achieved to reach your aim. Each one will be specific. You will use numbers to describe its scope. Explain how you know when you have done it. Set a date in the project timetable when it needs to be complete.
3. Projects normally draw a Gant diagram (named after Mr Gant) at this point. This shows how the objectives develop over time and how they fit together. For example; a parish building for work with children; might run a parallel objective to train up children's workers.

How do we know that this plan is robust?

Explain how you have made your plan strong. Show how you have tested it. Set out the triggers that will confirm the project is on the right track.

1. Explain your design briefly. Sum up the need you are addressing, the aim you have set and the objectives you plan to achieve.
2. Set success criteria. How will you know that you have succeeded? Make a list with numbers.
3. List how the completed project will change the experience of Christianity in the parish?
4. Review the overall capital cost of the project, and the long term change in the annual finances of the parish. Calculate if the change is affordable.
5. Construct a table of the risks.
 - a. In the first column list separate risks. Include:
 - i. Money coming in.
 - ii. Money to pay for the project.
 - iii. Time schedule
 - iv. Quality problems
 - v. Environmental impact
 - vi. Health and Safety
 - vii. Ethical issues
 - viii. People doing the work
 - ix. People in the church
 - x. Opportunity costs (what could you do if you weren't busy doing this?)
 - xi. Disruption to church life
 - b. In the 2nd column explain what this risk affects.
 - c. In the 3rd column tell us what you plan to overcome the risk.
 - d. Finally grade the risks from 1-5 (most serious to least serious). If you are working on spreadsheet software it will be easy to rank the risks using this column.

8. The next stages

Planning

If there is to be any alteration externally of buildings, planning permission will be needed. Your architect or project manager will help, and this can be run with the application for a Faculty if needed, but a Faculty can't be given unless planning permission is granted.

DAC

Please remember the DAC is advisory and not grant the Faculty, but it advises the Chancellor. A Faculty is not given when the DAC recommends a project but once the paperwork is completed and the Chancellor has given his directions.

As has been said several times, working closely with the DAC throughout the process is the best way to guarantee the DAC's recommendation and the Chancellor's direction that a Faculty is granted. See Appendix 2

9. APPENDIX 1 PRO FORMA FOR AN OPTIONS APPRAISAL

Option 1: Do Nothing	
Details	
Pros	
Cons	
Risks	
Costs	

Option 2:	
Details	
Pros	
Cons	
Risks	
Costs	

Option 3:	
Details	
Pros	
Cons	
Risks	
Costs	

Option 4:	
Details	
Pros	
Cons	
Risks	
Costs	

Conclusion:
<i>Confirmation and justification of recommended option</i>

10. APPENDIX 2 GUIDELINES TO OBTAINING A FACULTY

The procedure for obtaining a Faculty (described in detail in the following sections) is summarised below:

1. consultation - with congregation, inspecting architect, Archdeacon, professional advisers, English Heritage, local authority, amenity societies, etc
2. obtain PCC resolution
3. procedure documentation - full details (specifications, drawings, photographs, etc)
4. send documentation to DAC for consideration
5. obtain DAC certificate, Faculty petition form and Public Notice from Pastoral Department
6. complete petition form and send to Registry
7. display Public Notice on church notice board for not less than 28 days
8. at end of display period, send completed Public Notice to the Registry
9. Chancellor considers proposals and grants Faculty
10. carry out work
11. return certificate of completion when work is finished

Consultation

Before making a formal application for a Faculty, the parish should consult widely when considering any work. Those consulted should include the congregation, the PCC, the church's inspecting architect, the Archdeacon and, if necessary (see below) the local planning authority, English Heritage and interested amenity societies. The parish is also advised to involve the DAC at an early stage. This is particularly important for larger projects. The DAC suggests that it is good practice and common courtesy to inform or consult your Inspecting Architect about any QI or new work - even if you are not instructing them to act. The DAC will often ask if this has happened..

If the church is a listed building, the PCC should refer to the booklet 'Making Changes to a Listed Church' issued by the Rule Committee (part of General Synod) in 1999. The booklet may be downloaded <https://www.churchofengland.org/media/51391/mctlc.doc>

PCC Resolution

The applicants should obtain a PCC resolution authorising the work. Although this is not essential at this stage, a PCC resolution is required before the Faculty is submitted to the Chancellor and the DAC prefers to know that the proposals before the Committee have the support of the PCC.

Documentation

Full documentation for the proposed works will be required by the DAC and by the Chancellor when the petition for Faculty is submitted. The following details should be supplied:

1. FULL details of the proposed work, together with plans, designs and specifications (an extract from the quinquennial report cannot be used as a description of the work to be carried out)
2. statement of needs for work
3. an estimate of the cost of the work
4. the comments of the inspecting architect (and English Heritage / amenity societies if applicable)
5. the name of the architect to be employed (if it is not the inspecting architect)
6. the name of the proposed contractor
7. photographs of the church and the articles to be introduced or removed for the church
8. copy of planning permission (if applicable)
9. statement of significance of the church (for major alterations to a listed building) (guidelines available from DAC Secretary)
10. any other information that would assist the Committee in the consideration of the proposed work

Consideration by the DAC

The first step in the formal procedure is to submit the proposals to the DAC for consideration. The Committee normally meets on the second Tuesday of each month, except in August. Full details of the proposed works should be sent to the DAC Secretary at the Diocesan Office at the earliest opportunity and at least two weeks before the meeting at which the proposals are to be considered.

Once the details have been received, they will be passed to a specialist member of the DAC for consideration before the meeting. He/she will report on the proposals at the meeting. Certain small matters may be handled by a sub-committee of the DAC and do not have to wait for a full meeting of the Committee.

The procedures that applicants should follow are the same whether the matter is to be handled by a sub-committee or the full Committee.

After the proposals have been considered by the Committee (or subcommittee), the outcome will be communicated to the applicants as quickly as possible. In some cases, the DAC will be able to reach a decision at the first meeting. However, on other occasions the DAC will decide that further information is required or that the parish should be asked to reconsider its proposals. Sometimes the DAC will decide that a visit by some members of the Committee is required. It is important, therefore, that applicants do not assume that their proposals will be recommended by the DAC at the first meeting.

DAC Certificate

If the DAC is happy with the proposals the applicant will receive the Committee's certificate relating to the proposals, on which will be listed the plans and specifications recommended by the DAC. This will indicate whether the Committee has decided to recommend the proposals, or to raise no objection to them, or not to recommend them. It will also indicate the DAC's views on the effect of the works on the building, any archaeological concerns and recommendations for further consultation.

The Petition

This is the formal application for a Faculty. The blank petition form together with the Public Notice (see below) will be forwarded by the DAC Secretary to the applicant with the DAC certificate. The petitioners are normally the Incumbent and the Churchwardens of the parish and usually the PCC. (If the petition is for authority to execute a Licence for the use of either the church or church land by a third party or if there is no Incumbent, advice should be sought from the Diocesan Registrar before completing the petition as to who should be the petitioners.)

It is important that the Petition form is completed accurately. In particular the schedule of works and purposes for which a Faculty is required. Please do not rely solely on such phrases as "See specification herewith" or "See plans herewith". The schedule must set out the works and purposes that are to be authorised by the Faculty.

The summary of works in the DAC certificate will often help in completing the schedule, and the Registry is always ready to give advice. It is important, of course, that the works or purposes set out in the schedule are the same works or purposes that are referred to in the DAC certificate. It would normally be sensible to ensure that the wording on the Petition is the same as that on the DAC certificate.

If an application is for authority to replace an item, then it may be necessary to include a request for the disposal of the item replaced (e.g. organ, pews, etc.).

When the petition form has been completed, it should be sent to the Diocesan Registry. The following documents should accompany the petition:

1. the DAC certificate
2. a copy of the PCC resolution signed by the Chair or the PCC Secretary
3. a copy of the Public Notice (this should be a copy of the Public Notice which is being published - see below)
4. the designs, plans, specifications and/or estimates giving full particulars of the proposed works and a copy of planning permission (if required), statements of need and significance (if applicable). These should be the same documents as were submitted to the DAC, and should bear that Committee's stamp. These documents will normally be retained by the Registry
5. correspondence with English Heritage, local authority and amenity societies (if applicable)
6. in the case of works which are likely to affect the organ, the electrical installation, or the security of the building against fire, vandalism, theft or other risks, a letter from the Insurance Office concerned stating that the insurance cover of the church will not be affected
7. if the building has previously been the subject of a grant from English Heritage, or if grant aid is being sought from English Heritage, copies of the correspondence with English Heritage should be enclosed.

The Public Notice

This is the notice to the public of the petition for a Faculty. The Form of Notice is supplied with the Petition by the DAC Secretary, together with directions for its display. It should be completed and signed by the petitioners and published at the church. The schedule of works or purposes should refer to all the works or purposes set out in the schedule to the petition. If the schedule refers to plans or specifications, then the Public Notice should include an address where these documents can be viewed during the Public Notice period. Once again the summary of the works in the DAC certificate is likely to be a help, and petitioners should follow the wording wherever possible. The Registrar is also available to advise petitioners on the wording of the certificate, and it is suggested that his office should always be consulted.

The Public Notice should be completed and published. This Notice must stay on display for a continuous period of not less than 28 days. It is suggested that an announcement of the posting of the Public Notice should be included during the main Sunday service.

After the Public Notice has been displayed for 28 days, the Notice or copy should be sent to the Registrar with the certificate of execution duly completed.

A Faculty cannot be issued until this has been done.

Consideration by Chancellor

The Registrar will pass the papers to the Chancellor for a determination. The Chancellor has to check with the DAC that it does not wish to alter its certificate. In certain special cases (see below), the Chancellor will seek the opinions of other interested bodies.

Grant of Faculty

If the Chancellor is satisfied that the matter may proceed, and if no formal objections are received by the Registrar, the Faculty will be issued after the certificate of execution has been received at the Registry and the period for entering objections has elapsed.

Special Cases

1. In cases of emergency, permission may be given for the work to go ahead before a Faculty is granted. In these cases, parishes should speak directly to the relevant Archdeacon at the earliest opportunity or, if the Archdeacon is not available, the Diocesan Registry should be contacted.
2. For some special cases, the Chancellor is obliged, by the Measure, to consult some other interested parties in addition to the DAC. If, in the judgement of the Registrar, the works:
 - (a) involve alteration to, or extension of, a church that is a listed building, to such an extent as is likely to affect its character as a building of special architectural or historic interest

(b) affect the archaeological importance of the church, or archaeological remains existing within the church or its curtilage then the Chancellor is obliged to ensure that English Heritage, the local planning authority and any national amenity society (see below) that he considers to have an interest, is made aware of the proposed works.

