

CATHOLIC DIOCESE OF PORTSMOUTH

THE ESSENTIAL TRUSTEE – SUMMARY FOR THE TRUSTEES

1 INTRODUCTION

- 1.1 This note highlights some of the key topics covered by the Charity Commission's booklet CC3, "The Essential Trustee" as they relate to you as a Trustee of the various Diocesan charitable trusts ("Diocese"). It does not provide a full summary of the guidance which we recommend that you read in full.
- 1.2 Whilst the generic guidance in this note is applicable to your role as a Trustee of the various charitable trusts within the Diocese, the specific guidance relates to your role as a Trustee of the Portsmouth Diocesan Trust and the rules set out in its governing documents (see appendices 1.1 and 1.2). Where you are dealing with the other charities within the Diocesan umbrella, care must be taken to follow the rules set out in the relevant governing documents to be sure that the position is not different.

2 THE ROLE OF THE CHARITY COMMISSION

The Charity Commission is the independent regulator of charities in England and Wales. It ensures that charities are accountable and well run and that charity trustees meet their legal obligations in order to promote public trust and confidence. The Charity Commission is responsible for the registration of most charities in England and Wales and also provides advice and guidance to charities and their trustees once they are registered. The Commission also has wide powers to intervene in the affairs of a charity if things go wrong.

3 YOUR RESPONSIBILITIES AS TRUSTEES

As a board of charity trustees you have, and must accept, ultimate responsibility for directing the affairs of the Diocese, and ensuring it is solvent, well-run, and meets the needs of its beneficiaries and stakeholders. See also document 3.2 in the Trustees' Handbook, "Role of the Trustees".

- 3.1 **Who appoints the Trustees of the Diocese?** New Trustees are appointed by resolution of the Trustees but only with and subject to the approval of the Right Reverend Roger Francis Crispian Hollis as The Roman Catholic Bishop of Portsmouth ("the Bishop"). The Bishop is a Trustee by virtue of this office and has a separate power to appoint new Trustees within the Diocese's governing document.
- 3.2 **How long does my appointment last?** No specific length of service is specified in the Diocese's governing document. Your appointment will therefore last until you resign, die or are removed from office.
- 3.3 **Can I resign?** Yes you can. You may be required to complete legal documents confirming your action.
- 3.4 **Can we delegate our responsibilities?** You can generally delegate powers of administration and management to agents or employees, provided you always retain ultimate responsibility for running the Diocese and have the consent of the Bishop. You can also,

with the Bishop's consent, appoint any committee and delegate any of your powers to such committee.

- 3.5 **How do we make decisions?** All decisions concerning the Diocese, other than those lawfully delegated to committees, are made by the Trustees, usually at a meeting where the decision will be determined by the majority of votes of the Trustees present and voting. Decisions may also be made by written resolution where the resolution is signed by all of the Trustees.

4 COMPLIANCE

- 4.1 **Can Trustees be paid for their duties?** Generally no; however there are limited exceptions including reasonable and necessary out-of-pocket expenses.

- 4.2 **Can a Trustee be employed by the Charity?** Yes, because there is a specific provision in the Diocese's governing document which allows for bishops, priests and deacons to be employees. For any other Trustee, permission must be obtained from the Charity Commission.

- 4.3 **Do our accounts need external audit or scrutiny?** Yes. As the income of the Diocese exceeds £500,000, the accounts must be audited by a registered auditor.

- 4.4 **What are our duties regarding fundraising?** You must ensure that all fundraising activities of the Diocese are properly run and funds collected properly accounted for, whether the activities are carried out by you or on your behalf by another party.

- 4.5 **What laws and regulations apply to us?** The following are the main areas (but this list is not exhaustive):

- Employment law.
- Health and safety legislation.
- Equality legislation such as racial equality, disability discrimination etc.
- Legislation regarding children and vulnerable adults, such as child protection policies.
- For non-charitable trading organisations, company law applies.

5 TRUSTEES' FINANCIAL RESPONSIBILITIES

- 5.1 **The Charity has a Financial Secretary and a Finance Manager. Do I still have any financial responsibilities?** Yes. All Trustees have to ensure that:

- The Diocese is and will remain solvent.
- Charitable funds and assets are used reasonably and only for the Diocese's objects.
- The Diocese's assets, including its reputation, are not put at undue risk.

- Special care is taken when funds are invested or borrowed.

The Trustees must act reasonably and prudently. You must apply funds fairly and in the best interests of the Diocese. You should not accumulate excessive surplus funds without a specific purpose in mind. You should avoid conflicts of interest.

5.2 **What are my duties towards charity property?** All Trustees are accountable for the Diocese's property.

- Land and buildings must be adequately insured and properly used.
- Cash reserves should be appropriately invested.
- Bank accounts must be safeguarded and monitored.
- The value of endowments should be protected.

5.3 **Can we invest funds?** Yes, there is a general power of investment, but Trustees should follow standard investment criteria on sustainability and diversification, regularly review investments and take appropriate advice. The Trustees should also ensure that the Bishop consents to the investments.

5.4 **What other powers do we have over property?** Trustees can buy, sell and lease land, and use land as security to borrow money with the Bishop's consent. In all these cases, Trustees should take appropriate professional advice.

6 DUTY OF CARE

6.1 **What is the statutory duty of care?** Under the Trustee Act 2000, trustees must exercise reasonable care and skill, taking into account any special skills that they have (or claim to have). The Trustees are responsible for the Diocese's strategic aims and objectives and have to make a statement of potential risks and risk management in their annual report.

6.2 **How often do Trustees have to meet?** The Trustees should meet as often as is needed to do justice to the affairs of the Diocese and to enable them to make well-informed decisions. Under the Diocese's governing documents (see document 3.1 and Appendix 1 of the Trustees' Handbook) at least one ordinary meeting must be held each year and special meetings may be called at any time by the Chairman or the Secretary of Trustees.

7 LIABILITIES

7.1 **What are my liabilities as a charity trustee?** There are two types of potential liability:

- liabilities to third parties that occur in the course of running the Diocese; and
- Claims for breach of trust, which can be instigated by the Charity Commission, the Attorney General or the Trustees themselves.

If a claim is brought against the Diocese by a member of the public (for example, a claim for personal injury caused by tripping at one of the Diocese's premises), the claim would be made in the name of Portsmouth Roman Catholic Diocesan Trustees Registered, however

this does not exonerate the Trustees against any liability for meeting the claim personally. You are entitled to meet such claims out of the assets of the Diocese, including the proceeds of any insurance policy. But, ultimately, if the Diocese has insufficient funds to meet the claim, then the Trustees could be jointly and severally responsible for meeting the shortfall. In practice, in any adverse situation the Diocese should have sufficient funds to cover any third party liabilities.

Also, if you act in breach of your duties as charity trustees (known as a breach of trust), you are vulnerable to a claim to reimburse the Diocese for any loss caused as a result. An example would be allowing the Diocese's funds to be used for a purpose that falls outside its charitable objects or receiving an unauthorised benefit. The Charity Commission has power to relieve a trustee from personal liability in circumstances where he or she has acted in good faith and it is highly unlikely for a charity trustee to be held personally liable for breach of trust unless he or she has acted in deliberate contravention of the rules, or has been grossly irresponsible.

- 7.2 **Can I insure against personal liability?** The Diocese's governing documents allow the charity to purchase indemnity insurance for the Trustees. Such insurance is in place and is provided by the Catholic National Mutual. The limits of the indemnity for various classes of risk are as set out below and are reviewed by the Insurance Committee of the Bishops' Conference annually.