

WHO OWNS THE PROPERTY OF A PARISH CHURCH IN THE ROMAN CATHOLIC CHURCH IN ENGLAND AND WALES?

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It is currently unclear who owns the property of a parish in the Roman Catholic Church in England and Wales. Does it belong to the parish or the diocese? This article seeks to suggest some answers by examining Roman Catholic Canon law and the civil law in the form of charity law.² The answer to this question has implications for the Roman Catholic Church in terms of: the registration of parishes as separate charities from the diocese; ownership of property; whether parishes need to adopt governing documents and, if they do, what type of governing documents they should adopt; whether the Canon law is compatible with the civil law (charity law) provisions for trusteeship of a parish charity; the charitable status of parishes; and, what property can be used to satisfy liabilities stemming from litigation against the Church.

1. Roman Catholic Canon Law

In order to understand who owns property: the diocese or the parish, there is a need to look at the structure of the Church and how its property is owned under Canon law.

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² Unless otherwise stated references are made to the Charities Act 2011 which comes into force on 13 March 2012.

1.1 Structure of the Roman Catholic Church

The Roman Catholic Church is primarily made up of diocesan churches.³ Diocesan churches are a portion of church members under the care of a bishop.⁴ Within a diocese there are parishes.⁵ Parishes are said to be under the authority of the diocesan bishop but entrusted to a parish priest.⁶ Significantly, the bishop can establish, suppress or alter parishes after consultation with the Council of Priests.⁷ In the diocese the bishop is theoretically all powerful as he has legislative, executive and judicial power.⁸

1.2 Ownership of Property

In Canon law Juridic powers⁹ within the Church are capable of holding property. The juridic person that acquired the goods owns and controls them.¹⁰ At this point one might make the observation that if the diocese acquired the property it owns that property and if the parish acquired the property it owns that property. However, there need to be three qualifications to this proposition.

First, this will only be true so long as the parish remains in existence. If the bishop closes the parish then the diocese will own the property, there being no other appropriate juridic person to own it.

Second, the canonical position is complicated by the way that dioceses hold their property, including parish property, in accordance with the civil law.¹¹ The property of a diocese will be held on charitable trusts or by charitable corporations.¹² Property needs to be held in this way because Roman Catholic Canon law does not form part of the civil law of England and Wales and does not

3 C 368. References in this article are to canons of the *Codes Iuris Canonici*, 1983.

4 C 369.

5 C 515.

6 Ibid.

7 C 515(2).

8 C 391.

9 Juridic acts are exercised by qualified persons in Canon law which are lawfully valid: see C 124.

10 C 1256.

11 See A Corridan James, *An Introduction to Canon Law*, Burns & Oates, 2004, p 175.

12 For example the Roman Catholic Diocese of East Anglia holds its charitable trusts with a corporate trustee with the bishop, clergy and lay people as its directors.

provide a vehicle accepted by civil law to hold the property.¹³ The question needs to be asked whether the diocese acquired the property for itself or whether it is simply holding parish property because the parish lacks the legal capacity in civil law to hold it in its own name? If the latter then, according to Canon law, the property is owned by the parish and not the diocese.

Third, a fundamental principle of Canon law is that the intentions of donors are to be: 'most carefully observed'¹⁴ and enforced by the bishop.¹⁵ This raises the question whether Roman Catholic donors give to the diocese or the parish. If the diocese has purchased the property upon which the parish church was built from its general funds then it is clear that the diocese owns that property. However, if a parish church was built from funds raised from Roman Catholic parishioners then, according to Canon law, there is an obligation to respect the donors' intentions and treat that property as belonging to the parish during its existence.¹⁶ Funds donated or property given to the parish thereafter, whether the diocese owns the parish church or not, would, according to Canon law, 'belong' to the parish unless there is evidence of a contrary intention.