Unless there is correspondence in these cases showing that these bodies have been previously notified of the proposed works, the Chancellor may instruct the Registrar to serve special Public Notices on these bodies.

As this may lead to a delay in the granting of a Faculty, it is in the petitioners' interests to ensure that these parties have been contacted in the consultation stage and have been made fully aware of the proposals. The DAC Secretary will normally advise parishes if these bodies should be contacted and the Registrar is always ready to advise petitioners whether this special provision is likely to apply.

3. Although these notes relate primarily to parishes, other bodies (e.g. private individuals and corporate bodies) are entitled to petition the Consistory Court. In such cases the Registrar should always be consulted at the commencement of such application.

Other Bodies to be consulted

1. Historic England

As indicated above, Historic England have a right to be consulted over works that will affect a listed building in such a way that might affect its character as a building of special architectural or historic interest, or over works that might affect the archaeological importance of the church or remains within the church or its curtilage. Any parish that has accepted grant aid from Historic England for work on a building must also inform Historic England of any further work that is proposed for that building (whether it affects that area that was grant aided or not).

2. National Amenity Societies

These are the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and the Twentieth Century Society. Contact details for these bodies may be found in the 'Useful addresses' section.

3. The Local Planning Authority

Permission (as opposed to Listed Building Consent) may be required for works affecting the exterior of the church building, or for change of use of part of the church, or for works in the churchyard. In such cases, enquiries should be made of the local planning authority during the consultation process, and a copy of the planning permission, or a letter stating that planning permission is not required, should accompany both the documentation submitted to the DAC and the petition. The local authority should also be consulted when major works affecting the listed buildings (internal and external) are being planned. External notice boards may require advertisement consent from the local authority.

4. The Commonwealth War Graves Commission

If the works or purposes affect, or are likely to affect, a grave or memorial maintained by the Commonwealth War Graves Commission, the petitioners should seek the Commission's agreement with the proposal. If such agreement cannot be obtained, the Chancellor will require a special Public Notice to be served on the Commission by the Registrar, giving it the right to enter an appearance at the Consistory Court.

5. The Churches Building Council

Where the Chancellor is of the opinion that any petition for a Faculty concerns, or involves, or might concern or involve, an article of historic or artistic interest, (e.g. the proposed sale of church plate) he is required to direct the Registrar to serve details upon the Churches Building Council.

6. English Nature

If bats use any part of the church, and it is possible that the works or purposes might harm or disturb the bats or their roosts, the advice of English Nature should be obtained before there is a petition for a Faculty. The letter of advice from English Nature must be submitted with the Faculty petition.

11. APPENDIX 3 APPOINTING PROFESSIONAL CONSULTANTS

Contents

Chapter 1 - The need for professional consultants	_____
Chapter 2 - Choosing consultants	_____
Professional Expertise	_____
Professional Ability	_____
Resources	_____
Confidence	_____
Contractual Relationships	_____
Chapter 3 - Fees & Disbursements	_____
A percentage or sliding percentage scale	_____
A time charge	_____
An agreed lump sum	_____
An incentive scheme	_____
Speculative work and a negotiated fee	_____
A combination of the above	_____
Disbursements	_____
Negotiating fees and conditions of service	_____
Chapter 4 - The Brief	_____
Chapter 5 - Appointing consultants	_____
Chapter 6 - Instructions to consultants	_____
Chapter 7 - Selling Parish Property	_____
Chapter 8 - Buying Parish Property	_____
Appendix 1 - A brief outline to Building Agreements	_____
Appendix 2 - Questions to ask consultants	_____

Chapter 1

The need for professional consultants

All parishes, being constituted as individual corporate bodies, have legal duties and sometimes aspirations that can only be properly discharged by employing people who have a recognised expertise in a particular subject.

We live in days when professionalism and good workmanship are often abandoned in favour of a 'do-it-yourself' culture. This tends to be predicated on the desire to save money by eliminating the cost of other people's knowledge, experience, time and profit. More often than not this is a false economy but it is rarely seen as such by those pursuing the DIY culture, since they are usually satisfied by the personal standards they achieve, even if a discerning eye finds their

standards unacceptable. This is particularly true of building works and is becoming more widely accepted in the marketing and even the conveyancing of property. High standards can only be achieved when those doing a task have a deep understanding of the relevant issues and considerable experience in the execution of the task. When professional tasks are attempted on a DIY basis disaster frequently lurks around the corner. When it occurs it is usually costly, as there are often substantial costs attached to rectifying matters before they can be properly executed.

Table 1

- Acoustic Consultants
- Arboriculturalists
- Archaeologists
- Architects
- Building Surveyors
- General Practice Surveyors
- Electrical Consultants
- Employer's Agents
- Fund Raisers
- Geotechnical Consultants
- Heating Consultants
- Highway Engineers
- Land Surveyors
- Lighting Consultants
- Planning Consultants
- Planning Supervisor
- Project Managers
- Quantity Surveyors
- Solicitors
- Structural Engineers

The Care of Places of Worship Measure 1999 requires every place of worship to be inspected quinquennially and repairs, alterations and improvements to be carried out to a high standard. This reflects the importance with which church buildings are regarded throughout the country. This Measure requires the inspection of churches to be carried out by suitably qualified professionals who are either architects or chartered building surveyors. Moreover, the Diocesan Advisory Committee for the Care of Churches has a legal duty to control the work done on church buildings and to apply high standards to the maintenance or construction work undertaken. Many churches are important Listed Buildings in their own right and this aspect also necessitates parishes employing suitably qualified professional advisors and workmen.

In some cases parishes will wish to review the use of their buildings and this can lead to demolition, rebuilding and reordering, from a small scale project right through to a large rebuilding scheme. Some schemes of this type will involve the use of the premises by other parties and organisations, the letting or leasing of premises and the need to put in place complex financial arrangements. When such schemes emerge it will be necessary to appoint professional consultants to advise and enable the project to progress from inception to completion.

Sometimes parishes will wish to buy or sell property and Charity Law requires them, as they fulfil their duties in trusteeship, to act in a prudent way and take advice from suitably qualified professional consultants.

A typical list of consultants that may need to be employed by parishes at one time or another is shown in Table 1. Generally the field of expertise of these consultants is self-evident even though the scope and depth of the advice that they are able to offer may not always be fully appreciated. There will be times when parishes need to employ other experts that undertake particular roles such as horologists, organ builders and conservators but although similar issues relate to their appointment this subject is not dealt with in this Guide as their appointment is often made in conjunction with guidance from previously appointed consultants.

There may also be occasions when a parish is approached by a third party who wishes to carry out work that will impinge upon property for which the parish is responsible. This can arise for one of two reasons. It is either because the other party is looking for an economic benefit or because a statutory duty has to be undertaken. The party involved may well be looking to place scaffolding on parish land to facilitate building works on an adjoining site or they may wish to negotiate the rights for an over-sailing crane or to put telecommunication aerials in particular buildings. It may be they need to invoke matters such as a Party Wall Award which are statutory issues arising from time to time under the Party Wall etc. Act 1996. In these types of circumstance it is almost always appropriate for the PCC to instruct consultants to act on their behalf, as they will be able to negotiate considerations or ensure that the parish's rights are not infringed. In some cases the consideration that it is possible to negotiate can be very considerable, although each case has to be negotiated on its individual merits. However, it is always worthwhile bearing in mind that in such cases the fees incurred by the consultant appointed by the parish can, if properly negotiated, be paid by the party seeking the benefit or complying with the legislation.

Remember:

Failing to appoint a professional or not appointing them soon enough

Chapter 2

Choosing Consultants

In a Diocese such as Southwark there are probably more consultants to choose from than almost anywhere else in the country and with such a bewildering choice it becomes even more important to make appointments with care.

There are many matters that it is important to understand and take account of before instructing any consultant to act. The principal issues are set out in Table 2 and subsequently examined in detail.

Sometimes, particularly if the project is large and complex, it may be prudent to produce a carefully chosen list of consultants that are considered appropriate for a particular scheme, to reduce it to a short list and then interview two or three practices. This, if done properly, is a time consuming and demanding process. There is little point in proceeding along these lines if the interviewing panel cannot draw up the appropriate documentation to apprise candidates of what is required and does not fully understand all the relevant issues. To interview under these circumstances would probably end up being counter productive as the silver-tongued candidate rather than the best candidate would get appointed. Moreover, an interviewing process¹ is most likely to be pertinent to the appointment of a particularly critical lead consultant such as an architect, employer's agent or project manager.

Table 2

- Professional Expertise
- Professional Ability
- Resources
- Confidence
- Disbursements
- Contractual Relationships
- Fees
- Negotiating fees and conditions of service

Complex schemes will involve the appointment of several consultants, each of whom will need to work with and defer to the particular expertise of the other. It is worth remembering that individuals with large egos find this difficult and in practice often dominate the team to the detriment of the scheme. The interaction of individual personalities within a team is always worth taking into account when appointing professionals but the general rule is to make the appointments in the order that best suits the scheme. In some cases it may mean appointing a project manager in the first instance and using his expertise to assist in the appointment of the rest of the team. In other cases it may be prudent to appoint a planning consultant in the first instance, so as to advise on what might be possible. In yet other cases solicitors might need to be the first appointment. The fundamental approach is to tailor the appointments to the specific scheme with a view to avoiding mistakes and unnecessary costs. Alternatively the appointment of a multi-discipline practice may be worthwhile. This subject comes into focus again in Chapter 5.

There are occasions when professional teams need to be assembled. Under such circumstances the lead consultant will often recommend a particular practice with whom they have worked over the years. Sometimes appointing the suggested practice will be helpful and a sound decision but on other occasions it may be undesirable. The appointment of a multi-discipline practice may sometimes be appropriate and in other cases less so. However it is important that the employer considers each case on its merits, is comfortable with all appointments, is confident that all the personalities will work together as a team for the overall benefit of the scheme, agrees an

¹ In the past the Diocesan Surveyor has assisted some parishes with the interviewing process and will continue to make himself available to those parishes where such assistance is requisite.

appropriate brief and remuneration package for all members and is confident that each individual member of the team is able to provide the best possible advice.

It may be helpful to remember that most of the consultants listed in Table 1 will belong to one or more professional body that regulates the conduct of its members and has a procedure for disciplining those who infringe the required rules of conduct and standards of behaviour.

