

Birmingham Diocesan Trust – Guidance Note 3

BDT Consent Processes for PCCs

1. The Birmingham Diocesan Trust (“BDT”, often known by the title of its trustees as the Birmingham Diocesan Trustees Registered) is registered charity 247174 and was registered on 1 August 1966. It operates in accordance with the Birmingham Diocesan Trust Scheme of 4 January 1916 (amended 10 October 1977).
2. PCCs are governed by the Parochial Church Councils (Powers) Measure 1956 as amended by the Synodical Government Measure 1969 and the Church Representation Rules. A PCC is a charity and a member of the PCC is a Charity Trustee.
3. Under the PCC (Powers) Measure 1956, PCCs cannot own properties in their own right. Parish Property is vested in the ‘Diocesan Authority’, which is in Birmingham diocese, Birmingham Diocesan Trust (BDT). The BDT acts as Custodian Trustee on behalf of PCCs who act as Managing Trustee and beneficial owners that take day-to-day responsibility for the Property.

Where does the BDT need to be involved?

4. The legal title to the Property will be held in the name of BDT for the benefit of the PCC. Therefore the sale, purchase or lease of any Property will need to involve the BDT.
5. The BDT must always be approached for any proposed purchase, sale, or lease of a property by a PCC.
6. The only exception is if the PCC is becoming tenant under a lease for a term of 7 years or less.

Sales and Grant of Leases

7. Before any Property disposal is contemplated the PCC and its members must comply with Charity Act provisions s.117 of Charities Act 2011 which requires it to:-
 - (a) Obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity (unless for a lease of 7 years or less),
 - (b) Advertise the proposed disposition for such period and in such manner as is advised in the surveyor’s report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and
 - (c) Decide that they are satisfied, having considered the surveyor’s report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity

The PCC should approach the BDT with relevant information to show it has complied with s.117.

8. A PCC needs the consent of the BDT to sell, lease, exchange, charge or take any legal proceedings in relation to a Property UNLESS “the consideration on the transaction in question is less than such amount as may be specified in, or determined in accordance with, an order made by the Archbishops’ Council”. The current Order governing whether transactions require the approval of the Diocesan Authority can be found here:

<http://www.legislation.gov.uk/cy/uksi/2015/1545/made?view=plain>

9. In summary, if a PCC wishes to buy, sell, lease, let, exchange or charge Property the consent of the BDT will not be required if the value of the transaction is less than the lower of:

- (i) the PCC’s annual unrestricted income in its most recent annual accounts made up to 31 December
- (ii) £250,000 (provided that its most recent annual accounts are not more than 22 months old)

These financial limits do not apply to the following property, where permission must always be obtained from the BDT:

- (i) a church or a building licenced for public worship (in full or in part)
- (ii) a churchyard or part of a churchyard or
- (iii) land which is adjacent to property as defined in (i) or (ii).

10. Section 6(4) of the 1956 Measure provides that the PCC must indemnify the BDT against all liabilities, insurance premiums, rates and other outgoings and costs relating to Property vested in the Diocesan Authority, including solicitors’ and surveyors’ fees.

The Measure can be found at <http://www.legislation.gov.uk/ukcm/Eliz2/4-5/3/contents>

11. The PCC and BDT will decide if consent is needed. If no consent is needed the BDT, as holder of the Title, will still need to apply its signatures and seal to the relevant sale documents to allow the sale to proceed. If consent is needed the BDT may have further questions before they proceed.

Note – it is a common misapprehension that a PCC can grant a lease to a third party tenant without involving the BDT for a lease for 7 years or less. This is not the case – even if its formal consent is not needed, the BDT holds the legal title and should enter into the lease on behalf of the PCC.

Process for BDT to consent to a purchase

12. The PCC, as Managing Trustees, will make the initial decision to purchase a Property. The BDT will need to see a copy of any surveyor’s report and valuation. The formal consent of the BDT as Custodian Trustee can then be applied for if required, and this will normally be given if the terms of the proposed purchase and the proposed use of the Property are satisfactory. Whether its consent is required or not, the BDT will need to be party to the transaction and the BDT’s solicitor will need to check the documentation and their costs will fall to be met by the PCC.

13. If the PCC wishes to become tenant to a lease of no more than seven years, the BDT's consent will not be required and the BDT need not be a party to the lease or deal with any documentation.

Process for BDT to consent to a purchase, sale or letting

14. The PCC may appoint its own surveyor and solicitor but the BDT's solicitor will need to check the documentation as the BDT will be a party to the transaction, and their costs will fall to be met by the PCC. In order to save costs, PCCs often use the BDT's solicitor - Shakespeare Martineau (Vicki Simpson or Donna Barnes) or Blackhams (Tim Cuthbertson) are authorised to act for the BDT. Either of these solicitor firms can provide quotes on request to act jointly for the BDT and the PCC.

BDT meetings are generally held three times per year. Please submit any enquiries relating to the BDT to Ben Smith (Clerk to the BDT) – bens@cofebirmingham.com

A PCC can contact the Diocesan Registrar for further details at registry@shma.co.uk

A PCC will need to provide to BDT;-

- **A written resolution (draft below)**
- **Evidence the PCC have complied with their obligations under charity and ecclesiastical law i.e. surveyors report, evidence of valuation, marketing, heads of terms etc.**
- **Confirmation as to how BDT's legal costs will be met**

DRAFT RESOLUTION

At a meeting of the Parochial Church Council of

held at on the day of 20

it was resolved:-

1. That the PCC wish to (details of project)
2. To appoint Messrs as Solicitors to act in connection with the sale/purchase/letting and to be responsible for payment of their charges in connection therewith together with all Surveyors' fees and estate agents' commission.
3. To indemnify the Birmingham Diocesan Board of Finance and the Birmingham Diocesan Trust from and against all legal costs and other expenses or liability incurred in connection with the transaction.
4. The PCC confirms by this Resolution that independent professional valuations have been acquired and are available for submission to the Custodian Trustees – the Birmingham Diocesan Trust.

Signed by Chairman

PCC Member (1)

PCC Member (2)

Glossary of terms

<i>Custodian Trustee</i>	Holds the title to properties on behalf of a charity. It does not take part in day-to-day management and operation. The Birmingham Diocesan Trust acts as Custodian Trustee for PCCs in the Diocese of Birmingham.
<i>Managing Trustee</i>	Responsible for the day-to-day management and operation of a property.
<i>Beneficial Owner</i>	Enjoys the benefits of ownership even though the title to a property is in another name. PCCs act as beneficial owners to properties for which they are Managing Trustee.
<i>Vesting</i>	The legal ownership of a property.
<i>Best Value</i>	Charity land and property must normally be sold or leased for the best price available, often the market rate.
<i>Qualified Surveyor</i>	A member of the Royal Institution of Chartered Surveyors (RICS).
<i>Disposition</i>	The sale, lease or transfer of a property.
<i>Unrestricted Income</i>	Income that a PCC may use for any purpose.
<i>Licensed Place of Worship</i>	A building licenced for public worship.