2. The Civil Law: Charity Law

What constitutes a charity under the civil law? There is no need for a charity to have a formal governing instrument.¹⁷ A trust can be created orally in the case of an *inter vivos* trust of personalty.¹⁸ By contrast, a trust of land, or interest in it, must be evidenced by some writing signed by some person who is able to declare such trust or by his will¹⁹ and, where property, is devised or bequeathed to charity under a will, the formalities under section 9 Wills Act 1937 (as amended by the Administration of Justice Act 1982) must be complied with. Usually, charitable trusts are created by a settlor or a testator who transfers or bequeaths or devises funds or property to trustees upon trust for charitable purposes. Although a trust is usually created in this way it can be presumed to have arisen by the Court where there is no record of a trust deed and there is evidence that property has been

13 C 1284(2). Note that the civil law does form part of the Canon law unless it is contrary to Canon law: see C 22.

14 C 1300.

15 C 1307.

16 See footnote 7 ante.

17 For a discussion of this subject see: Robert Meakin, *The Law of Charitable Status: Maintenance and Removal*, CUP 2008, pp 12-44.

18 *M'Fadden v Jenkyns* (1842) 1 Ph 153.

19 Law of Property Act 1925, s 53(1)(b).

dedicated for charitable purposes over a long period of time.²⁰ Even where the formalities have not been complied with the Charity Commission, the Court and the Crown will use their powers to give effect to charitable intent.²¹

There is a statutory definition of ‘charity’ for the purposes of registration. ‘Charity’ is defined in the Charities Act 2011²² as:

... an institution which

- (a) is established for charitable purposes only, and
- (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.’

This definition requires further explanation.

An ‘institution’ is defined in the Charities Act 2011²³ as: ‘an institution whether incorporated or not, and includes any trust or undertaking’. Trusts are defined as:

...the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by trust or not, and in relation to other institutions has a corresponding meaning.²⁴

It is clear that a diocesan charitable trust or corporation with charitable purposes²⁵ is a charity which must be registered at the Charity Commission.²⁶ Charities hold their general funds for their general charitable purposes but, in addition, if they hold property for particular charitable purposes within those charitable purposes, that property is held on special trusts.

‘Special trusts’ are defined as:

...property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property....²⁷

²⁰ *Goodman v Mayor of Saltash Corp* (1882) 7 App Cas 633, HL.

²¹ See para 3.1.

²² Charities Act 2011, s 1(1).

²³ Charities Act 2011, s 9(3).

²⁴ Charities Act 2011, s 353(1).

²⁵ Typically to advance the Roman Catholic faith in such ways that are charitable in law.

²⁶ Charities Act 2011, s 30.

²⁷ Charities Act 2011, s 287(a)(b).

Arguably, parish property will be held on special trusts where parish donors have given property for the purpose of that particular parish unless there is evidence of a contrary intention. That evidence could include the fact that Mass offerings will typically be given in gift aid envelopes citing the name of the diocese and its registered charity number.²⁸ The counter-argument to this analysis is that as the parish has no legal existence, or separate registered charity number, giving in this way is merely to facilitate tax-efficient giving through gift aid.²⁹ Legacies will be given in a variety of ways often depending on the wording in legacy brochures but often they will be given specifically for the parish and will therefore belong to the parish.³⁰

The importance of respecting donors' intentions in Canon law³¹ is reflected to some extent in charity law. The authority for this proposition may be seen from the cy-pres jurisdiction of the Court and the Charity Commission to amend charitable purposes.³² The power to amend charitable purposes is generally limited by the requirement for the Court or the Charity Commission to have regard to the 'spirit of the gift.' However, the importance of this requirement has recently been reduced by the Charities Act 2011³³ which now places a further requirement on the Court or the Commission to balance the consideration of the 'spirit of the gift' (on the one hand) with the need to consider the 'social and economic circumstances' prevailing at the time of the proposed alteration of the original purposes (on the other hand). This counter-balancing consideration is at odds with the canonical position which gives paramount importance to the wishes of donors.³⁴ In practical terms, the canonical position might act as a brake on cy-pres applications being made by diocesan charities and therefore the change in the law might have little practical effect.

3. Implications of Parishes Owning Property

There are a number of implications which flow from parishes owning their own property. First, are parishes required to be registered separately from their

28 For example, as in the case of the Roman Catholic Diocese of East Anglia.

29 For a definition of 'charity' for the purpose of gift aid see Finance Act 2011, Schedule 6.

30 For example, the legacy brochure at the Parish of Our Lady and English Martyrs, Cambridge offers donors the ability to give to their parish rather than the diocese.