Professional Expertise

The issues with which consultants deal are varied and often complex. Very often particular practices develop an expertise in a distinct corner of what is perceived to be their general area of work. Where there is a particular project in mind there is a clear advantage to be had in matching the expertise to the project. This will almost certainly result in the parish getting the best end result and the best value for money. For example, some architectural practices bring a greater expertise to historic buildings. Others are better at designing new buildings. Some are more able to design sympathetically within particular environmental constraints and other practices have built up an expertise in distinctly esoteric areas. Although most practices will argue that they can meet a particular brief within their broad field of practice there is less likelihood that a good new church, that really meets a particular parish's needs, will emerge if the bulk of the work undertaken by the architectural practice appointed is in the design of hospitals or industrial buildings. Similarly there are lawyers and surveyors who specialise in particular areas. If the area of work involved is ecclesiastical then it is prudent to use a firm that specialises in ecclesiastical matters. Although this is self-evident, it is often overlooked.

Remember:

Specialist skills are worth using.



Many professional practices, once they reach an optimum size, operate by delegating less important and less expert tasks down the line to less experienced or unqualified staff, thereby reducing their costs. It is therefore important to know, when appointing a consultant, who will do what, with whom every day contact will be made and who will take overall responsibility for the project. The more junior the staff, the greater degree of supervision is needed by senior staff. It is an inescapable truth that the more junior and inexperienced staff employed on the job the more errors or difficulties will inevitably arise during a project. In some cases this will have a financial consequence. The corollary is that the more weighted the practice is with senior, well-qualified staff, the less potential there is for error or difficulties to emerge.

Specialist experience is also helpful in ensuring that the practice appointed will be as efficient as possible when dealing with your project. All professionals know where to search for and how to interpret matters needing research but if the person undertaking the task in hand is experienced in the details of a particular type of work he or she will need to spend less time researching or identifying issues and will therefore, in pure economic terms, have more time available for the rest of the project. Moreover their familiarity with an issue is likely to be much wider than will be first

understood if researched. Thus up to date experience and knowledge of fast moving practice and legislation becomes an important point when making any professional appointment.

There are occasions when some consultants are not suitably qualified in the eyes of the law. It is therefore essential to ensure that the consultant appointed is able to legally fulfil the tasks to be undertaken otherwise it is inevitable that two sets of fees will be incurred for the same job. Bear in mind also that unsuitably qualified consultants may well not be able to recognise their limitations until it is too late. This is not an uncommon occurrence. Under these circumstances one set of fees is paid to the firm originally instructed and a second set to the suitably qualified firm to comply with legislation. This is particularly relevant when the negotiations leading to the sale of property need to comply with the Ecclesiastical Measures and the sale itself needs to comply with Charity Law.

Professional Ability

As in all walks of life some professionals, despite their expertise and qualifications, are more able than others. Very often the ability to think laterally is the means of solving a tricky problem that will greatly benefit a client. Sometimes this can make the difference between success and failure of a project. This ability is born of intellect, coupled with experience and knowledge, and can only be conceived by the individual handling the project if he or she has a complete understanding of all the relevant issues. Obviously such issues are more likely to be met if an able, well-qualified and experienced individual undertakes the work.

Excellent negotiating skills are a prerequisite for any professional who will be structuring a deal on your behalf. It is only the person who is fully aware of his brief and all the implied nuances that are imposed by practice and law who will deliver the best deal. Negotiating deals is an adversarial pursuit and the person with the greater ability will win the best deal for their client.

Finding a practice with ability is not always straightforward but it can often be achieved by examining track records. One of the best means of discovering track records is to speak to several of the consultant's past clients. It is imprudent to rely on just one such reference, as this might not reflect a rounded position. It is necessary to bear in mind that a lay, as opposed to a professional referee, may well be viewing matters from their subjective position which might result in undeserved acclaim or opprobrium. Professionals have the advantage of networking and a ready access to the professional press to assist in the assessment of track records but their advice still needs to be taken with caution when seeking an objective reference. Investigating the track record of practices is always worthwhile and is never a waste of time as, at the very least, it helps in engendering confidence.

Resources

If any consultant is to provide their client with the best possible service they must ensure that they are not so stretched with other business that the scheme suffers. Modern technology greatly assists in efficiency but it does not substitute for the time that is needed to properly liaise with a client and properly discharge the duties undertaken.

It is worth bearing in mind that the most able practices will always be busy and those that are less able will generally have little difficulty in meeting urgent timetables. There is therefore a balancing

Remember:

The most able practice will most likely produce the best results.

judgement that sometimes needs to be made when appointing a consultant; to accept a slower timetable and have the more able service or to pursue speed at the price of ability.

Large practices will usually have the greater resources in terms of staff and will therefore be more able to shuffle work around within their organisation to meet tight timetables. A judgement will therefore sometimes need to be made as to whether it is better to appoint a larger practice that can absorb schemes and act more quickly and run the risks associated with the use of less qualified and less experienced staff or to accept the delays that may well arise when using a smaller practice where the work is more likely to be handled entirely by a qualified principal. Despite this generalisation there is an increasing number of larger practices that are putting in place more checks and systems that reduce the risks associated with less experienced staff. Moreover, few professional firms employ people who have not undertaken professional education but the degree to which they are able to put learnt theory into practice can be crucial.

Sometimes the best service may come from a sole practitioner but there are disadvantages in instructing such a firm. The obvious one is that if they are taken seriously ill or die then your project is delayed, may have to be resurrected with another firm and then your costs rise accordingly. On the other hand the overheads of such practices are often lower, their fees generally less than those of larger practices and there is a greater chance of establishing that trust between client and consultant that can lead to complete satisfaction. Despite these advantages a sole principal has the disadvantage that he cannot discuss his cases with an in house colleague by way of seeking a second opinion or to assist with brainstorming. Nevertheless a really knotty problem would very likely be discussed, in principle, through networking and the use of the internet.

Any consultant appointed should know when and where to access the latest technical and legal information and it is reasonable to expect this. Matters move and develop so quickly that any practitioner who cannot keep up to date will be of little service to his client and is unlikely to remain in business for any length of time.

Confidence

It is fundamental to any sound working relationship between consultant and client that there is mutual trust and confidence. If this is never established or irretrievably breaks down during the course of a project the relationship is doomed and recriminations become inevitable. With this in mind it is therefore important to appoint only consultants in whom there is complete confidence that they will always act in the sole best interests of their client and provide the best possible advice. If it is not possible to start from this point, an alternative appointment should be made so that the necessary degree of trust and confidence is at least in place at the outset of a working relationship. During the course of most projects there will very likely be a difficult stage but this will be eased if there is confidence that the advice being received is sound, even though it may not be liked and is perhaps even contrary to that hoped for or anticipated.

Experience tends to show that it is confidence in those acting for you that will begin to cement a good working relationship that leads to a relaxed atmosphere and in turn, more often than not, produces the best results. Because confidence is so important it is necessary to factor in this issue when making professional appointments. Meeting people, discussing matters and being open about expectations is highly desirable and few consultants would feel aggrieved about not being appointed if a potential client felt that personalities were such that they could not work with each other. Friction between client and consultant will only lead to acrimony that will in turn hinder the satisfactory delivery of the project.

Contractual Relationships

Once a consultant has been appointed and fees agreed or deemed to be agreed, there is a legal contract between the parties. In its simplest terms the consultant has undertaken to use his or her professional expertise for a particular purpose and the client has undertaken to pay him for the work he does. There may well be, and often are with any complex proposals, unforeseen matters that emerge but the client is entitled to expect a proper and well-conceived solution to the project. For any number of reasons relationships can and do break down between the parties. Sometimes expectations are not met, personalities clash, unresolved difficulties arise, costs soar and tempers fray. It is at times like these that each party may start to think of looking to the contractual obligations of the other party and one or the other may begin to think in terms of litigation.

Some professional bodies promulgate lengthy Forms of Agreement that clients are asked to accept, and sometimes some firms will have their own Form of Agreement. These will define the relationship between the parties. Sometimes such a Form of Agreement is perfectly satisfactory and sometimes it is less so, being weighted in the favour of the professional. When parishes are asked to sign such Forms of Agreement they should not do so unless they fully understand the implications of such an action. If they do not understand the details and the implications they should seek advice before entering into such an Agreement².

When the parties fall out the employer is usually looking to pursue the consultant for negligence or breach of duty and the consultant is usually seeking the payment of fees. Although it is not always possible to resolve differences without the need to litigate it is almost always desirable and preferable to settle matters without litigation for there are few cases involving litigation where both parties do not feel hard done by after the dust has settled. Moreover, very rarely does either party come away from the experience without being out of pocket. Under these circumstances resolving a dispute so as to minimise any loss must be more prudent than pursuing to the end unsustainable and costly principles.

It is worth remembering that it is only the parties that have entered into a contract that can seek to enforce it. Thus, if it is the PCC that has entered into a contract with a professional firm and either of them is perceived as being in breach of contract then it will be the corporate body or the company that is sued by the other party. Similarly, if it is the Vicar or an individual professional person that is a party to a contract then it will be the individuals personally that will be liable for any breach of contract.

On occasions some professional consultants will be asked by their clients to implement building agreements on their behalf. In such cases, although the original contractual relationship between consultant and employer remains intact, a different relationship is created to deal with the building agreement. A brief introduction to Building Agreements is incorporated in Appendix 1.

Remember:

Speed can have disadvantages as well as advantages.

² The Property Department of the Diocesan Office can sometimes help in issues such as these.

Chapter 3

Fees & Disbursements

If there is one thing that causes the greatest animosity between parishes and consultants it is over the fees that are charged for the work undertaken. It is therefore imperative to have a clear understanding of fees before any consultant is instructed. If interviews are being undertaken then fees should be dealt with at interview. Most consultants are VAT registered so VAT on fees should always be budgeted for³.

There are occasions when some firms will give advice for say an hour or two without incurring a fee. This is usually done to assist in establishing whether or not there is a useful service that they can provide. However it is always essential to have a clear understanding of which consultation, if any, is free of charge and which will incur fees. It cannot be said too often, that when any professional is being consulted, it is imperative that those involved know whether or not fees will be charged and, if there is a free consultation, from which point the charges will start running.

Table 4

- A percentage of the cost of the work.
- A sliding percentage scale.
- A time charge based on hourly rates of remuneration.
- An agreed lump sum.
- An incentive scheme.
- Speculative work and negotiated fee.
- A combination of the above.

All professional fees are negotiable. The Office of Fair Trading abolished mandatory or recommended scale fees promulgated by professional bodies many years ago. Remuneration for professional work is usually calculated and agreed in a number of ways that are shown in Table 4. There are, to some degree, pros and cons for both the client and the consultant with all of these different methods.

