



URC Thames North Trust

Guidance Note 5 for Churches

Use of church premises by third parties

1. This Guidance Note draws attention to some of the issues which may arise in connection with the use of church premises by third parties. The arrangements need to be on a sound formal basis to give some protection in the event of dispute, especially when relationships break down or circumstances change. Generally, a change of leadership in a user group may afford an opportunity to ensure that documentation is up to date and in the most appropriate form. Churches are invited to contact URC Thames North Trust ("TNT" or "the Trust") for advice.

2. More detailed information on issues arising in connection with the use of church premises is given in the note on "Use of church premises by third parties" available as section 651 of the general URC Property Handbook. A copy is attached. It is also available from the URC website at www.urch.org.uk/plato/legal/legal_downloads/S651. (The Handbook has been compiled by members of the informal grouping of the URC's Provincial Legal and Trust Officers, known as "PLATO").

Approvals

3. Church property is intended to be used for the church's own activities, but "temporary, occasional or intermittent use of the premises" by others is allowed under the URC property trusts described in Guidance Note 3 so long as no lease or tenancy is created. Where a more formal commitment is appropriate, the proposal needs the authority of a church meeting resolution, the approval of Thames North Synod (through its Grants Loans and Property Committee), and the advice of a surveyor. The lease is prepared by a solicitor on instructions from the Trust, see Guidance Note 4 "Sales and leases of church land and buildings" for further information.

Which uses?

4. The more frequent the use of premises by any organisation, the greater the potential for the user to be able to claim in a dispute that the arrangement is a lease (even if there were no documentation) and consequently that the church has no right to end the arrangement.

5. There is no certain way of identifying when the protection of a lease is needed; there are some pointers in the PLATO note attached. As a broad guide, advice should be sought from the Trust about any use by a specific user on three or more days per week. This is likely to include most play groups and after school clubs, and some luncheon clubs.

Documentation

6. For all third party users each church should have its own documentation defining the part(s) of the building to be used, the purpose, the hours of use, the amounts payable and other practical details. This may take the form either of a hiring agreement or of a general statement of conditions of use with a booking form. Examples are available from the Trust and the Synod's Property Development Worker.

7. Although a lease will cover many of the same details, it is not possible to provide a sample lease for adaptation by local churches. As indicated in the PLATO document, there

are formal procedures to be observed to ensure that the lease protects the church properly. Churches sometimes become involved in identifying key terms in prospective leases. They are recommended to explore whether the user can be persuaded to pay all or part of the landlord's legal costs.

8. Occasionally an organisation may offer its own form of agreement for use of the premises. The distinction between lease and hiring is important, and churches are recommended to consult the Trust before accepting such agreements.



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Many churches obtain part of their income by permitting third parties – other charities, commercial and other organisations, individuals – to use parts of their premises or grounds when not required for church purposes. Proper documentation of these arrangements is needed to minimise difficulties in the event of serious dispute.

This section draws attention to some of the issues which arise in connection with these arrangements.

Individual arrangements can sometimes have unintended consequences. Churches are advised to ask their Synod Office or their trustees for guidance on particular situations, both at the outset and in connection with the ending of any arrangement.

Property trusts

Church property is charity property, and is held by trustees (usually a company) for the benefit of the local church fellowship. URC property is held by its trustees on standard terms. The relevant provisions are that the trustees:

- by decision of the Church Meeting may permit temporary, occasional or intermittent use for any reputable purpose, without creating any lease or tenancy – see **Hiring** and **Licence** below;
- by decision of the Church Meeting, and with the approval of the Synod, may let part (not the whole) of the premises for not more than 28 years – see **Leases** below.

Any disposal of church property (this includes ‘leases’) has also to be made in accordance with general charity law (>621).

Hiring

This is the simplest form of arrangement for use of premises. It applies to single or occasional uses, which lack the frequency of regular use. Availability for these uses is regulated by the church’s own needs, and perhaps its commitments to its regular users.

Licence

A user making more frequent use of church premises is potentially a licensee. The arrangement with a user making more frequent use of church premises is likely to be a licence if it falls the right side of the exclusive possession test described below.

