

21 MAR 2013

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LEGAL OFFICE

To all diocesan registrars and diocesan secretaries

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*Deputy Official Solicitor to
the Church Commissioners*

15 March 2013

Charity Commission: disqualification as charitable trustee

I am writing at the request of the Charity Commission, who contacted me to say that they were concerned that a number of active members of parochial church councils are involved in Individual Voluntary Arrangements (IVAs). As I am sure you will already be aware, a person in an IVA is disqualified from acting as a charity trustee under the Charities Act 2011.

The Commission is writing directly to the individuals concerned, but has asked the Legal Office here to write to all dioceses with a reminder that a person who is disqualified from acting as a charity trustee may not be a member of a PCC.

By section 178 of the Charities Act 2011, a person is disqualified from acting as a charitable trustee if he or she:

- has been convicted of an offence involving dishonesty or deception;
- has been adjudged bankrupt and not yet discharged;
- has made a composition or arrangement with creditors [e.g. entered into an IVA or a creditors' voluntary arrangement];
- has been removed from office by an order of the Charity Commission or the High Court made on grounds of mismanagement of the affairs of a charity;
- has been removed from 'being concerned in the management or affairs of any body' by the Court of Session under the Charities and Trustee Investment (Scotland) Act 2005;
- is disqualified from acting as a company director.

This is, of course, mirrored in the church's own legislation: rule 46A of the Church Representation Rules provides that a person is disqualified from election or from serving as a churchwarden or a member of a PCC, a DCC or a Synod if he or she is

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The Archbishops' Council and The Church of England Pensions Board are registered charities

disqualified from being a charity trustee (subject to the possibility of a waiver by the Charity Commission in relation to ecclesiastical charities).

The Charity Commission guidance is that it is good practice for a person to be asked to declare in writing that he or she is eligible to act as a charity trustee before taking up office. The Charity Commission sample declaration of eligibility is here: <http://www.charitycommission.gov.uk/Library/guidance/sampledeccc30.pdf> .Such forms, if used, should be retained by the PCC, not sent to the diocese or the Charity Commission. I am aware that a number of dioceses already encourage PCCs to use this or a similar form of declaration.

I would be very grateful if you could take steps to ensure that all PCCs in your diocese are aware of this guidance. Do please contact me or Stephen Slack if you would like further information.

Yours faithfully

Saira Salimi