31 See ante.

32 Previously Charities Act 1993, s 13 as amended by Charities Act 2006, s 15 and now contained in Charities Act 2011, s 62(2).

33 Charities Act 2011, s 62(2).

34 See ante.

diocese as independent charities? Second, do parishes need to adopt governing documents which accord with civil law? Third, if there is a need for a governing document, what type of governing document? Fourth, is Canon law compatible with the civil law requirements for trusteeship of a parish charity? Fifth, does liability arising in a diocese reside with the diocese or the parish?

3.1 Do Parishes need to Register as Separate Charities?

Charities are required to be registered by the Charity Commission unless excepted or exempt from registration.³⁵ Roman Catholic parishes are not exempt from registration.³⁶ They are excepted from registration when registered under the Places of Religious Worship Registration Act 1855³⁷ and their gross income does not exceed £100,000.³⁸ The income threshold was introduced by the Charities Act 2006 and the regulations relating to the exception in 2008.³⁹ Despite the introduction of the income threshold Roman Catholic parishes have not registered.⁴⁰ This could be because they have decided that the property of the parishes are held on ‘special trusts’⁴¹ and therefore are administered by the diocesan charity and its trustees and fall under the diocesan charity’s registered charity number. It should be noted that the Charity Commission has the power to direct that special trusts are treated as forming part of that charity or as forming part of a distinct charity for any of the purposes of the Charities Act 2011, including registration.⁴²

To understand the term ‘special trusts’ there is a need to understand the meaning of ‘trusts’ for the purpose of registration as a charity.⁴³ In this context the definition of a charitable trust for the purpose of registration as a charity is wider than the common law definition for the recognition of a charitable trust.⁴⁴ Under the common law there are three essential requirements. First, there must be

³⁵ Charities Act 2011, s 1(1).

³⁶ Charities Act 2011, Schedule 3.

³⁷ Places of Religious Worship Registration Act 1855, s 9.

³⁸ Charities Act 2011, s 30(2)(a)(b) and Charities Act 1993 (Exception from Registration) Regulations 2008, 2008 No 3268, reg 2(2)(e).

³⁹ Ibid.

⁴⁰ A search on the Charity Commission website: www.charity-commission.gov.uk did not show any registered parish charities.

⁴¹ See para 2.

⁴² Charities Act 2011, s 12(1)(2).

⁴³ Charities Act 2011, s 353(1).

⁴⁴ *Knight v Knight* (1840) 3 Beav 148 *per* Lord Langdale at 172. See Jean Warburton ‘Charitable Trusts-Unique’ [1999] Conv 20.

certainty in the words used to create it.⁴⁵ Second, the subject matter must be certain.⁴⁶ Third, there must be certainty that all the potential objects are charitable.⁴⁷ It is doubtful that the canon law constituting a parish,⁴⁸ would qualify as a trust for the purposes of the common law as there would be no evidence that there was an intention to create a trust shown, for example, by stating clearly that property held on trust with all the obligations under the civil law that are imposed on trustees.⁴⁹ However, it could be regarded as a ‘trust’ and for that matter a ‘special trust’ for the purposes of registration as a charity because this is a wider concept that includes:

...the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by trust or not, and in relation to other institutions has a corresponding meaning.⁵⁰

If a parish is regarded by the Charity Commission as a special trust then it will usually be registered as a subsidiary charity under the registered charity number of the diocese.⁵¹ It is possible that parishes with a gross income exceeding £100,000⁵² might be asked to register separately by the Charity Commission but, as yet, there is no indication that this is planned.

Arguably, according to canon law⁵³ a parish is not a special trust but a distinct charity requiring separate registration because canonically it is a juridic person capable of holding property and actually owning that property itself where it purchased the property using funds owned by parish donors. If a parish is a distinct charity then for the purposes of registration it must be either a trust (as explained above) or a company.⁵⁴

45 *Tito v Waddell* (No 2) [1977] 3 All ER 129.

46 *Palmer v Simmonds* (1854) 2 Drew 221.

