**Statement of Facts: Occupation of Church Owned Land by Catholic Schools**

1. **Introduction**
2. This Statement of Facts sets out the current basis upon which Catholic schools occupy Church owned land and buildings. Throughout this document the term ‘school’ means all Catholic schools and colleges, including schools in the trusteeship of a religious order. This includes maintained schools, academies in England, independent schools, sixth form colleges and non-maintained special schools.
3. In this paper, as in the education system more widely, the various Church bodies which own the land and buildings are generically and legally referred to as a school’s Trustees (in the plural) despite the fact that some are incorporated and some are not: see for example *Academies Act 2010*, s.4(1A) – this terminology goes back in statute to the *Education Act 1944* and beyond. For Catholic schools the Trustees will generally be the Catholic diocese within which the school is situated or, in a small number of cases, a Catholic religious order.
4. Approximately one-third of schools in England are voluntary in origin and have Trustees (the other two-thirds are statutory in origin, and do not have Trustees). Most of these voluntary schools are Catholic or Anglican, although there are a few others. More detail about the range of these Trustee bodies and their structures is given in **Appendix 1**.
5. **The Origins of these Arrangements**
6. The Churches were the first providers of education in this country and have been providing schools of many different types since mediaeval times. State funding for voluntary schools first became available in 1832 and has been available in various forms ever since. Since the mid-nineteenth century most church schools have been in receipt of some form of public funding, although the Churches have always had a smaller number of schools that are not publicly funded.
7. The partnership between the churches and the State in the provision of schools has gone through a number of chapters since 1833, the most significant being:
* the introduction of the first non-voluntary (statutory) schools alongside the church schools in 1870, followed by compulsory elementary education;
* the introduction of local education authorities and the beginnings of modern school governance in 1903;
* the equal maintenance of county (statutory) and voluntary schools under local education authorities and universal secondary education from 1944; and
* the introduction of the current academy system, alongside maintained schools, from 2010.
1. Throughout that time, and up to the present day, the way in which the Churches provide schools has been fairly uniform. This paper describes the way in which the Catholic Church has provided most of its schools over the past two hundred or more years. There are a small number of Catholic schools, and individual parts of school sites, which are not provided on this basis. This paper does not attempt to deal with these schools or parts of sites.
2. In the arrangements described in this paper, the Trustees own the freehold (or equivalent[[1]](#footnote-1)) interest in what is to become a school site. This may be newly acquired with the intention of establishing a school or be land which has long been in Church ownership: this makes no difference. The Trustees have made a voluntary decision to establish a Catholic school as part of the fulfilment of their mission (or, put in more modern legal terms, to fulfil their charitable objects). In order to do so, they establish an entity to conduct a Catholic school on their behalf, and they permit that entity to occupy their site in order (and only in order) to do so. This arrangement allows the Trustees actively to fulfil their charitable objects on an on-going basis, so long as they wish their objects to be fulfilled in this way.
3. The entity occupying the site and conducting the school on behalf of the Trustees has varied over time and in different sectors. It is usually some form of ‘governing body’, with members appointed by the Church, sometimes an unincorporated body, and sometimes some form of corporate body. A fuller explanation of the different types of ‘governing bodies’ is given in **Appendix 2**.
4. **The Factual and Legal Basis of Occupation**
5. Catholic schools are provided by their Trustees for the purposes set out in the Trustees’ governing documents, known collectively in education law as their “Trust Deed”[[2]](#footnote-2), which will set out the Trustees’ charitable objects and other parameters within which they may allow their property to be used. The Trustees will have established the school in furtherance of their charitable objects, and the governing documents of the school will also contain parameters within which the Church school is to be conducted: these will be compatible with the Trust Deed of the Trustees.
6. The governing body of the school or the academy trust company occupy and conduct the school on behalf of the Trustees as the occupier of the premises, the proprietor of the undertaking and the employer of the staff. Occupation of the premises is subject to the Trustees’ objects, Trust Deed and any other parameters laid down by the Trustees. Whilst the Trustees permit the school to occupy their site for the time being, they do not give the school any right to occupy and ultimate control of the site and any decisions relating to the land and buildings rest with the Trustees.
7. The Trustees own the freehold (or equivalent) title to the site. The school occupies the site under a mere licence (sometimes also called a bare licence). A mere licence passes no interest in the site and is always revocable. It therefore passes no *rights* to the governing body of the school or the academy trust company to occupy the site. Unlike a lease, it does not create an estate in the land. Unlike a licence *agreement*, it does not create any contractual rights. The licensee is simply given permission by the owner to use the site for the authorised purpose, thereby preventing that use being a trespass. This is in recognition of the “trustee – beneficiary” relationship which exists between the Trustees and their school. These licences are not normally in written form, and are terminable by the Trustees at any time, at will and without cause: see *The Governing Body of the Henrietta Barnett School v The Hampstead Garden Suburb*, set out briefly in **Appendix 3**.
