

16/87 Legal Liability of Church Officers Guidelines re Structural Security of Church Buildings

This report was received by the Synod of the Diocese of Sydney in October 1988.

Introduction

1. Last year the Synod passed the following resolution.

"Synod requests the Standing Committee to investigate and report to Synod on the extent to which and the circumstances under which churchwardens and/or parish councillors may be legally liable in case of injury sustained by persons as a result of structural failures of church buildings where those failures are due to -

- (a) structural causes already known or suspected; and
- (b) causes not previously known or suspected.

Synod further requests as a matter of urgency that guidelines be provided to all parishes as to appropriate steps which should be taken to ensure the structural security of church buildings."

2 The Standing Committee has taken advice from its Legal Committee on the legal liability aspect of the resolution and from the Archdeacons on the question of guidelines.

Legal Liability of Parish Officers

3. Apart from exceptional circumstances, an occupier of premises has a duty of care to persons entering those premises and must take reasonable care to avoid a foreseeable risk of injury to those entrants.

4. Where churchwardens and members of parish councils/church committees know or suspect that a church building contains a structural weakness it is probable that they will be liable (as well as the Property Trust) to persons injured by a structural failure caused by that weakness. Where, however, the risk of injury is not foreseeable, or in the case of a foreseeable risk of injury reasonable measures are taken to avoid that risk, then they will not be liable.

5. The diocesan insurance policies cover legal liability for death or injury to persons and the Chief Executive Officer of the Sydney Diocesan Secretariat (Mr N. Malone) has confirmed that these policies extend to indemnify churchwardens and members of church committees/parish councils and other persons. But the knowledge of a structural weakness in a church building could constitute "a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms" within section 21(1) of the Insurance Contracts Act 1984 (Cth), which the Property Trust would be required to disclose to the insurer in order to avoid the possibility of the insurer avoiding the policies or reducing their liability under the policies. Therefore, it is very important that churchwardens advise the Manager, Administration (Mr Graham Seton) of anything that might have a bearing on the diocesan insurance policies so that the Property Trust can make appropriate disclosures.

6. Mr Graham Seton is responsible for administering the diocesan insurance policies and any enquiries about those policies should be addressed to him.

Guidelines Re Structural Security of Church Buildings

7. The following guidelines, prepared by the Archdeacons, have been approved by the Standing Committee and circulated to parishes in terms of resolution 16/87. Attention is drawn to the rights, powers and duties of churchwardens, parish councils and church committees. (See Sections 41, 51 and 52 of the Sydney Church Ordinance, pages 237, 243 and 244 of the Fifth Handbook and chapter 5 of that Handbook.) It is not possible for these rights, powers and duties to be delegated.

- (a) It is the responsibility of churchwardens to look after and administer all the property of the church but they must exercise their rights, powers and duties subject to the rights and powers of the parish council/church committee to authorise payments and determine matters of policy in the control of the funds and property (Section 41(1) and (11) of the Sydney Church Ordinance).
- (b) It is the responsibility of church committees (parish councils also if they are acting as church committees) to keep buildings and furniture in good repair (Section 52(4) of the Sydney Church Ordinance).
- (c) It is recommended that the churchwardens make an annual inspection of the condition of all church buildings and report to the parish council/church committee. The Guide for Annual Inspection Report provided to parochial units in 1986 by the Historical Buildings Preservation Council has been adapted and commended for use by parishes.

2 16/87 Legal Liability re Structural Security of Church Buildings (1988)

- (d) It is recommended that each parish council/church committee should appoint a small committee to keep church buildings, fittings and furniture under constant observation and to report to the parish council/church committee from time to time on any necessary repairs.
- (e) Where there is a need to undertake major work, the Archdeacon should be consulted as early as possible and professional advice should be sought.
- (f) It is recommended that the parish council/church committee should make an annual provision in their budget for the repair of buildings.
- (g) Churchwardens should advise the Manager, Administration if anything arises that might have a bearing on the insurances (item 52 of the Fifth Handbook, pages 31 and 32).

8. Arrangements for parish administration in single-church parishes may be different to those which apply in multi-church parishes and these guidelines should be read in that context. New housing districts will need to adapt the guidelines to suit their present administration.

For and on behalf of the Standing Committee

W.G.S. GOTLEY
Diocesan Secretary

16 August 1988