47 *Chichester Diocesan Fund and Board of Finance (Incorporated) v Simpson* [1944] Ch 253 per Lord Greene MR at 259.

48 C 515.

49 *Re Hamilton* (1871) LR 6 Ch 597.

50 Charities Act 2011, s 353(1).

51 Charity Commission, *Reporting and linked Charities: registration, reporting and accounting*, OG 34 B1-07 January 2003.

52 Charities Act 2011, s 30(2)(b)(c).

53 See para 1.2.

54 Although it is not clear what the word ‘undertaking’ means it probably means an undertaking construed as a charitable trust under the civil law. See Nathan, *Charities Act 1960*, 1st ed, Butterworths, 1962, p 25. For a discussion of what constitutes an ‘undertaking’ see Robert Meakin, *The Law of Charitable Status: Maintenance and Removal*, CUP 2008.

Unlike the Charities Act 2011 and the requirements for registration as a charity with the Charity Commission, the Court has never made it a requirement that there is an ‘institution either incorporated or not’ including ‘any trust or undertaking’ to carry out charitable purposes.⁵⁵ In fact the Court will give effect to charitable intention where property is given to the charity on trust where the trust machinery has not been provided for by the donor or it has failed.⁵⁶ Where property is given to charity without being constituted as a corporate body or as a trust then the Court will have no jurisdiction⁵⁷ and the Crown as *parens patriae* will act as the constitutional trustee⁵⁸ and apply the property by way of Royal Sign Manual. Therefore there is a distinction between the requirements for charitable status under the general law and the requirement that an institution is a charity for the purposes of the Charities Act 2011 and registration. It follows that even if the Charity Commission took the view that a parish was not an ‘institution’ because it is not incorporated, it is not governed by a trust or a company,⁵⁹ as it is governed by canon law (which does not form part of the civil law) it could ask the Crown to exercise its Royal Sign Manual power to apply the property for charitable purposes. Alternately, if the Charity Commission considered that the Canon law showed evidence of a charitable intention expressed by charitable trusts but created informally, then it could use its scheme making powers to provide a trust instrument. Either way, the parish could then be registered as a charity.

3.2 Is Parish Property an Asset of the Parish or the Diocese?

If a parish is a legally separate charity then its general property will, unless there is evidence to the contrary, belong to that charity and not the diocese. The same will be true when a parish is treated as a ‘special trust’ where the donor has intended there to be a distinct charity with charitable purposes which differ from that of the diocese, in this case, specifically for the parish.⁶⁰ It was concluded earlier⁶¹ that even if a parish is not regarded as a distinct charity or special trust, the Crown or the Charity Commission would probably use its powers to construe a legally enforceable charity. The implications that flow from this analysis are that

55 By way of illustration see *AG v Mathieson* [1907] 2 Ch 383; *Re Bennett* [1960] Ch 18. The fact that it has not been a requirement of the Court explains why the Court has not defined it.

56 *Paice v Archbishop of Canterbury* (1807) 14 Ves 36, 83; *Re Burley* [1910] 1 Ch 205.

57 *Re Bennett* [1960] Ch 18 *per* Vaisey J at 26.

58 *Paice v Archbishop of Canterbury* (1807) 14 Ves 364 *per* Lord Eldon at 372.

59 Charities Act 2011, s 9(3).

60 *Re Arms (Multiple Sclerosis Research) Ltd* [1997] 1 WLR 877 is authority for the proposition that a special trust is a separate charity.

61 Para 3.1.

diocesan trusts will be less wealthy than assumed. For example, in the Roman Catholic Diocese of East Anglia,⁶² accounts for the year ended 31st December 2010, 78% of its assets were said to be parochial, 83% of income and 71% of expenditure related to parishes (out of £24,867,190 net assets £19,476,739 were said to be parochial). If parishes do own their own property separate from the diocese then this could have strategic financial planning implications for diocesan trustees.

