



The responsibilities of being a PCC member for St James Church, Hemingford Grey:

1. This is not an exhaustive list of PCC member's responsibilities but only considers some of the legal issues members may not realise they are taking on. Further information is available from the Charity Commission and from the Church of England websites

2. Charity and CIC structures:

St James' Church itself is a registered charity (no.1132817) it was registered a few years ago when the registration rules changed and it was necessary for churches with more than a certain income to register individually with the Charity Commission rather than being considered by the government as charities and eligible to obtain gift aid on donations without registration. The PCC is the board of trustees of the charity and PCC members are liable in law for the functioning of the church, in particular its use of donated money and employment of staff. The church includes the operation of the Parish Centre as well as activities in the church and parish.

There are also two Community Interest Companies (CICs) associated with St James. These are:

- St James' CIC which owns the Post Office business and associated stationery sales and its directors are Matt Pluke and Karl Benn.
- Hemingford Garden Room CIC runs the coffee shop business, and its directors are Tim Drye and Peter Bradford, a third director is to be appointed.

CICs are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit and not purely for private advantage. In both cases this is the benefit of the service to the community, not the making of profit to give away for community purposes. At present the members or owners of both companies are the directors.

The criteria for a CIC include a "community interest test" and "asset lock", which seek to ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator of CICs who also has a continuing monitoring and enforcement role. They have boards of directors, or governors/ representatives of the owners/members.

All three (the church, PO business and coffee shop business) are incorporated bodies, so they can own property, sign contracts and are subject to regulation. The directors and trustees are liable if things go wrong, though this is limited to £1 each, unless there is fraud. Annual reports must be filed and accounts audited or examined in the right way.

If charity status were to be lost by St James because we failed in these matters no gift aid would be claimable.

3. The role of PCC members and CIC directors:

The PCC members and CIC Directors are legally responsible for the control and management of the church/CIC and its work. For the PCC this means we are legally responsible for the property, staff and money given etc.

This legal responsibility does not extend to staff/lay people who attend PCC, it is only the duty of elected PCC members and church wardens. The status of the vicar is unclear; he is probably not a trustee but may be deemed equally responsible for decisions.

CIC directors are responsible in the same way as trustees.

Duties are those in charity/company law and defined over time by case law.

The main responsibilities are:

- Exercising **Prudence**: A good test is: Am I taking the same responsibility for the charity's money as I would that of a dependent? Trustees are responsible to prevent insolvency. So agreeing deficit budgets with no resources would be negligent. As we have property which could be sold we are not imprudent in this area.
- Exercising **Fiduciary responsibility**: For example ensuring the CIC uses its resources in the best interest of the CIC for the benefit of the community

4. Constitution

The church constitution is the PAROCHIAL CHURCH COUNCIL POWERS MEASURE (1956) AS AMENDED AND CHURCH REPRESENTATION RULES, (for more detail see <https://www.churchofengland.org/clergy-office-holders/pcc-information.aspx>). The object of the church as a charity is 'Promoting in the ecclesiastical parish the whole mission of the Church.' This defines what we can use the premises for, e.g. we can sell Christian books in church, but not designer clothing.

As the CICs run in church property they must be an investment for the property, and not stop church activities designed to meet the object of the church. There should also be proper leases, including how investment by the church will be repaid, or an acknowledgement of how much was invested and that it is being repaid through doing activities in line with the object of the church. There could be queries over allowing CIC use with no rent/service charge unless their operation helps fulfil the object. A peppercorn rent could be charged but then there might be tax/VAT consequences. Issues around this are being explored see 8 below.

5. **Conflicts of interest**: PCC members and CIC directors must declare and not vote/be part of the quorum on any issue where there may be a conflict of interest, for example if a PCC member is being paid to maintain the church yard or play the organ, they cannot vote on the level of that payment.

6. **Good governance**: trustees are responsible to:

- set strategy, do vision planning (together with the vicar)
- set and record plans and review results,
- ensure record keeping adequate for audit and reporting
- approve delegation to staff and volunteers
- ensure PCC has the right skill mix
- make clear roles assigned to PCC members, sub committees, staff and volunteers and the authority limits
- assess risks and check risks being rightly managed

7. **Risk management:** although liability is limited this is only providing we comply with what we are supposed to do. The PCC and CIC Boards need to ensure insurance to cover possible negligence is in place, and that issues such as Health and Safety policies are being complied with in church and CIC activities and the associated premises.

8. **Issues being considered:**

PCC is looking into PCC or PCC members being members (owners) of the CICs. This is because we are running a risk in not having PCC as member(s) of the CICs, anyone can be appointed as a director or as staff without any church control, so other than being able to throw them out of the premises we cannot have any control. If PCC as an entity becomes a member of the CICs, then they are subsidiary companies and must work towards the church's object.

We are also looking into a link between the PCC and CICs whereby if the CIC is wound up its assets return to the PCC but PCC is not responsible for its debts

As we allow use of premises and have donated some items there should be a contract for use. There is a contract agreed with the Post Office but not with Garden Room

The issue of ensuring insurance covers all parts of all 3 legal entities, and who is responsible for insurance between church and CICs when both use the same premises is being checked.

9. **Employment issues:**

The PCC (or CIC) is the employer and responsible for the staff.

Contracts: These are in place and are being brought in line with each other. We have been advised that current contracts can only be altered by agreement with the staff member. Contracts should be kept to only what is needed. Custom and practice may in law be binding and form part of the contract though unwritten. Fixed term contracts delay permanence to about 4 years. We must ensure Part Time terms are as good as Full Time ones.

Grievance and discipline: We have been advised to use ACAS code standards, we have policies and need to check they are in line. Unfair dismissal cases may follow if policies are not clearly written, followed and recorded.

The above is notes from a session with solicitors, amended after discussion in PCC.

Paper approved for distribution to PCC members and potential members by the PCC, 1st February 2012