A percentage charge or a sliding percentage scale has always been and remains a simple way of calculating fees for work that can easily be identified and quantified. It is frequently used, either as an agreed fixed percentage or a sliding scale for some marketing of property and valuation purposes as well as some legal, architectural and building related services. Arguments against a percentage basis for fees are frequently put forward. It is argued that such a fee basis is loaded against the client. The argument runs along the lines that with, say building works, the more the works cost, the more the client is out of pocket and the more remuneration the consultant receives. A contrary argument is that when selling property the consultant has an incentive to obtain the maximum value in order to maximise his fee. The counter argument to this is that an agent has no incentive to obtain the best price in a sale because his reward, by way of increase in fees, is disproportional to the effort needed to get best value. These arguments tend only to be advanced either when there is little or no confidence between client and agent or in academic discussion. Experience suggests that in most cases a good professional will usually act in the best interests of his client but once again this is an issue that generally has little impact if there is confidence on the part of a client that they are receiving the best possible advice and the labourer is seen as "being worthy of his hire".

It is the thinking behind these arguments as well as limited budgets and the prudent desire to minimise costs that leads to a client wanting to get the lowest percentage fee for the work he wishes to commission and this, if pursued to the upshot, can and often does lead to a most unsatisfactory position. If any consultant is to provide a quality service there is an optimum cost

³ There should be no confusion between VAT on fees and some building work that is zero rated or subject to the Listed Places of Worship Grant Scheme. VAT on fees is always chargeable. Currently it is charged at the standard rate of 17½%.

that reflects the time needed to do the work and provide a good service. If the fee level is driven below this optimum level the incentive to provide a good service disappears. Moreover, if the profit is eaten away by too low a fee then the job will inevitably suffer and a downward spiral will be created that may incorporate loss of confidence, short cuts to reduce the time on the job, inadequate application and thought, possible negligence and even bankruptcy. Bearing all this in mind it is foolish to try and negotiate too low a percentage fee. Good firms will resist unrealistic fees, knowing they cannot do the job properly at a significantly reduced cost and poor firms, which might be enticed into agreements for low fees, are unlikely to be in business to pick up the pieces when matters have been found to go wrong. It is sometimes argued that run off professional indemnity insurance cover will deal with any negligence arising out of professionals going out of business or retiring but this is only likely to solve part of the problem, if such insurance is in place, and in reality there will be many additional costs for the client to bear that will considerably outweigh any fee advantages gained in the first instance.

A **time charge**, historically referred to as a quantum meruit fee, is often adopted when the full scope of the work cannot be quantified at the outset. Fees are therefore calculated by multiplying an hourly rate for each of the individuals working on the project by the number of hours worked. The hourly rate is calculated to take into account the salaries of the staff working on the project, a proportion of the non-productive staff, overheads and profit. Much concern is expressed over the 'headline' hourly rates but they need to be understood in context. It is inevitable that hourly rates in the City will be very much higher than those in the provinces as salaries, rent, business rates and all the overheads are considerably greater than elsewhere. Again it is often argued that to agree a time charge is to provide professionals with an open chequebook. In reality a time charge is often

Remember:

Do not appoint anyone in whom there is little or no confidence.

a very good solution to dealing with work that cannot altogether be foreseen as it eliminates risks that are to the advantage of neither party. Moreover, any firm that consistently abused the trust placed in it would find it difficult to stay in business. Undoubtedly unscrupulous firms exist but this is just another reason to be comfortable with advisors and only use firms in which there is confidence and a sound track record.

All professional practices keep scrupulous records of the time spent by every member of staff on each job so as to provide accurate records for calculating fees that are time based. It may also be helpful to understand that there are often considerable differences in the hourly rates charged by different professions where different levels of remuneration exist. Similarly there are considerable differences in the rate per hour between say principals and more junior staff.

An **agreed lump sum** is another means of dealing with fees. It has the advantage of certainty and overcomes many of the concerns previously identified. It is often a very good way of helping to build confidence between parties. There remains the danger that driving a lump sum fee too low creates the same potential difficulties that can arise with percentage fees that are too low and there is sometimes the tendency to slightly over or under estimate the likely time needed in undertaking the work. However if a reasonable fee is negotiated this is often a good way to proceed. It is a particularly good way to proceed in the first instance if there is considerable work to be done to establish whether or not a project is viable and it can be a good means of covering work that will involve exploring a number of different options.

An **incentive scheme** is one where the fee is structured in such a way that the better the result the more the consultant is paid. It can be a useful structure but is rarely used, as it does not lend itself easily to many circumstances. There is a case for using a structured incentive fee arrangement more frequently but it is not easy to set the goals so as to establish a worthwhile incentive and

other alternatives are much easier to handle. Furthermore an incentive scheme can be aggravated by the desire to inject into the fee proposal a form of penalty for poor performance which, it is argued, provides a further incentive for above average performance. It is not a system of remuneration that lends itself readily to parish proposals.

Speculative work and a negotiated fee is a system whereby a consultant undertakes to do a certain amount of work without charge on the understanding that if the job goes ahead he will be employed for the project at a negotiated fee. So far as the consultant is concerned it is a proverbial 'sprat to catch a mackerel' and his initial costs will be recouped from the fees for the job if and when it progresses. So far as a client is concerned it is often seen as a way of avoiding costs if the scheme cannot or does not proceed. In reality, if used, the consultant is only likely to give the job the minimum amount of time that in their opinion is necessary to establish viability. So far as the consultant is concerned there is a balance to be had between spending too much time on the project, with the risk of no income, against not spending enough time to demonstrate viability. Very often this is not an easy balance to achieve. Generally if the project is straightforward all the client is gaining is a deferred payment of fees and the consultant's risk relates to the credibility of the client and the likelihood of him or her pulling out of the project for spurious reasons.

On the other hand if the project is difficult the consultant will view the risks of the project failing as being high and therefore there is very little incentive to invest the time that is necessary to properly establish viability and fully test the obstacles in the way of success. Under these circumstances a client is unlikely to stand much chance of succeeding with a difficult or problematical scheme because he is emasculating the enabling process by starving it of funds. In those cases where a client has no investment or real commitment such a fee arrangement can sometimes be justified but where, as in the case of a parish, there is an existing investment then such a fee basis can result in a lost opportunity. Even worse, if the consultant is half-hearted about

Remember:

Disputes are expensive and best avoided.

the case the lack of proper and adequate attention can, and frequently does, bring about a sterilisation of a site or a project for the foreseeable future. Incentive fee schemes are often used by organisations that have a cash flow problem (thus their attraction to parishes that are short of funds) but rarely do they achieve anything useful apart from deferring the payment of fees.

A combination of the above fee structures is possible and is often used, as it can be the most appropriate means of dealing with projects that combine a clearly defined project with some unknown elements. Thus time charges can be used for part of a project, lump sums for other parts and percentage charges for perhaps the main constituent whilst some exploratory work might be done speculatively. It is possible to negotiate any option if both parties are willing.

Disbursements

Most consultants whilst dealing with a client's business will keep scrupulous records of the expenses incurred during the process. Some firms will log and charge for telephone calls, postage, printing costs, travelling costs, subsistence costs, overnight accommodation and other out of pocket expenses. Some will charge for non-productive travelling time. Some practices will 'throw in' some or all of the expenses incurred during a project or average them out and include them within their hourly rates. As with fees, the issue of how expenses will be dealt with should be clearly understood by a client at the outset. It is the sort of issue that should be raised and agreed at the outset of any appointment.

Negotiating fees and conditions of service

When negotiating fees all the issues previously discussed need to be borne in mind. Generally the guiding principle must be 'negotiate fees within a limited range; large fee reductions will almost certainly turn out to be a false economy'.

However no parish should be deterred from discussing fees with the consultants that they are contemplating employing. Since there are no mandatory scale fees imposed by professional bodies, negotiating fees is no longer considered a taboo subject; it is the norm and indeed fully understood, even if not always anticipated by many consultants. Whilst all fees are negotiable, there are many issues that it is wise to keep in mind if the optimum service and outcome is to be achieved. The principal issues to consider and act upon are set out below.

- Agree how disbursements will be charged.
- Agree the scope of work included within any fee proposal and what work will incur additional fees.
- Consider whether there are any advantages from dealing with fees using lump sums, time charges and percentages.
- Determine whether non-productive time spent travelling will be charged.
- Discover whether a third party might pay some or all of the fees⁴.
- Ensure that the initial brief is comprehensive and accurate.
- Review the implications of a fee proposal that is patently abnormally low.
- Understand the line of command within the firm.
- Understand the risks that may be attached to a particular fee structure.
- Understand the work that will be undertaken by qualified/unqualified staff if time charges are used.
- Use a fee structure that most suits the work to be undertaken.

⁴ This can sometimes be the case when dealing with a matter instigated by a third party. The Diocesan Office is always ready to advise on such issues.

Whatever the outcome of a negotiation on fees it is important that there is a clear written understanding of the contractual agreement reached between the parties.

As has already been mentioned, in order to reduce their exposure to risk, some consultants are increasingly seeking to define and limit their liability by the use of a written Form of Agreement. The Royal Institute of British Architects has produced a lengthy Form of Agreement for the use of its members and it is advisable to go through the document in detail and negotiate its amendment, if appropriate, before making a formal appointment. It may be possible to negotiate amendments prior to making the appointment but it will be virtually impossible after the contract is in place.

Depending upon the scheme for which advice is sought collateral warranties from consultants may be appropriate and should they be needed it is wise to discuss and agree the issue before rather than after an appointment is made.

It is important that both employer and consultant have a common understanding of each other's expectations prior to any appointment being ratified. Expectations can easily be discussed and recorded by means of a meeting between the parties. Although not exhaustive, the list in Table 5 provides a good starting point for such a discussion.

Remember:

All fees are negotiable but it is unlikely that a satisfactory solution will be achieved without paying the optimum fee.

Table 5

Establish:

- that the initial meeting to explore compatibility, establish the viability of the proposal & establish confidence will not incur fees.
- an agreed fee & disbursements structure.
- how the consultant organisation will deal with the work.
- the level of experience of the staff/partners that will handle the scheme.
- the timescale in which the work will be undertaken.
- that time will be of the essence, should that be appropriate.
- when the decision will be made as to whether or not the appointment will be made. (There is no compulsion to rush an important decision & it is important that those responsible for the appointment have made a considered decision.)

There are certain things that it is quite reasonable for any employer to expect from a consultant and these are set out in Table 6 There are also certain things that it is quite reasonable for the consultant to expect from his client and these are set out in Table 7.