3.3 Do Parishes Need to Adopt Constitutions which Accord With Civil Law?

At present parishes are constituted by Roman Catholic Canon law⁶³ which does not form part of the civil law. The Canon law⁶⁴ places an obligation on those administering property to ensure that property is safeguarded in accordance with the civil law,⁶⁵ and to observe the provisions of Canon and civil law, to observe the stipulations of the founder or donor or lawful authority and to take special care that damage will not be suffered by the Church through the non-observance of the civil law.⁶⁶ There is no requirement under the civil law for a charity to have a formal governing instrument⁶⁷ but it is the responsibility of those administering charitable property to put in place a formal governing document setting out the precise charitable purposes and administrative provisions.⁶⁸ It could be argued that, in the case of a Roman Catholic parish there is no formal governing document and therefore there is an obligation to put one in place that complies with the civil law. If this is true then what sort of governing document should a Roman Catholic parish have?

3.4 If There is a Need for a Governing Document What Type of Governing Document?

For parish property to be held by a corporate entity rather than in the names of individual trustees the governing document would usually be in the form of a

⁶² Registered charity number 278742.

⁶³ C 515.

⁶⁴ C 1284

⁶⁵ C 1284(2) 2.

⁶⁶ C 1284(2) 3.

⁶⁷ See *Re North Devon and West Somerset Relief Fund Trust* [1953] 1 WLR 1260 but note that it is the responsibility of those who receive funds for charitable purposes to execute a trust deed declaring precise trusts.

⁶⁸ *AG v Mathieson* [1907] 2 Ch 383.

memorandum and articles of association of a limited liability company.⁶⁹ A company model accords with Canon law, which provides for a parish to have juridic personality.⁷⁰

Charitable companies are usually in the form of a guarantee company where the members guarantee the liability of the company, usually up to a nominal amount. Unlike trusts, charitable companies have limited liability. Having parishes governed by separate charitable companies with their own directors would assist in ring-fencing liability.⁷¹

3.5 Is Canon Law Compatible with the Civil Law Requirements for Trusteeship of a Parish Charity?

Under the Canon law the property of a parish is administered by the parish priest⁷² with the assistance of a finance committee.⁷³ When administering the parish, the parish priest is under an obligation to act in accordance within the limits and administration set out by the bishop⁷⁴ and to act as a good householder, as prescribed by Canon law.⁷⁵ The parish administration is in a way a mirror image of the position at diocesan level where the bishop establishes a finance committee.⁷⁶ In practice the diocesan finance committee and the bishop become trustees of the charity administering the property of the diocese.⁷⁷ The same is not true of the parish priest and the parish finance committee which exist as a matter of Canon law but have not so far had formal recognition as trustees under the civil law, perhaps because it is assumed that the property of a parish either belongs to the diocese or is held on special trusts which are administered by diocesan trustees.⁷⁸ If a parish were to have a formal governing document in civil law, for example, in the form of a charitable company limited by guarantee, then it would

69 Reference should be made to standard textbooks for commentary on the law of charitable trusts and charitable companies. See Jean Warburton, *Tudor on Charities*, 9th ed, Butterworths, 2003 and E West, *Companies Limited by Guarantee*, 2nd ed, Jordans, 2004.

70 C 515(3). By comparison Church of England parishes are constituted as corporate bodies: see the Parochial Church Councils (Powers) Measures 1956 clause 3.

71 See para 3.7.

72 C 532.

73 C 536.

74 C 1281.

75 C 1284.

76 C 492.

77 For example see the Roman Catholic Diocese of East Anglia.

78 See for example the parish of Our Lady & English Martyrs, Cambridge.

be logical for the parish priest and his finance committee to be the directors and charity trustees of that company.⁷⁹ In practice the authority of the bishop is protected in diocesan charities by giving him the power to appoint and remove trustees and a veto over key powers dealing with property.⁸⁰ This type of protection could be replicated in the case of a parish charity to protect the authority of the parish priest.

It should be noted, however, that there is an important canonical difference between the diocesan finance committee and the parish finance committee. In the *1997 Instruction on Certain Questions Regarding the Collaboration of Non-Ordained Faithful in the Sacred Ministry of Priests*,⁸¹ the parish finance committee is said to enjoy a consultative role only and cannot in any way become a deliberative structure, whereas the diocesan finance committee has more authority in Canon law because on certain issues the bishop must take advice and although he is not obliged to follow such advice, failure to consult will affect the validity of his actions.⁸² On other issues the bishop must go further and not just consult but actually obtain consent. Failure to obtain consent will also affect the validity of the bishop's actions.⁸³ It will be appreciated that the finance committee of the diocese more readily lends itself to adoption in the form of charity trusteeship under the civil law, which requires active and deliberative trustees⁸⁴ than the parish finance committee. In creating parish charities there could be a tension between the canon and civil law.

