

F MANAGEMENT ISSUES

F3 Letting of Church Premises – Third Party Use

November 2014

1 Under this policy it is vital some kind of legal arrangement is entered into in every case when an outside organisation or party is using the church premises for any reason and the appropriate documentation completed properly.

2 If organisations or people are allowed to use the church premises regularly without a written Agreement it is likely they will acquire some form of protected tenancy, even if this was not the church's intention. This can cause all sorts of problems in the future if a church wishes to obtain possession or the third party proves to be a bad tenant. In contentious cases, the law seems to favour the tenant and it can be extremely difficult for the church to obtain possession of its buildings.

3 There is a little flexibility from the basic rule, but not much, therefore, it is essential the Legal and Trust Officer is consulted in plenty of time before the tenant commences his/her use of the premises (or land etc).

4 There are various types of document which may be appropriate and the church must consult the LTO for guidance. These matters are complex and it is not appropriate to go through them all in these Guidelines. It is, therefore, imperative that advice be sought. The Legal and Trust Officer has a precedent Booking Agreement which can be used in fairly informal arrangements. All churches were sent a copy of this some time ago together with guidance notes but it is always wise to consult the LTO for guidance as to whether this document is appropriate.

5 The Booking Agreement was carefully drafted by the Trust's Solicitors with the intention that it can be completed by the churches themselves to cut down on costs. However, it is extremely important to ensure this is not used in inappropriate circumstances. If the Legal and Trust Officer feels a simple Booking Agreement is not sufficient then the matter will have to be passed to the Trust's Solicitor for advice as to what type of document needs to be prepared.

6 In this case, the church will be responsible for any professional fees. It cannot be stressed enough how important it is for these matters to be dealt with properly. As Managing Trustees of the premises, the Elders have numerous statutory responsibilities and, if things are not dealt with properly, they could find themselves personally liable if things go wrong later on, not to mention the trouble and expense it can cause the church in trying to rectify problems later on.

7 It is not unusual for the third party to pay all the fees or for these to be shared but this is something that must be negotiated at the time.

8 If a lease of 7 years or more is anticipated, it is a requirement of the Charities Act 1993 that a surveyor's report is obtained under Section 119 of the Act, advising upon lease terms etc. This must be arranged through the Legal and Trust Officer and the church would not be able to proceed without this.

It is a requirement of the Charities Act that the "best terms" are obtained at all times and, therefore, it would not normally be possible to take a less than market rental unless it can be proved this would represent best terms for the Charity (i.e. the URC). Even in short term lets, strictly speaking, it is necessary to obtain professional advice about this and, again, the Legal and Trust Officer should be consulted. If the church accepts less than market rental and the matter was challenged by the Charity Commissioners, the Elders could find themselves personally responsible for any shortfall between the market rental and that actually received. It is, therefore, very important to deal with matters properly in the first place.

9 It should be noted that letting to another charity at less than market rental does not normally satisfy this Section of the Act, as the URC Constitution states that any dealings must be in furtherance of the aims of the URC. More information and advice about this must be obtained from Legal and Trust Officer.