

PARISH PROPERTY IN THE CATHOLIC CHURCH – A RESPONSE TO ROBERT MEAKIN

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Robert Meakin’s article in this Review² is both interesting and timely. He tackles some important issues in his usual erudite way, at a time when the Catholic Church, like many others, is having to deal with declining numbers and increasing demands for accountability; and when the question is asked ever more pressingly, ‘what is it all for?’. But is he right?

Meakin starts from the premise that parish property is necessarily distinct from diocesan property, because canon law says it is. Yet he acknowledges³ that canon law principles have to fit into the local landscape. Merely because property ‘belongs’ to a parish, do we have to accept that it must be held separately by parish trustees? I think not. It is well understood that different trusts may be united under a single set of trustees, whether by an overarching trust deed or, as Meakin himself points out,⁴ a simple uniting direction under s.12 of the Charities Act 2011.

True, the historical treatment of Catholic property in England and Wales has involved some smoke and mirrors, originally designed to get round the restrictions on ownership for Catholic purposes, and maybe modern treatment does not have to be quite so arcane, but I think it is a step too far to suggest that parish charitable trusts should be created all over the country. Let me explain why:

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2 Robert Meakin, ‘Who owns the property of a parish church in the Roman Catholic Church in England and Wales?’ CL&PR 14 [2012] 41.

3 At 3.3.

4 At 3.1.

1. In many cases it is just impossible to establish who paid for a Church property: often a 'mission' was created either from the meagre resources held by a bishop or from local donations, or from the gift of a single benefactor. The Catholic Church in this country owes much to the munificence of certain families, whose only concern would have been to have a chapel built in their area, and they would never have given a thought to who should 'own' it. Often, my firm's archives simply show that money was paid to us by or on behalf of the bishop to complete a purchase and only rarely were we alerted to special trusts being involved. Indeed the default position has been that the price was paid 'out of funds held for the general purposes of the diocese'.
2. There is much room for error here. It would be a hugely expensive and perhaps fruitless exercise to try to identify which properties were paid for from parish funds, to establish charitable trusts for each parish, and then to declare trusts for each such property.
3. And to what end? Meakin rightly draws attention⁵ to the canon law duty to safeguard a parish's assets; but what better way can there be, than to have them held centrally by competent and experienced trustees, accountable to the local parish community and supported by paid staff and professional advice?
4. Is it necessarily in the interests of the parish trust to be self-administered by a harassed priest ('I was not ordained for this!') and by lay people who already give up a lot of their time for the good of the parish community? Many who are willing to support their priest as members of the finance committee or a pastoral council would run a mile if they were asked to take on formal responsibility - and potential liability - as charity trustees. True, in the Church of England local parishes are run by Parochial Church Councils, many of which now have to register as charities, but in very many cases the incumbent minister is the owner of the freehold. Furthermore, Catholic priests appear to be moved between one parish and another rather more often than their Anglican counterparts.
5. No doubt the long-awaited Charitable Incorporated Organisation could be used as the vehicle for each parish trust, thus giving the parish trustees the protection of limited liability, but these people, if such can be found, would still have to exercise the heavy responsibilities of charity trustees.
6. The drive, many years ago, to bring myriad parish investments under a common trusteeship was borne out of the frustration and cost suffered when shareholdings were found in the names of priests long dead, or worse, lacking capacity. True, a corporate trustee can now be appointed,

⁵ At end 3.6 on p 53.

but where is the advantage to the local parish community in putting onto its shoulders all the responsibility of managing its investments? Central banking may not be universally popular, but parishes have grown to appreciate the better financial return and the support that they receive from those who are, nowadays, paid to serve both the curia and the parishes. How many parish priests have taken the view of one who announced “In the cut and thrust of parish life, it’s very difficult not to sign blank cheques”?!

7. Meakin correctly says⁶ that money is often left for the purposes of a specific parish.⁷ We usually advise that, to avoid creating a restricted fund, a legacy is given to the diocese for general purposes but with the words “and I express the wish, but without imposing a binding trust or legal obligation, that the fund be applied for its charitable purposes in the parish of X”. Even then, canon law dictates that those wishes must be honoured.⁸ So I am not clear how the interests of the parish are better served by having the parish property held locally.
8. In any event, a diocesan umbrella trust can easily recognise parish ownership in the accounts, certainly as regards investments if not land and buildings, and most do - often as either endowment, restricted, designated or general trusts.
9. The reporting requirements for ‘connected charities’ would mean that each parish trust must declare and define its relationship to the diocese, and might well lead to consolidation of parish accounts in the diocesan accounts, or at least a note of their turnover and net profit/loss.⁹ So much the same result would be achieved as now, but at greater total cost.
10. In speculating who might be trustees of a parish charity, Meakin suggests¹⁰ that the authority of a parish priest might be protected by giving him power to appoint/remove trustees and a veto; but what about the overriding authority of the bishop? Although he acknowledges that authority under C 1281,¹¹ I do not think that his article gives sufficient weight to the role of the bishop in ensuring that parish goods are faithfully administered. And it