There is a general rule against trustees being paid unless authorised by the governing document or the Court or the Charity Commission.⁸⁵ However, as the parish priest will usually be paid by the diocese this will not be an issue. In respect of any payments made to him from the parish these can be justified as

79 In the case of a charitable company the directors are charity trustees being the persons having the control and administration of the charity: see Charities Act 1993, s 97(1).

80 See for example the trust deeds of the dioceses of East Anglia and Northampton.

81 Instruction p 21, art 5. See Beal, Corriden and Green, *New Commentary on the Code of Canon Law*, Paulist Press, 2000, pp 709-711.

82 C 1263 (moderate or extraordinary tax on juridic persons); C 1277 (important acts of administration); C 1281(2) (determination of limits of authority); C 1305 (investment strategies); and, C 1310(2) (changing objects of a foundation where the objects become impossible).

83 C 1277 (extraordinary acts of administration); C 1292(1) (alienation of property over certain limits); and, C 1295 (the completion of any transaction which could worsen the financial position of the diocese). When consent is required there is a need for an 'absolute majority': see C 127(1).

84 See *Re Lucking's Will Trusts* [1968] 1 WLR 866.

85 See *Bray v Ford* [1896] AC 44.

charitable payments to a beneficiary; it being charitable to maintain the clergy.⁸⁶ In such circumstances the governing document should contain procedures to manage conflicts of interest.⁸⁷

3.6 Is a Roman Catholic Parish a Charity?

Under the civil law, parishes (albeit Church of England) are not automatically considered to be charitable in law.⁸⁸ In *Farley v Westminster Bank*⁸⁹ the House of Lords decided that a gift for ‘parish work’ was too vague to constitute a charitable religious purpose. Similarly, in *Re Stratton, Knapman v AG*⁹⁰ the Court of Appeal decided that a gift to the vicar of a particular parish ‘to be by him distributed at his discretion among such parochial institutions or purposes as he shall select’ was not charitable. Lord Hanworth commented that:

In law it is not every parochial purpose which is a charity. Many objects are commonly called charitable, but if they are merely benevolent, or humanitarian, then, however excellent they may be, they are not necessarily charitable in the legal sense.⁹¹

By way of contrast the Court of Appeal in *Re Bain, Public Trustee v Ross*⁹² decided that a gift to the vicar of a particular church ‘for such objects connected with the church as he shall think fit’ was charitable on the basis that the gift was construed to be for the church i.e. the church building, its fabric and services and that these purposes were charitable. Significantly, in this case the court considered itself bound by the rule of law that required it to take a benignant construction in favour of charity when faced with the choice of an effective gift for charity and one which would hold that the gift was void.⁹³

It will, therefore, be crucial if parishes are to have their own governing documents that they contain purposes which are recognised in law as being charitable.⁹⁴ What about the charitable status of Roman Catholic parishes prior to the provision of any

⁸⁶ *Re Hetherington* [1990] Ch.1.

⁸⁷ See *Bray v Ford* [1896] AC 44.

⁸⁸ For a discussion on this point see Simon Pulleyn, ‘Is your Charity a Trust? A Case Study’ (2010-11) 13 CL&PR 51.

⁸⁹ [1939] AC 430.

⁹⁰ [1931] 1 Ch 197.

⁹¹ *Ibid* at 200-201.

⁹² [1930] 1 Ch 224.

⁹³ Applying *Bruce v Presbytery of Deer* HL Sc 96 at 97.

⁹⁴ See Charities Act 2011, s 1(1).

formal governing document where their property is held on special trusts? Theoretically, there must be a danger that these special trusts would be held to be non-charitable.

