

## **Rebecca Martin**

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**From:** Rebecca Martin  
**Sent:** 13 November 2020 11:24  
**To:** Christine Fischer  
**Subject:** RO letter Land and Buildings – Occupation Documentation and Guidance including in Relation to Health and Safety Liability  
**Attachments:** Attachment 1 Occupation of Premises Document (FINAL) October 2020.doc; Attachment 2 Potential Trustee Liability in HS Law (FINAL) October 2020.docx; Attachment 6 Statement of Facts - Appendix 3 (FINAL) October 2020.docx; Attachment 5 Statement of Facts - Appendix 2 (FINAL) October 2020.docx; Attachment 8 Compliance Checklist.docx; Attachment 3 Statement of Facts - Occupation of Church Owned Land by Catholic Schools (FINAL) October 2020.docx; Attachment 7 Occupation of Church Owned Land by Catholic Schools - Lease or Licence (FINAL) October 2020.docx; Attachment 4 Statement of Facts - Appendix 1 (FINAL) October 2020.docx

**13 November 2020**

**To: Religious Order Trustees of Schools**

### **Land and Buildings – Occupation Documentation and Guidance including in Relation to Health and Safety Liability**

The CES has developed a suite of documents to assist Trustees in understanding the background to the occupation of Church land and buildings by schools and to enable Trustees to put in place the necessary mechanisms to ensure an appropriate understanding by schools of the nature of their occupation.

As part of this work we have considered whether the Trustees would have any liability in the event of any breaches of health and safety by the occupiers of the school land and buildings in the ownership of the Trustees. The Catholic Insurance Service (CIS) instructed leading counsel to produce an advice on the possibility of Trustees being liable for breaches of health and safety legislation, in particular in relation to asbestos management, construction and fire safety in schools. The purpose was to identify risks, to provide guidance on any risks, and to suggest steps to take to mitigate them. Counsel's advice has been carefully considered and factored into the development of the documentation below, which includes an outline of Counsel's advice.

The final suite of documents is attached, as follows:

1. Occupation of Premises Document;
2. Potential Trustee Liability in Health & Safety Legislation;
3. Statement of Facts: Occupation of Church Owned Land by Catholic Schools and 3 appendices;
4. Occupation of Church Owned Land by Catholic Schools: Licence or Lease?; and
5. Compliance Checklist.

The purpose of the *Occupation of Premises Document* is to set out the basis upon which a school occupies the premises owned by the Trustees. It includes obligations that the governing body is to fulfil. In the document "Governing Body" means the governing body of a maintained school, independent school, sixth form college and non-maintained special school and the Board of Directors of an academy trust company.

The *Occupation of Premises Document* is to be used in circumstances where the school is in occupation under the normal arrangements described in the attached *Statement of Facts: Occupation of Church Owned Land by Catholic Schools*. In the arrangements described in this paper, the Trustees own the freehold (or equivalent) interest in a school 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.

Therefore, it is essential to note that the *Occupation of Premises Document* is not an agreement. It is simply issued by the Trustees as a means of setting out the parameters of the occupation and can be unilaterally amended or replaced by the Trustees at any time. It is important that you do not deviate from this because to do so may change the nature of the occupation so that the school is no longer in occupation by virtue of a mere licence. **Please note that if you do not follow this advice you may put your rights of ownership at risk.**

The *Occupation of Premises Document* has been expanded as a result of Counsel's advice to deal with specific issues relating to delegation under health and safety legislation. Counsel's advice has been taken in relation to the drafting of the Occupation Document in respect of the health and safety elements of it. I can also confirm that we have worked closely with Kathy Perrin at CIS and she has confirmed that she is content with the document.

In the course of our deliberations the CES was asked whether the Trustees should issue leases, as opposed to the occupation continuing on the current basis. A separate paper has been produced to explain the CES advice as to why Trustees should not grant leases.

In addition, CIS kindly instructed solicitors specialising in health and safety to put together a schedule/checklist which Trustees might use to exercise an appropriate degree of oversight, which is part of the attached documentation. We are grateful to Kathy for this and to her and the rest of the team at CIS for working with us to produce the documentation.

I appreciate that there is much to digest in the documentation that we are providing to you and that you may need some support in understanding what you need to do in terms of issuing the Occupation Document and undertaking the appropriate level of oversight in relation to health and safety. We would suggest that you liaise with the relevant diocese for the area in which one of your schools is located if you have any questions as we have been in discussion with dioceses about these developments and I am sure that they will be able to help you. I am also available to answer any questions that you may have.

**Christine Fischer**

**Assistant Director & Head of Legal**

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