It is helpful to bear in mind that sometimes it will be taken for granted by consultants that their service is to include particular work whilst the employer may see matters differently or have given the matter no thought whatsoever. For example, an architect may automatically include in his fee quote for acting as supervising officer in a building agreement. An architect or surveyor might include in his fee for measuring buildings and for producing measured drawings that are already in the possession of the employer but which the consultant did not know existed. Clearly all such matters need to be fully understood by both parties. Similarly, if for example the employer has already appointed or is contemplating appointing a project manager, this work needs to be understood and excluded from other fee quotes. Again it is important that all parties fully understand each other's expectations, the role that is expected of each consultant and that no party is under a false impression that, if uncorrected, would lead to a duplication of work. In the event that an employer is comparing fee quotations from different practices it is imperative that like for like comparisons are made and anything that would distort an objective measurement stripped out of the comparison or appropriately adjusted.

Table 6

To expect a Consultant to:

- give clear, comprehensive and sound advice;
- act solely in the their best interests;
- declare any conflicts of interests as soon as they become apparent & act appropriately;
- give sound, comprehensive and up to date advice on legislation & techniques;
- to keep them constantly informed of progress;
- to act within proscribed budgets;
- act with integrity in a proper professional manner.

Table 7

To expect an Employer to:

- give a clear and comprehensive brief;
- give clear & unambiguous instructions;
- to respond to requests for decisions;
- provide any additional information needed to assist in formulating advice;
- understand that when instructions are extended or amended it will very likely impact upon an agreed fee structure;
- settle fee accounts expeditiously.

Equally important in such circumstances is the need to ensure that all consultants quoting professional fees should have identical briefs. If there are different briefs the fees cannot be objectively compared.

Remember:

Have a clear understanding of any fee commitment and how it may be varied under changed circumstances.

Chapter 4

The Brief

As has already been touched on, the brief is most important if the consultant is to fully understand his client's instructions and provide the best possible advice and service. That brief will take on different forms dependant upon the discipline of the consultant and upon the tasks that he or she is expected to perform. When preparing a brief there is a need for clear thinking to establish exactly what is required but it is important that the employer does not seek to impose solutions within the brief that inhibit the consultant's thinking otherwise the best possible solution is unlikely to be obtained. It is always worthwhile remembering that if the brief is incorrect or inadequate there is a good chance that the solution will take on similar characteristics.

The size of the brief will inevitably vary with the size and nature of the task involved. Clearly the brief to a solicitor selling a house will be much simpler than a brief to several consultants that involves a complex series of land transactions coupled with the construction and subsequent leasing of buildings. Sometimes the work of one consultant will lead naturally to the formulation of the brief for another consultant whose advice is needed a little later in a complex chain of events. A good example of this is when a solicitor's brief can be expressed in the Heads of Terms negotiated by surveyors. Two other examples, perhaps less obvious, are when a planning consultant's advice or advice from a quantity surveyor forms part of an architectural or building surveying brief.

In the case of a simple sale of a residential property the brief to surveyors is relatively straightforward although any concerns, reservations or uncertainties should be unambiguously expressed at the outset. Concerns needing expression might range from the desire to achieve the best possible consideration, avoiding gazumping, compliance with Charity Law or indeed any particular individual concerns. It may be helpful to remember that it is at this stage the surveyor will need to clarify and amplify any implications arising out of such matters as details of title, the parties involved, possible timescales and any peculiarities of the case. The brief to solicitors may need to include advising the surveyors on obscure title issues.

If the case has an architectural context then the brief will need to set out the broad vision, the detailed use for the building, the size of spaces thought to be required, the budget within which the work is to be undertaken and any special conditions or concerns. Other concerns might include the phasing of the work or keeping part of the building in use whilst building works are undertaken. Once an architect or building surveyor is appointed they will wish to develop the brief they have been given to get a clearer understanding of expectations and would usually take this opportunity to help their client appreciate the technical opportunities and limitations of meeting both the actual and a modified brief that might better suit their aspirations. What the brief should not do is to seek to devise solutions. This is the job of the consultant and to seek to dictate how the problem is to be solved is very likely to produce second-rate solutions. It is always prudent to set the brief out in writing even though on occasions this can become a substantial document. In complex cases, as is usually the case with buildings, once a consultant has been appointed they can often usefully assist in the preparation of subsidiary briefs for other consultants.

When consultants are asked to work on existing buildings the brief becomes particularly important. This is so when the funds available for a particular job are limited but the scope of the works cannot be fully known until part of the structure is exposed. Under these circumstances it becomes particularly important to incorporate any necessary caveats into the brief to prevent unaffordable expenditure as the building surveyor or architect makes technical decisions that have a cost

implication. In such circumstances phrasing of the work may be vital and if so should be expressed at the outset.

It is often helpful to realise that the brief will form part of the contract between the parties and in the event of a dispute may become a useful tool in its resolution.

Remember:

The wrong brief gives rise to the wrong advice and the wrong solution.

Chapter 5

Appointing consultants

Once a decision has been made to appoint a particular consultant the appointment should be made in writing and should set out the main parameters of the agreement. Not to set the details of an appointment out in clear correspondence can often lead to misunderstandings, disputes and accounts for abortive work. Failure to confirm instructions and to set out the brief in a concise manner is one of the most common reasons for disputes, disappointment, frustration and argument between consultants and their clients. Prudent consultants will confirm their appointment and their understanding of the scope of their work in the event that their client does not proceed in this way but it is foolish for a client to rely on this, as any misunderstanding will translate itself into a dispute that could have been easily avoided had clear instructions been given by the party that had conceived them. Should confirmation of instructions come from the consultant it is prudent to check the content with care and rectify any omissions or mistakes.

If costs are to be minimised it is not just getting the brief correct that is important when instructing consultants. The timing of the appointment is just as important if abortive fees are to be avoided. In getting the timing right it is important to review those relevant issues that might change. Sometimes it is possible to shape events or change circumstances so that what was controversial or uncertain is no longer so. Sometimes there are issues that are by definition unpredictable and sometimes there are variables that it will only be possible to eliminate as work proceeds. All these possibilities need to be thought through before appointing any consultant.

Where schemes are complex, making the appointments in the best possible sequence, so that the first consultant's advice can be used to brief other consultants in a predetermined order, is a good means of eliminating or minimising abortive fees. A few examples will probably help to illustrate this.

First let us consider the case of a building development where in many cases an employer instructs an architect to prepare a feasibility scheme and incurs considerable fees for the work involved. If, when for reasons outside the expertise of the architect, it is not possible to undertake such a development, all the fees incurred will be abortive. On the other hand, if the first issue to be considered is one of title and it is not possible for legal reasons to build on the land at all or only in particular ways, then the likelihood of the architect devising a scheme that will not work will be avoided and likely abortive costs reduced or eliminated. Similarly, as no building is possible without planning permission, it can be prudent to seek the advice of a planning consultant before instructing the architect as, if there are particular planning issues that must be addressed in order to gain a planning permission, they can be incorporated into the architectural brief at the outset and again by so doing reduce the likelihood of incurring abortive fees. Indeed if the planning advice is that

there is, say, only a 40% chance of obtaining planning permission, then whether the architect is instructed at all will need careful examination. There will be occasions when this will, in the light of the risk, still be worthwhile and even crucial to the successful outcome of a scheme but the planning issues will need to be incorporated within the architectural brief and the risks of failure fully understood. By proceeding in this way costs can be controlled by avoiding or keeping to a calculated minimum any abortive fees.

Another example can be seen in the timing of appointments of such consultants as project managers, structural engineers, quantity surveyors and architects. If a project is to be project managed, then the project manager should be the first appointment, as he or she will have experience to bring to the appointment of the other members of the construction team. It will then be possible to see, and subsequently co-ordinate, the way in which the structural engineer, the quantity surveyor and the architect can work together to produce the most efficient and best value engineered solution to a building scheme. Under such circumstances the optimum scheme is much more likely to be developed than if the team or an individual member of it is appointed ahead of the project manager.

It is quite easy to bring to mind other examples so it can be readily seen that it is to the financial advantage of a would be employer to get the timing right over appointments. If this matter is well thought through there will be occasions when inappropriate appointments will not be made thereby saving what might otherwise be a considerable amount of misspent money. Every professional office has any number of files of jobs that started and never reached completion because of a change in circumstances or events and most of them will have generated a fee of varying magnitude, dependent upon the point when the scheme was abandoned.

It will therefore be seen that in order to avoid abortive costs it is important to avoid making any professional appointments until it is clear what advice is required so that the advice sought reflects the true need and the time is right to incur the associated costs.

Remember:

Save money by not giving premature instructions.

Chapter 6

Instructions to consultants

Professionals will talk to their clients and seek to fully understand and develop the brief that they have been given but they still need clear instructions. The brief may be clear but instructions on when and under what circumstances to act will still be needed. The brief will tell them what is needed but the instructions will tell them when and under what circumstances to do it. Instructions may also be required to amplify such matters as sequence of events or alternatives. If the instructions are not properly developed and do not clearly relate to the brief or if the consultant is

of the school 'that knows the needs of his clients better than they do themselves,' then dissatisfaction will inevitably develop on the part of the employer and what is required will not readily be achieved. To compound matters a substantial fee account may well be payable for work that was not wanted, perhaps because minds had been changed. Vital as it is to get the brief right at the outset of any undertaking, the costs will only start to run once instructions to act have been given. It cannot be over emphasised how important it is to be clear about what is wanted and what a consultant is being asked to do. All the time taken to define exactly what is required from a consultant before any appointment is made, is time well spent.

Consultants base all their actions on their instructions and the way in which they believe they can discharge their duties in the best interests of their client. It is advisable for all clients to understand this very important principle. Very often the consultant will need to take specific detailed instructions from their clients at various stages during the project. In the case of a building project this might relate to particular finishes or in the case of solicitors and surveyors how to react to a particular set of circumstances that have arisen out of the action of other parties involved in a transaction. In such cases it is reasonable for the employer to expect advice to guide in the decision making process and for the consultant to participate in a reasoned discussion that assists the decision making but ultimately a client may need to make difficult judgements and the consultant will act upon those judgements when they are translated into instructions. If these judgements prove to be wrong then further instructions and costs may ensue but the consultant cannot presume to know the mind of his client for it may well be there will be matters that will influence a decision that are entirely unknown to anyone but his client.

By way of example, legal or surveying advice might suggest the need for a robust challenge over some issue or that counsel's opinion should be sought. If the challenge is undertaken or the opinion sought it will generate additional work and those instructions will consequently have incurred greater fees. Another example might be the suggestion that for appearance sake, for convenience or to avoid a delay, a different component or a different form of structure in a new building might be appropriate but the decision and the instruction in relation to it may well incur additional construction costs as well as additional fees. It is therefore important that there is always a clear understanding of the way that instructions will affect costs and decisions should always be made that avoid or limit abortive costs. It is always worthwhile asking any consultant seeking supplementary instructions what the cost implications of a decision may be.