Some comfort can be taken from the analogous position of parochial church councils of the Church of England. These bodies are corporate bodies⁹⁵ which constitute parishes in the Church of England. They used to be excluded from the definition of ‘charity’⁹⁶ but, following the Charities Act 2006⁹⁷ they may now need to be registered if their gross income exceeds £100,000.⁹⁸

The Parochial Church Councils Measure 1956, constituting parochial parish councils, does not set out exclusively charitable purposes. However, the Charity Commission has registered those parochial parish councils requiring registration with objects: ‘promoting in the ecclesiastical parish the whole mission of the church’⁹⁹ despite the fact that, under the common law, it is not certain that property held for parish work is charitable. As registration confers a conclusive presumption for all purposes that an institution is a charity¹⁰⁰ then parochial church councils will be presumed to be charitable. By way of analogy, Roman Catholic parishes should, in practice, be treated as charitable unless registration is challenged by an interested person.¹⁰¹ If Roman Catholic parishes are charitable and qualify for registration then there is a duty on their charity trustees to apply for registration.¹⁰² Further, the Canon law¹⁰³ places an obligation on those administering property to ensure that property is safeguarded in ways valid in accordance with the civil law¹⁰⁴ which reinforces the obligation under the civil law to register as a charity.

95 Constituted and governed by The Parochial Church Councils (Powers) Measure 1956.

96 Charities Act 1993, s 96(2).

97 Previously parochial church councils fell outside the definition of charity: see Charities Act 1993, s 96(2)(a)(b)(c).

98 Charities Act 2011, s 30(2)(b)(c).

99 For example see Parochial Church Council of the Ecclesiastical Parish of St Mary the Virgin, Primrose Hill with St Paul, Avenue Rd, registered number 1132701. For an example of the Charity Commission construing the objects of a charity governing by statute where they are not expressly set out in a charitable form see: *Decision of the Charity Commissioners for England and Wales; made 2nd April 2001 relating to the Application for Registration as a Charity by the General Medical Council.*

100 Charities Act 2011, s 37(1).

101 Charities Act 2011, s 36(1). Usually HMRC.

102 Charities Act 2011, s 35(1).

103 C 1284.

104 C 1284(2).

3.7 Liability: Diocese or Parish?

The bishop and the diocese will be vicariously liable for the actions of diocesan priests.¹⁰⁵ Should the diocese be unable to cover this liability the question arises whether parish property could be used to satisfy the liabilities of the diocese. It could be argued that, if parish property is held on special trusts, then regardless of whether the parish is incorporated as a charitable company, its property will be protected as it belongs to the parish and not the diocese.¹⁰⁶ However, where the parish incurs liability which cannot be said to be that of the diocese, for example, where contracts are entered into in the name of the parish, then such liability will be that of the parish trustees or the parish charitable company.

Could a reorganisation of a diocese so that parish property is held by a limited liability company be said to be an attempt by the diocese to defraud creditors (including litigants)? Where the parish charitable company is dissolved liability will usually be contained in the company unless it can be shown that the transfer of property was to defraud creditors and this was less than five years before the dissolution.¹⁰⁷ It would be difficult for creditors to show this if parishes were, prior to incorporation, construed as ‘special trusts’¹⁰⁸ as property would already have been held on trusts distinct from the diocese.

4. Conclusion

It has been shown in this article that the Canon and civil law point towards parishes owning their own property and that parishes should have a charity governing document that complies with the civil law. It was suggested that the appropriate legal structure would be a charitable company limited by guarantee as this would fit with the canonical position of parishes having their own juridic personality. This would also have the civil law advantages of facilitating the holding of property and limited liability.

Important issues arise from these conclusions. First, dioceses may need to strategically review their financial position as they might own less than they

¹⁰⁵ See *JGE v 1. The English Province of Our Lady of Charity. 2. The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 (QB); *Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256.

¹⁰⁶ *Re Arms (Multiple Sclerosis Research) Ltd* [1997] 1 WLR 877 is authority for the proposition that a special trust is a separate charity.

¹⁰⁷ Insolvency Act 1986, s 207(1)(2).

¹⁰⁸ *Re Arms (Multiple Sclerosis Research) Ltd* [1997] 1 WLR 877.

realise. Second, the recognition of parishes as distinct and separate entities for the purposes of Canon and civil law could have major implications for the protecting Church property in the face of litigation.