8. The documentation required for Church academies and agreed between the DfE and the national bodies representing the Churches (the CES and the National Society), includes a *Church Supplemental Agreement.* In this document, the Trustees undertake to the Secretary of State (but not to the academy) to make the land available for use by the academy trust company, which use may be terminated by the Trustees by their giving not less than 2 years notice. This two-year notice period reflects the position set out in statute for maintained schools[[3]](#footnote-3) and for academies[[4]](#footnote-4) that the Trustees must give reasonable notice (defined as not less than two years) in circumstances where termination of the occupation would have the result that it is not reasonably practicable for the school to continue to be conducted in the existing site.
9. This legal framework established by the Trustees does not give the school enforceable rights that would reflect any diminution of rights that the Trustees have over their property. The Trustees assert their control over the property by permitting it to be used for precisely the purposes for which they have established the school. The Trustees’ objectives about how the site is used are the same as those of the school, with both of their objectives being met. However, it is the Trustees that must first decide that their site is to be used for these purposes within their charitable objects, and who continue to have the rights to the resources in the site. In practice the continued agreement to permit the school as an entity to use the site means that the Trustees are perpetually reasserting this control, and this has not been passed to the school.
10. This control is a substantive control, since the Trustees could, at any time, exercise the decision to take the property out of the education sector, subject only to the undertaking given to the Secretary of State in the case of an academy. They would be entitled to do this if they considered that the continued licence was no longer the best way to fulfil their charitable objects and would be obliged to do so if they considered that the continued use by the academy was no longer fulfilling their objects.
11. The Trustees are entitled to set out parameters governing the use of the land. This can include, but is not limited to, ensuring that the use is compatible with the charitable trusts, for example, restricting the use of the premises preventing certain activities which they consider to be incompatible with their charitable trust, or where such activities would not be in keeping with the teachings of the church.
12. In addition, the Trustees control any dealings with the land and buildings. For example, in relation to the collection of any information relating to matters of ownership, such as in connection with the Land and Building Collection Tool and the Condition Data Collection, the Trustees would control its completion and require sign-off before any information was uploaded by an academy trust company to the Land and Building Collection Tool. In relation to the surveys conducted to complete the Condition Data Collection, surveying firms require Trustees’ consent before the surveys might be conducted. The Trustees’ consent is required for any works, including capital works. Most Trustees will not even permit the submission of any capital grant application without the Trustees’ consent having been provided.
13. In summary, the following are the characteristics of the standard occupation arrangements in Catholic schools.
* Legal ownership remains with the Trustees.
* The schools do not have enforceable rights but permission to use the site which is continually renewed until such time that the Trustees decide otherwise.
* Both the Trustees and the schools have access to the resource represented by the site. The school cannot deny or restrict others from access to the resource, but the Trustees can deny or restrict others from access to the resource (including its redevelopment), including, ultimately, the school.
* Decisions on the use of the site need to be agreed by the Trustees within parameters set by them. The school has no power to deal with the site except as delegated to them from time to time by the Trustees.
* The Trustees are able to take action to ensure that the site is used to achieve their objectives including the ability to withdraw the site at will.
1. **Understanding the Basis of Control**
2. This note focuses on the important level of control which Trustees need to exercise in relation to the land and buildings occupied by schools. Ownership of the land and buildings by the Church, and through this the ability to exercise control over Catholic schools, is one of the fundamental reasons why the Church has been able to continue to retain the protections of the Catholic character of the schools enshrined in legislation and in the governing documents applying to Catholic schools.
3. However, the control herein described should be exercised at a high level. Trustees should exercise the correct degree of control, which is essentially one of step in where the occupier is not conducting the school in accordance with the objects of the Trust Deed or is not fulfilling the parameters laid out by the Trustees in their current ‘Occupation of Premises’ document.
4. This level of control is different to the day-to-day ‘control’ (i.e. ‘management’ of the premises) which is delegated to, and being exercised by, the occupier, i.e. the school. The legal responsibility for maintenance and upkeep of the premises lies with the occupier which is directly funded by government to undertake these legal responsibilities.
5. Any oversight exercised by, or on behalf of, the Trustees should not step over into the day-to-day management and conduct of the school. Ultimately, the Trustees should be exercising oversight of the occupation of the school premises.
1. Occasionally the Trustees’ interest in the land may fall short of a freehold interest, e.g. a long lease, such as those where the Trustees own a 999 year lease on certain estates in central London. However, since we do not believe this makes any material difference to the issues discussed in this paper, they will be treated as equivalent. [↑](#footnote-ref-1)
2. See Education Act 1996, s.597(1). [↑](#footnote-ref-2)
3. School Standards and Framework Act 1998, s.30(11). [↑](#footnote-ref-3)
4. Academies Act 2010, Schedule 1 para. 16 [↑](#footnote-ref-4)