Depending upon the fee arrangements that are agreed, any subsequent instruction that varies an original instruction may well incur a fee for which there is no allowance in a budget. It frequently occurs that a client is not sure of what they want and in response to that indecision an offer is made by the consultant to examine various alternatives beyond the original brief. The offer is often taken up without any thought to the additional fees that will be incurred and an extra account for the additional work is met with both incredulity and annoyance.

Once a consultant is appointed and initial instructions given, it will often be necessary for the employer to respond to requests for more detailed instructions. It is most important that every consultant has very clear instructions as well as an agreed line of communication if mistakes and misunderstandings are to be avoided. It is equally important that an employer has an equally clear understanding of the implications of the instruction that he has issued. High quality professional advice will not emerge from the consultant's office unless instructions and lines of communication are clear and unambiguous.

Where the employer is a parish there is a tendency to feel that all matters need to be agreed by the Parochial Church Council but if individual members of a committee are involved in the process of giving instructions on a day-to-day basis to the consultant, disaster is almost inevitable. The most sensible way of avoiding difficulties is for a parish to appoint a single person who would take instructions from and report to a small working party with delegated executive powers. That person

alone would be the person who received communications from and gave instructions to the consultant. Quite clearly it needs to be a responsible person in whom the PCC have confidence and the working party needs to constantly report matters back to the PCC who carry the ultimate responsibility. If the consultant is instructed in the first instance only to take instructions from that one person then the potential for misunderstanding between employer and consultant is virtually eliminated and when confusion is eliminated many of the causes of disputes are also removed. There is of course still room for disputes to arise but they are immensely reduced and day-to-day communications given their best chance of success.

There are inevitably occasions when circumstances change after a consultant has been appointed. Depending upon the state of the job at the time and the magnitude of the change of circumstances it is very likely that additional fees will be incurred. A consultant will not normally expect to do work twice, following a change of instructions, for the initially agreed fee. If the change is very small it will usually be absorbed but if it is significant, involving a lot of work, then the employer can expect a proportionate increase in the eventual fee account. Moreover some changes will incur additional costs to third parties so the increase in overall costs can become compounded.

Changes during a building project will very quickly incur considerable extra costs so the advice is always to agree matters after careful thought each step of way so as to ensure the optimum design is achieved and to make no changes after drawings to invite tenders are finalised. As an example, if an acoustic consultant is advising on reverberation times and sound absorption then his work will need to start again if the shape of the space is changed because of the need to make savings on construction costs. Particularly in a building project, any changes induced by or required of one discipline may have knock-on costs to other disciplines that the employer will eventually be required to pay. It is important to remember that in any building project a vast number of decisions affecting costs will have to be made by a consultant. It is impossible and absurd to expect him or her to discuss the implication of every decision they will need to make with their clients as this sort of decision making is part of the job for which they have been appointed. Indeed, the whole point of appointing a professional person to act is to make use of their expertise in the delivery of an undertaking and it is axiomatic that many of their decisions will have cost implications that their employer will be contracted to meet. There is, however, a difference between making decisions that will incur costs within an agreed budget and those that will breach the budget. Any employer can reasonably expect a request for instructions over a budget breaking issue. Clearly the same applies to decisions that are outside the brief.

It is prudent on occasions to define through clear instructions the sequence in which work is to be undertaken thereby avoiding abortive fees through precipitate action. The scope of instructions can be discussed with and implemented by consultants so that only the immediately needed work is done in the optimum sequence. Indeed consultants can and do bring much to bear in such discussions and can often suggest a sequence of work that will save their clients money but this frequently fails to take place because the employer either does not understand the relevant issues and the need for supplementary instructions or fails to express them in a way that generates the appropriate response. It is always worthwhile remembering that a consultant cannot always guess what he or she is not told.

Another problem that can arise from time to time is failing to give clear instructions and it cannot be stressed too greatly that all instructions should be unambiguous. Quite often, after an informal unrecorded meeting or the transmission of messages there is a misunderstanding that tends to create mistrust because each party thought an agreed item meant something different. For the benefit of the job, record instructions unambiguously at the time they are given.

Yet another point to bear in mind is that if a project has a long gestation or delivery period membership of a PCC is likely to have changed. There is a tendency with a change of PCC membership to wish to revisit past decisions. Such action is usually counterproductive. It does little more than restart the same debates that have taken place previously and there is much to be said for keeping all PCC meetings constantly apprised of the current position of any project. This not only keeps the issue in the minds of members but it will also enable the gradual change in membership to be aware of the nuances of the scheme as it develops over a period of several years. Such action will also avoid increased costs that are likely to arise when the consultant is forced to go through the same reasoning and revisit the same issues for the umpteenth time.

Remember:

Every time you change your mind costs are likely to increase.

Chapter 7

Selling Parish Property

Selling Parish Property ought to be a relatively simple and straightforward matter but as those who have bought and sold their own homes will know, it is not always as straightforward as one would hope. There are always totally unforeseen matters that can arise. These will obviously need resolving in conjunction with the advice given by the appointed professionals and may incur unforeseen extra costs. However these sorts of issues do not arise often. What arises much more frequently are the irritants that can push a sale off course and result in the need to find a new purchaser to replace the one who has dropped out. So, what can the vendor do to help the smooth running of a property sale and what are the things that can go wrong?

What the Vendor can do to assist the smooth running of a sale.

1. Agree the proposed sale with the relevant Archdeacon.
2. Notify the Property Department at the Diocesan Office of the proposed sale and forward a copy of the relevant minute of the PCC. The Diocese will become active in the sale process. The Property Department will instigate a search for the title deeds⁵ to the property. Once they have been retrieved they will be checked to ensure there are no adverse encumbrances that will preclude a sale. Until this is done it cannot be taken for granted that the property can be sold. Particularly with 'church' property there are often conditions that prevent a straightforward sale. These can relate to the terms of Trusts, reversions and covenants. Sometimes it is possible to overcome these difficulties but careful work is often necessary

⁵ The deeds are unlikely to be with the Parish but a check should still be made in the safe.

if disappointment and abortive fees are to be avoided⁶. It is not uncommon with church property for there to be no title deeds or for none to be found. Lack of any title deeds is unlikely to apply to Parish residential property but when it arises it can usually be overcome without undue difficulty.

3. Appoint suitably qualified⁷ surveyors to market the property having first agreed the fees that will be charged. The basis of the agreement should be recorded in writing between the parties. Do not forget that VAT will be charged on these fees. Copies of the title deeds should be passed to the surveyor acting in the sale so that he is fully aware of any constraints attached to the property and can advise and value the property accordingly. Use the expertise and experience that the surveyors have to offer and discuss with them such things as are set out below.
 - What, if anything, can be done to the property that would be cost-effective in its presentation so as to achieve a faster sale and better sale price?
 - What they will do to market the property so as to comply with Charity Law but at the same time minimise the chances of gazumping in a fast moving market? Whenever gazumping occurs it usually creates a real dilemma, for under Charity Law the Parish is duty bound to obtain the best value but feels that once an offer has been accepted it is morally unacceptable to withdraw in favour of an overbid. This is particularly so as such an offer is deliberately made to secure a sale by disadvantaging a purchaser who may well have spent considerable sums of money on surveys and legal fees and be part of a long chain of sales. The accusations of bad faith and immorality spread down a very long chain and can create considerable pastoral difficulties in a parish.
 - What area of the market will they be targeting and might this influence presentation?
 - What is the best form of marketing? In very rare cases there may be a case for selling by auction or tender.
 - What arrangements are needed to ensure quick and easy access to the property for potential purchasers? If access is not easy some viewers will be put off going to the trouble to view it.
 - What is the best time to present the property to the market? Having regard to market circumstances can be important, as presenting the property at the wrong time can impede a sale.
 - What is the optimum level to pitch asking price? Fine judgements are called for as being over ambitious can hamper a sale and getting it right can speed up the entire process enabling money to be in the bank earning interest at the earliest possible moment.
 - What other issues are of concern? Discuss any concerns that may exist about future use or users and, if possible, agree a strategy for trying to achieving them. It is not always possible to meet hopes and aspirations but it is always worthwhile examining them in detail as sometimes they can be met.
 - What will the agent do to act as progress chaser to an agreed sale?
4. Appoint suitably experienced solicitors to act in the conveyancing. As with the surveyors, it is important that fees are agreed before the appointment and recorded in writing. Should the solicitors appointed be other than the Diocesan Registrar's practice it is equally important to agree with the Registrar his additional fee for checking that the work done by

⁶ The Property Department in the Diocesan Office is always willing to advise on such matters in the first instance.

⁷ A *suitably qualified* surveyor must be familiar with Charity Law and be able to certify that the sale price of the property has achieved open market value. He or she will be a General Practice member of the Royal Institution of Chartered Surveyors (not all members are general practitioners) or a suitably qualified member of the Incorporated Society of Valuers & Auctioneers. Ordinary unqualified surveyors in many High Street Agencies are not suitably qualified.

the appointed solicitors complies with the Ecclesiastical Measures. This too should be properly recorded.