Documentation – hirings and licences

Local churches are recommended to have clear written arrangements with all their users. It is usually convenient to have both a booking form to be completed by users and a general purpose “conditions of use of premises” statement to be given to users. It is a useful precaution to have these documents reviewed by the trustees, and if necessary their legal advisers. Taken together, the documents should cover, as appropriate to the circumstances, such matters as:

- dates/days, times and type of use, duration of the arrangement (one off, seasonal, termly, annual) and any termination procedure;

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- identification of the part(s) of the building and the facilities, including kitchen, storage and parking arrangements, to be made available, and responsibility for clearing up and cleaning;
- the charges payable, and arrangements for their revision;
- responsibility for making good any damage done to church property, and requiring the user to have liability insurance;
- acknowledgement by the user that no warranty is given by the church or its trustees that the premises are legally or physically suitable for the user's purpose.
- temporary relocation of use by the church and occasional cancellation by either party;
- responsibility for obtaining any licences or consents applicable to the use and for compliance with these
- responsibility for compliance with other legal requirements applicable to the use or user, including the Children Act 1989;
- acknowledgement that the arrangement is not intended to confer exclusive possession and that no tenancy is intended to be created.

Leases

Many churches refer to their third party uses as "lettings" (others prefer "hiring"). In more formal usage "letting" refers to a "lease" or "tenancy". A lease/tenancy is not the same as a "licence" and has different, potentially more onerous, consequences. The distinction and the consequences are described at the end of this section.

Local churches are recommended to consider from time to time the nature of their relationship with individual users. If it appears from the pointers below that an arrangement may amount to a lease, the trustees should be consulted so that, if necessary, steps can be taken to regularise the position, including compliance with charity law requirements for leases (>621). A change in leadership of the user group may provide an opportunity to review documentation.

Churches wishing to recover possession of their premises on the expiry of a lease or a licence are advised to consult their trustees well in advance. The grounds for possession can then be identified and notice served on the user at the right time, which might be as long as a year beforehand.

Other arrangements

Other kinds of agreement are sometimes suitable for arrangements where there is no perceived risk of the user acquiring security of use against the church and its trustees. Examples are licences for car parking spaces (not for commercial use or in conjunction with use of rooms) and tenancies at will for cultivation of a garden, use of land for parking or amenity space and use of a storeroom or cupboard. A tenancy at will has no fixed term and may be terminated by either party by notice having immediate effect. Whatever the circumstances, documentation should always be arranged through the trustees.

Lease or licence?

There is a danger that an arrangement which is recorded or understood between the church and the third party user to be a licence may turn out on close scrutiny to be a lease. If this is so, the user is likely to be a business tenant, which has significant implications. In this context "business" has a very wide meaning, and includes charities and other not-for-profit activities.

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A business tenant is entitled by law to renewal of the lease, unless it can be shown either that the premises are required by the landlord (= the trustee) for his, or his beneficiary's (= the church's), own use or the building is to be demolished or reconstructed. In those circumstances the tenant may be entitled to compensation in lieu of renewal. (No compensation is payable on the rather rare occasions when possession is recovered on other statutory grounds, eg because the tenant is in material breach of the lease).

The statutory entitlement to compensation can be overridden by agreement between the parties. This protects the interest of the landlord (= the trustees, and thence the church), but is only obtainable if there is a formal, properly drafted lease. It is usual to have an exclusion provision of this kind in leases of church premises. There are specified notices to be served (this has replaced a county court order procedure).

It follows that the distinction between a lease and a licence is important for churches. Unfortunately, the distinction is not necessarily clear. When occasion arises, the nature of the each arrangement is decided by the court on its own facts.

It is well established that the key to making the distinction is whether in law the landlord (= the trustees) retains possession of the premises and gives the user no more than a non-exclusive right of occupation (a licence); or whether the user has exclusive possession (keeping the landlord out) for the period specified (a lease).

Identifying features include the following.

- Reservation of the right to divert the user to an alternative part of the premises points to a licence. (It must be physically possible for this to be done, even though the right is not exercised. If only part of the building is being used, relocation may be impossible should any special facilities required for the use not be available elsewhere in the building).
- Daily use may point to a lease, even if the use is seasonal or termly and for part of the day (as with play groups).
- Reservation of the right for the local church to cancel the use on specific occasions is not sufficient to make the arrangement a licence.

Other details may be relevant in context but on their own are not conclusive one way or the other in determining the nature of a particular arrangement.