6 In section 2 on p 45.

7 I am not convinced that gift aid envelopes referring to a diocese is evidence of an intention not to benefit the parish where those envelopes are used (see Meakin, section 2 on p 45). The better view is surely that the donor wishes to benefit that parish, although I don’t suppose he or she will have recognised the distinction.

8 As Meakin acknowledges: see 1.2 on p 43.

9 Charities (Accounts and Reports) Regulations 2000, Schedule, para 1.

10 At 3.5 on p 51.

11 Beginning 3.5 on p 50.

is I believe implicit in canon law that trustees can set aside parish property to prevent its appropriation to other purposes.

11. The creation of parish trusts would bring into focus a difficulty over conflicts of interest: I question whether the inherent conflict of having a parish priest as trustee with special powers is so easily managed as Meakin suggests.¹² And he says¹³ that the priest will usually be paid by the diocese, but my understanding is that he usually takes his paltry salary - and his Christmas and Easter offerings - direct from the parish account, which also pays all his living expenses. So payment of an 'influential' trustee would still be an issue.
12. Quoting the recent cases of *Maga* and *Portsmouth Diocese*,¹⁴ Meakin asserts¹⁵ that 'the bishop and the diocese will be vicariously liable for the actions of diocesan priests'. As the latter case is possibly under appeal, I would not be so bold, and anyway I question whether that liability would apply in all circumstances. But would not the diocese have a right of indemnity against the parish if the perpetrator had been acting as representative of a local parish entity?
13. What seems clear is that, if parishes 'go it alone', parish property could not be appropriated to pay for claims against the diocese, as has happened in the USA. Would the position be any different if a priest of that parish had been the perpetrator? The damage to the Church's reputation in the abuse of children or vulnerable people is bad enough, but what would the public view be of a Church which said that it could not pay compensation to a victim of abuse because its property was not available for that purpose? The long-held opinion that it would be a breach of trust to use a diocese's charitable funds in that way no longer seems tenable.
14. Meakin claims¹⁶ that there is a duty on parishes to apply for registration, assuming that they qualify as charitable. But if they (and the Charity Commission and HMRC) have accepted registration under the diocesan umbrella, who is to complain? I am certain that the Charity Commission would not welcome a rush of many hundreds of what the Commission might regard as unnecessary applications.

¹² End 3.5 on p 52.

¹³ At 3.5 on p 51.

¹⁴ *Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256; *JGE v I. The English Province of Our Lady of Charity. 2. The Trustees of the Portsmouth Roman Catholic Diocesan Trust* [2011] EWHC 2871 (QB).

¹⁵ At 3.7.

¹⁶ At end 3.6 on p 53.

15. As long as there are two Catholic parishioners there is a community. So it is difficult to suppress (as opposed to linking) a parish. For so long as the parish exists, the parish trust would presumably need to continue unless a cy-près case could be made out. A uniting direction would help, but would not resolve the need for the trust itself to be administered.
16. Meakin does not address the question of schools. Many were built next to a Church or presbytery and would be seen as very much part of the parish and its property. But others, especially at secondary level, serve several parishes so no single parish could claim to ‘own’ it. Some will be transferred sites, where a school is sold and the local authority provides a new site to be held on special trusts that reflect its contribution and the Department for Education’s right to a clawback. In such cases, are we to try to distinguish between those sites that were provided for a parish school and those that serve several parishes?
17. More generally, if a parish is set up as a charity it is surely much more likely that a parish, rather than the diocese, will get into difficulties over a building project and may have to be bailed out by the diocese. If so, may we expect the diocese to provide guarantees?

In short, I respectfully take issue with Meakin’s conclusion¹⁷ that the case for parish trusts has been made out. What is the problem with the system we already have? What benefit can there be to a parish in seeking to create a separate legal entity, with all the responsibility that that entails? Is it not at least arguable that in many cases there will be, to use the current Charity Commission jargon, an overall ‘disbenefit’ to the parish?

¹⁷ First sentence of section 4 on p 54. He might have suggested a charitable incorporated organisation (CIO) - when those come available - as an alternative appropriate structure to a company limited guarantee.