5. Discuss with the solicitors how quickly they can act in ensuring the transaction moves as quickly as possible. Unfortunately any property transaction can only proceed as fast as the slowest party is able or willing to move but if there is no delay from the vendors solicitors then this provides the best chance of bringing the deal to a conclusion before the purchasers change their minds and withdraw. Until such time as contracts have been exchanged there is always the possibility that the deal will fall through. Although this is an obvious point, it is frequently forgotten.
6. Respond quickly to any requests for information or requests for instructions from surveyors and solicitors.
7. Do not agree to any changes of terms directly with the purchaser without first referring them to the surveyors and solicitors.
8. Liaise regularly with the surveyor. Agents have duties to report all offers received to their clients but it is important to discuss the quality of offers received with the surveyors and be guided by them on their individual merits. There may well be cases where the highest offer is not the best offer. For instance if the highest offer is conditional upon particular events that sound judgement considers to be unlikely to materialise, then it may be much better to accept a lower offer where say the purchaser is able to quickly complete the purchase. The soundness of every offer needs to be carefully and properly reviewed before it is accepted or rejected. Although Charity Law requires open market value to be achieved this needs to be assessed having regard to all the relevant circumstances.
9. Accept the best offer having regard to all the relevant circumstances and the recommendation of the surveyor who will be certifying under the Charity Act. An offer will usually be subject to contract, survey or even some other matter. Once an offer has been accepted the surveyor will immediately draw up a Memorandum of Sale that will be circulated to all the relevant parties. This will provide the solicitors with the information they need to produce draft contracts that it is hoped will lead to the eventual completion of the sale.
10. Respond quickly when solicitors seek information of any kind. The buyer's and the seller's solicitors will correspond with each other and as part of the process the purchaser will be seeking replies to pre-contract enquiries. These will include such questions as who owns boundaries, have there been any disputes involving the property, what fittings are being sold with the property together with many other pertinent issues. A speedy response to the solicitors will help to expedite matters more quickly than will be the case if for convenience the request is set on one side.
11. At exchange of contracts the documentation will need to be signed by the Diocesan Board of Finance as Custodian Trustees⁸. The contract is executed by the Diocesan Secretary or in his absence by the Diocesan Surveyor. There will be occasions when neither of them will be available on particular days and therefore it is always helpful, if it looks as though there is a specific urgency over executing a contract, to have the documentation to hand a few days in advance so that it can be signed and held by the solicitors pending exchange of contracts. This will become particularly important if there is a back-to-back sale and purchase that will require simultaneous completions. The Transfer will require the signature of the Diocesan Secretary and two members of the Board of Finance. There are occasions, usually

⁸ Under the PCC Powers Measure it is not possible for property to be vested in a Parish. It is instead vested in the Diocesan Board of Finance as Custodian Trustee on behalf of the Parish in their capacity as Managing Trustees.

in the height of the holiday season, when it may not be possible for two signatories to be found immediately. Since the sale proceeds will not be available until the execution of the Transfer, advance notice will once again be helpful should there be a particular urgency attached to the receipt of the sale proceeds. This is the sort of issue of which the Diocesan Registrar is well aware but if other solicitors are acting in a sale they can easily get caught out.

Dealing with matters in this way should go a long way to assist the sale process and help to reduce the period during which the property is on the market.

The Housing Act 2004

The Housing Act 2004 will affect the way that residential properties are marketed from 2007. Although the foregoing will still be valid the Act will require Agents selling properties to undertake additional duties and these duties will incur additional costs for the actual process of selling. Surveyors and agents selling property will be required to have available, before the property is put on the market, a Home Information Pack or a Seller's Pack (two different names for the same thing). This must be made available to potential purchasers upon request. It is being introduced in an attempt to speed up the process of buying and selling owner-occupier property⁹ and to prevent as many sales as possible breaking down through adverse searches and surveys. The intention is that every potential purchaser will be able to know, before making an offer to purchase a property, what the shortcomings of the property are. It does not remove the maxim *caveat emptor* but it does seek to disseminate at an early stage that information which under the current system is only likely to emerge once parties have gone a long way down the sequence of events that form part of the process of buying and selling land.

This pack will be subject to regulation by the Secretary of State but is likely to contain the following authentic documents:

- the interest to be sold;
- the title to the property;
- anything relating to the property by way of documentation or records;
- the physical condition of the property;
- the energy efficiency of the property;
- any warranties or guarantees relating to the property;
- details of any taxes, service charges and the like relating to the property;
- the replies that the seller proposes to give to prescribed pre-contract inquiries.

The physical condition of the property will be in the form of a Home Condition Report undertaken by an approved Home Inspector and will take the form of an elementary Structural Survey.

Penalty Charges will be applied for breaches of the requirements that will be enforced by the local Weights and Measures Authority.

This is a small snapshot of the way that the Housing Act 2004 is likely to influence matters in the near future.

Exactly how all this will work out in practice will only emerge as the procedure is introduced but the Secretary of State has wide powers to amend and modify matters. The costs of providing the information will fall on the vendor. It is the view of the Government that the costs will be in the

⁹ Property which is not available for vacant possession will not be covered by these requirements.

region of £400 but this is seen by many as a naïve view of matters. One of the criticisms of the scheme is that if a property takes a long time to sell, the information pack will be out of date but the Secretary of State has powers to deal with this matter also.

Things that can go wrong

If the preceding issues are carefully addressed many of the things that can go wrong will be eliminated. However there is always scope for the unexpected. By definition, if they are unexpected, it is difficult to anticipate them but the type of problem can be more easily described. The common types of problems include the following.

- Purchasers who are not serious; they waste time and can divert attention from those who are.
- Purchasers who may be serious but have difficulty with funding.
- Offers that have been accepted but which cannot be certified under Charity Law.
- Title issues that are seen by the purchaser's solicitors as being difficult; these can usually be overcome but overcoming them may induce delay and additional costs.
- Land Charges that may emerge during the sale process.
- Old or current disputes that become known during the conveyancing process that deter a purchaser.
- Structural surveys that reveal defects which induce a revised purchase price or persuades a purchaser to pull out of the transaction.
- Purchasers withdrawing at a critical stage or at the last minute.
- Gazumping towards the end of the conveyancing process.
- Gazundering just before the exchange of contracts on a falling market.
- Mortgagees withdrawing funds or reducing offers of funding after valuation surveys have been received.
- The unexpected need for bridging funding at a critical time.

Some but not all of these issues can be anticipated and sound monitoring and good advice will often keep many issues at bay but despite careful handling of the entire process matters can still go awry. When this happens there is much frustration and often anger but there is little that can be done except pick up the pieces and go back to the point where it is possible to continue with a new purchaser. To avoid further frustration it is often prudent to disclose to the next purchaser at a very early stage why the previous purchaser fell away.

Remember:

A suitably qualified surveyor is required to certify a sale under Charity Law. Appointing an appropriate surveyor to market a property can save two sets of professional fees.

Chapter 8

Buying Parish Property

Buying Parish property is easier in some ways than selling but it is still surrounded with similar problems to selling, although the issues tend to the opposite direction. So, what can the purchaser do to help the smooth running of purchasing a property and what are the things that can go wrong?

What the Purchaser can do to assist the smooth running of a purchase

1. Agree the purchase of a property with the relevant Archdeacon.
2. Notify the Property Department at the Diocesan Office of the proposed purchase and forward a copy of the relevant PCC minute. The Diocese will become active in the purchasing process.
3. Identify the available budget, not forgetting the cost of surveys, tests, fees, remedial work, any furnishings and VAT.
4. Ensure that all the funds needed for the purchase will be available when needed. This may or may not involve bridging finance or a mortgage¹⁰. These will be needed in several tranches. 10% of the full purchase price will be needed upon exchange of contracts and the remaining 90% upon the day of completion of the purchase. The fees (including VAT) for the professional advisors may fall due at different times. The solicitor's fees will usually fall due upon the completion of the sale but abortive fees for work done on a sale that has fallen through are very likely to fall due when it is known that a sale has fallen down. Surveyor's fees for structural surveys will fall due once the surveyor has reported his findings. Bear in mind that if the purchaser withdraws following an adverse survey there will be abortive fees to pay on the survey that brought about the withdrawal and further fees on the next structural report that will be needed.
5. Appoint suitably experienced solicitors to act in the conveyancing. As with selling properties it is important that fees are agreed before the appointment and recorded in writing. Should the solicitors appointed be other than the Diocesan Registrar's practice it is equally important to agree with the Registrar his additional fee for checking that the work done by the appointed solicitors complies with the Ecclesiastical Measures. This too should be properly recorded.
6. Identify with clarity and with the help of the Archdeacon¹¹ the needs to be met. Meeting all these preferences will almost always be impossible and compromises will need to be made. The best advice is to put the perceived needs in to a priority order and concentrate on

¹⁰ These are matters upon which the Diocesan Office can advise.

¹¹ The Archdeacon will play an important part in identifying a suitable house for the occupation of assistant clergy, as he will need to be content that the accommodation is satisfactory.

finding a property that meets the top two or three priorities. The issues to consider will include:

- the budget and the overall cost;
 - the geographical area;
 - the proximity to transport hubs or other facilities;
 - the number of rooms required;
 - the size of rooms;
 - the amenity space, size of garden etc desired;
 - the desired parking or garaging arrangements;
 - the quality of accommodation;
 - the decorative order;
 - the preferred age of property¹²;
 - the likely maintenance costs;
 - the likely furnishing and running costs for the occupiers.
7. Search for a property that meets the identified needs using reputable High Street agents making clear your needs and preferences. Consider whether it may be worthwhile commissioning a professional search by instructing surveyors to search for the property. This can sometimes be a worthwhile approach although it will obviously incur additional fees that will need to be incorporated within the budget.
 8. Be prepared to look at every property that meets your top priority order.
 9. Find the property that best meets your needs and identify your serious interest with the Agent marketing the property. Where more than one agent is marketing the property and you receive details from more than one agent then it will be prudent to make your offer through the agent that appears to be the most professional and efficient. If the ability of different agents is not known through local reputation it is possible to make a judgement by paying regard to the general professionalism and efficiency of the Agents that has become apparent whilst receiving details of and making arrangement to visit various properties.
 10. Determine the true open market value of the property. Judging what might be an acceptable offer against the known asking price is not necessarily easy, for on the one hand you do not wish to pay more than is necessary for the property but on the other hand you are unlikely to want to lose the transaction by making an inadequate bid. The information needed to make a judgement on value is knowing what similar properties in a similar area sold for. This can be quite different from asking price, as asking prices may be pitched too high in order to enable vendors to buy a particular property that will otherwise be beyond them or pitched low in order to foster a quick sale. Whilst it is possible these days to search for this information on the Internet the ability to negotiate and secure a house purchase is not everyone's forte, particularly since in the case of a parish purchase the overarching duties of Trusteeship need to be borne in mind.
 11. Secure the property. This is done by lodging a formal offer that should always be subject to contract and survey. It is also wise to make the offer subject to all *For Sale* boards being removed and the property being withdrawn from the market by all agents that are handling the sale. A good way of securing a property and demonstrating your seriousness can often be by instructing a suitably qualified surveyor to negotiate the best purchase price on your

¹² Generally the older the property is the greater will be the long-term maintenance costs. The Property Department at the Diocesan Office is always willing to advise on this issue.

behalf, although the timing and success of this will depend on the speed at which the market is moving. Negotiation, as has been said earlier, is an adversarial pursuit and very often a good negotiator will secure the property at a price that is a pleasant surprise to a purchaser. Clearly fees will need to be paid in such circumstances and they need to be agreed and recorded before instructions are given. Once an offer to purchase has been accepted the agent will circulate a Memorandum of Sale to the solicitors acting in the case.

12. Instruct, as soon as possible, Chartered Building Surveyors to carry out a full structural survey. As with all professional appointments it is important that fees are agreed before the appointment is ratified and recorded in writing. This is the time to raise with the surveyor any concerns that may exist about the property, as he or she will be able to specifically deal with the issue whilst carrying out the formal inspection. The purpose of a structural report is threefold. First, to ensure that a purchaser is aware of the defects in the property being acquired and their cost implications. Second, to enable the price to be adjusted to reflect the true condition of the property should there be any substantial defects. Third, to enable withdrawal, at the earliest possible stage, if the property possesses too many defects or defects that are unacceptable. When the report is received it will often create the impression that the property has little to recommend it. This is because the information sought is the discovery of defects and not the highlighting of the satisfactory matters. After reading the report through at least twice it is important to raise with the surveyor anything within the report that is not fully understood or seems unclear. A good surveyor will be able to provide approximate costings for remedial work although these need to be understood as approximate and not seen as an exact cost that will be incurred when employing a builder to rectify the defects. It is important to remember that VAT will be chargeable on the cost of any remedial works.
13. Respond quickly when solicitors seek instructions or information of any kind. The buyer's and the seller's solicitors will correspond with each other and as part of the process the purchaser will be seeking replies to pre-contract enquiries. These will include questions on who owns boundaries, have there been any disputes involving the property, what fittings are being sold with the property and many other pertinent issues. As a purchaser you will need to examine the answers given to the pre-contract enquiries and be satisfied with them. Should you have any concerns at this stage you should raise them with the solicitor acting on your behalf. A speedy response to the solicitors will help to expedite matters more quickly than will be the case if for convenience the request is set on one side. Indeed speedy responses will help to reduce the time during which it is possible for gazumping to occur.
14. Agree a date for the exchange of contracts and a completion date. As with the sale of property the contract documentation will be executed by the Diocesan Board of Finance and the comments in Chapter 7 relating to the timing of executing documents apply equally to purchases.
15. Immediately before the contracts are exchanged the property should be insured for its full rebuilding cost, not its purchase price. The surveyor carrying out the Structural Report will be able to provide this information although the request for this information should be given to him at the outset. The calculation to arrive at the rebuilding cost is complex and needs to include such matters as demolition or partial demolition in the case of destruction by fire or explosion, the costs of dealing with the rights of adjoining property as well as the costs of the actual rebuilding work¹³, the fees and VAT. Moreover, the insured value needs to be adjusted for likely inflation¹⁴ in the building industry over the next twelve months to ensure that the building is not under insured should disaster occur right at the end of the insured

¹³ Regard will need to be had to the quality of the existing building as well as external works, outbuildings and the like.

¹⁴ Inflation in the building industry always runs well ahead of the headline rates of inflation reflected in the Retail Prices Index.

term.

16. Once completion has taken place and the keys obtained from the Agents it is important to ensure that the property is occupied as soon as possible. If occupation cannot occur immediately then arrangements will need to be put in hand to ensure security. Curtains at the windows that are drawn at night and remotely controlled lights all help to prevent squatting and vandalism.

The Housing Act 2004

It will be helpful to read the section in Chapter 7 dealing with the introduction of the Home Information Pack. As this legislation comes into force it will be possible for purchasers to have access to information that may well influence their decisions on whether or not to make an offer for a particular property. Obtaining the Pack is likely to incur a nominal charge but the process will assist purchasers at an early stage.

Once this legislation takes effect there will be a considerable temptation to avoid incurring the costs of a full structural survey because the Home Condition Report will be seen as satisfying this need. This may well turn out to be false reasoning.

Currently there are three forms of surveys/reports during the purchase of a residential property that often cause confusion and comprise the following.

- Valuation Report.
This is a report commissioned by a funding institution to establish the value of the property so as to ensure that the lender has adequate security in the event that the borrower defaults on loan payments. It will not identify any defects other than very serious ones that affect value.
- Homebuyers' Report.
This is a short simplified structural report that follows a pro forma. It is usually perfectly adequate for the purchase of a modern property and is much cheaper than a full structural survey. It has many caveats as the surveyor will not spend as much time on the inspection or writing the report as is necessary for a comprehensive full structural survey. Such things as incipient dry rot or attack by longhorn beetle are unlikely to be noticed.
- Full Structural Report.
This report stems from a very thorough and detailed inspection and covers every aspect of the building to be purchased. It ought always to be commissioned when a Parish, having duties in trusteeship, are purchasing anything other than a modern residence.

The Home Condition Report will most likely take a similar form to the Homebuyers' Report but may well be in an even more simplified form. Moreover, despite the limitations of the Home Condition Report, it will quickly become out of date. The age, size and condition of the house being sold will all be particularly pertinent and will have a direct bearing on the need for prudence during a purchase, despite all the information that is to be provided in the Home Information Pack. As has already been mentioned in Chapter 7 these issues have yet to be resolved but in whatever way they are resolved the issue of a current satisfactory report will remain and the need for better reliable information on the condition of a residential purchase will need to be constantly borne in mind.

Things that can go wrong

The things that can go wrong with the purchase of a property are more likely to rest with the purchaser than the seller but there is always a risk that unexpected things can still arise that are not of the purchaser's making. The common types of problems include the following.

- The seller suddenly deciding not to sell at the last minute.
- Difficulties that may arise by way of Charity Law should there be any doubt that the purchase price is above open market value.
- Title issues that are seen by the purchaser's solicitors as being difficult; these can usually be overcome but overcoming them may induce delay and additional costs.
- Land Charges that may emerge during the sale process.
- Old or current disputes that emerge during the conveyancing process that may induce the purchaser to withdraw.
- Structural surveys revealing defects that convince the purchaser to pull out.
- Unsatisfactory answers to pre-contract inquiries. These might include the discovery that planning permission had recently been granted for what was seen as an unsatisfactory use for a neighbouring property or reveal the building had been recently flooded.
- Gazumping towards the end of the conveyancing process.
- Mortgagees withdrawing or reducing offers after valuation surveys.

As is the case with selling property some of these issues can be anticipated and sound monitoring and good advice will often keep many issues at bay but despite careful handling of the entire process matters can still go awry. When this happens there is much frustration and often anger but there is little that can be done except pick up the pieces and begin the search for another house.

Remember:

Caveat Emptor - *Buyer beware* - saving money by not commissioning a suitable structural survey is often a false economy.

Appendix 1

A brief outline to Building Agreements

There are a number of different standard Building Agreements, each one of which is designed for slightly different circumstances but there is much commonality between them.

The agreement is designed to place within a legal framework the work that a contractor will undertake, the conditions that will prevail under certain circumstances and the arrangements for payment of the works. Most agreements are long complex documents.

Amongst other issues the agreement will make provisions for:

- The cost of the works and making stage payments.
- The term of the construction period.
- VAT.
- Other parties interests and concerns.
- The duties of each party to the agreement.
- Unforeseen matters.
- The use of sub-contractors and suppliers.
- Variations to the works as they proceed.
- Statutory obligations.
- Insurances.
- The effects of instructions during the course of the work.
- How delays in the work and changes should be dealt with.
- Bankruptcy.
- Termination of the agreement.
- Serving of notices.
- Retention funds.
- Defects liability periods.
- Patent and latent defects.
- Quantifying claims.
- Disputes and methods of resolution.

The parties to such an agreement always include the Employer¹⁵, the Building Contractor and an intermediary who is responsible for administering the agreement. The intermediary is often

¹⁵ The employer becomes an inactive party to the building agreement in as much as he or she is deprived of giving any direct instructions to the contractor (these can only be made through the supervising officer). The employer is required to pay within a certain period all the moneys certified as being due under the building agreement or be in breach of contract and can only gain the use of the building upon completion of the works or as agreed within the documentation.

referred to as the Supervising Officer and this person may be a project manager, a building surveyor, an architect, a quantity surveyor or another individual.

It is the duty of the supervising officer to give instructions to the contractor and interpret the building agreement and all the circumstances arising out of the agreement in a quasi-judicial way. There will be times when circumstances dictate that decisions made by the supervising officer will result in an employer or a contractor feeling aggrieved. This is particularly so if the supervising officer is the architect who designed the scheme and he or she is called on to make a decision that at first sight appears not to be in the interests of the employer who is paying the supervising officer for his work. On such occasions it is important to remember that an architect or chartered building surveyor, when acting in the quasi-judicial capacity, is not acting in the sole best interests of his client as is the case when designing the building works; he is acting impartially in interpreting the building agreement.

Traditionally one of the functions of the architect has been to administer the building agreement but in recent years there has been a veering away from this method of procuring buildings. Where the supervising officer is the same party that has designed the works or part of the works, tensions can sometimes arise and there is much to be said for removing these tensions by the appointment of a more neutral party as supervising officer. Fulfilling the role of supervising officer is nevertheless a role that many in the architectural profession still see as their prerogative¹⁶.

It is often perceived that giving the designer of building works the position of supervising officer enables him or her to make amendments to the building under construction that incur extra costs, either because of matters that have been forgotten and need insertion or because second thoughts by the designer are seen as unnecessarily ornamenting the building. The concern that links an escalating designer's fee to the increase in building costs becomes stronger.

All building agreements make provision for the contractor to be paid for work that could not be anticipated or properly quantified so the risks of such matters arising when work is taking place on existing buildings are considerable. It very often transpires that works to existing buildings exceed the original contract sum quite considerably¹⁷.

¹⁶ There are several different ways to procure buildings and the Diocesan Surveyor is willing to discuss these with parishes should the issue arise and it be considered helpful.

¹⁷ When dealing with existing buildings it is always wise to insert into the cost calculations a substantial contingency sum.

Appendix 2

Questions to ask consultants

This appendix is designed to act as a reminder over the questions to ask consultants, either at a formal interview or during informal discussions when assessing whether or not a particular appointment is appropriate. The questions are not exhaustive, neither will they all be relevant in particular circumstances. Nevertheless, it is hoped that they will, if supplemented with particular concerns and selected appropriately, enable a more informed judgement to be made than might otherwise be the case when appointing consultants.

- What is the size of the consultancy?
- How long has the practice been in existence?
- What is the structure of the practice?
- What is the philosophy of the practice?
- Does the practice specialise in any particular field?
- How many principals are there?
- How many assistant staff are there and what are their qualifications?
- If appointed who will have what responsibility and what would be the lines of communication?
- What would their fees be and on what basis would they calculate the fees?
- How would they charge for disbursements?
- Would they charge for travelling time?
- What in particular might they be able to bring to a particular project?
- What organisations and individuals feature on their client list and who can be contacted as a referee?
- What are their most recent successful projects and why are they regarded as being successful?
- If appointed what might be a realistic timetable for dealing with the project?
- How would they react to working with other named practices?
- Can they cope with a particular scheme should time be of the essence?
- If appointed would there be any conflicts of interest?
- Where does the practice see itself in a team of professionals?
- What is the limit of their professional indemnity?
- Can the fees incurred be borne by a third party?
- How many recent projects have been delivered on time and within budget?
- Where can examples of their work be seen?