

Guideline Leaflet PC11: Churches and Leases

Churches are often approached by other commercial or charitable organisations who want to make regular use of spare space in the church building. A Lease is often needed to properly record the issues to consider and the rent, and other agreed terms.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at www.baptist.org.uk/resources

The date on which the leaflet was last updated can be found on the download page.

PC11: Churches and Leases

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

The legal services undertaken by the Legal & Operations Team of the Baptist Union of Great Britain are carried out and/or supervised by a Solicitor who is authorised and regulated by the Solicitors Regulation Authority. Regulatory Information is available here:

[L17 Legal and Operations Team – Regulatory Information](#)

These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your Holding Trustees, you should contact them. They will do their best to help.

If your church property is in the name of private individuals who act as trustees they may also be able to help.

MAKING USE OF CHURCH BUILDINGS

This can be useful, either in raising the profile of the church in its community, or as a source of income.

Churches are often approached by other commercial or charitable organisations who want to make use of spare space in the church building. This may be a purely commercial arrangement or the user may be a local charity or voluntary group.

CASUAL LETTINGS

Churches often let rooms to other organisations. This kind of casual arrangement is generally known as a hiring arrangement. Few legal formalities are required and there is information about this in our Guidelines Leaflet PC10 *Hiring of Church Premises*. (If you intend letting a residential property please refer to our Guidelines Leaflets PM04 *Letting a Manse in England* or PM08 *Letting a Manse in Wales*).

However, where the arrangements are not casual or occasional and sections of the church building are reserved for the tenant for extended periods of time then a more comprehensive document is required. This is usually called a Lease.

This leaflet should be read alongside the leaflet PC10 *Hiring of Church Premises*. The Charity Trustees of the church (usually the minister, deacons and elders, or leadership team) should on each and every occasion consider whether the letting arrangement is in the best interests of the charity.

We require all external groups working with children, young people or adults at risk on church premises to:

- provide confirmation of up to date safeguarding policy and procedures;
- ensure all paid staff and volunteers have been subject to DBS checks, in line with national government guidance; see <https://www.gov.uk/government/collections/dbs-checking-service-guidance--2>
- be able to demonstrate that all paid staff and volunteers have completed the appropriate level of Safeguarding training.

MORE FORMAL ARRANGEMENTS

Unless the letting arrangement is a casual hiring some form of documents is needed to record what has been agreed between the parties.

This leaflet is about Leases – arrangements that allow an individual or organisation to have specific legal rights over the church’s property over an extended period of time in return for a regular rent or other benefits.

Various kinds of documents might be prepared.

Hiring Arrangement	Based on the PC10 <i>Hiring of Church Premises</i> .
Assured Shorthold Tenancy Agreement	Used for letting residential property. See Guidelines Leaflets PM04 <i>Letting a Manse in England</i> or PM08 <i>Letting a Manse in Wales</i> .
Tenancy at Will	This is a fairly flexible set of legal arrangements. Either party can end the Lease by giving notice at any time. There is not usually a fixed timescale.
Licence	This usually applies where the users of the property can be given notice to leave, or are sharing a building with the church whilst having a defined space and time when it is available. It is usually for a defined period.

There are also Agricultural Tenancies and other kinds of less common tenancies – which are not covered by our general guidance.

THE TENANT

The tenant may be a local club, society, or voluntary group. It could be another church. If another church is sharing the building the arrangement may be wholly commercial, but there may be important points to consider. Please refer to our Guidelines Leaflet L06 *Guest Congregations*.

Sometimes a church will be invited to create a long term lease with a partner organisation working in their area. The tenant may want to operate a business.

If there is a substantial community partnership with major alterations being made to the church building then churches should also look at our Guidelines Leaflet L01 *Churches and Community Partnerships*.

In preparing this leaflet we are trying to identify the specific aspects of preparing a Lease for a commercial (or partnership) arrangement that needs to be considered by the church, its surveyors/valuers and solicitors.

The church property will usually be held in trust for the local church in the name of the Baptist Union Corporation, or one of the other Trust Corporations. They are the Holding Trustee (Property Trustee) of the church property. They need to sign or execute the letting documents to ensure that the arrangements are legally binding.

CONSULTING A SURVEYOR OR OTHER APPROPRIATE VALUER

Even the most straightforward arrangements will need to be considered carefully. Professional advice, for example, from a surveyor will usually be required. They will need to ensure that the church is getting a ‘good deal’ and collecting an appropriate rent from the tenant.

Who must provide that advice depends on the length of the lease. For leases with a term of 7 years or

less the church must obtain and consider advice on the terms from a person whose ability and practical experience makes them competent to advise upon them. In practice, this may often be a surveyor. The church must then be satisfied on the basis of that advice that the terms of the lease are the best that can reasonably be obtained for the church charity.

For leases with a term more than 7 years, the church must obtain and consider a formal report on the proposed disposal from a qualified surveyor or a another suitably qualified 'designated adviser'. This person should have ability in, and experience of, the valuation of land of the particular kind, and in the particular area.

The law says a 'designated adviser' must be either a person who is:

a fellow or professional Associate of the Royal Institution of Chartered Surveyors ;

a fellow of NAEA Propertymark (a professional membership scheme for estate agents); or

a fellow of the Central Association of Agricultural Valuers.

It is unlikely that an agricultural valuer will be appropriate unless the lease solely relates to agricultural land. The surveyor or other appropriate designated adviser will issue a report which complies with the appropriate regulations (The Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023).

The Charities Act provides that the Charity Trustees must consider the advice contained in the surveyor's or other designated adviser's report and that the terms for the proposed sale are the best that can reasonably be obtained for the church.

Depending on the circumstances a church may need to seek advice from a surveyor even if the proposed lease is for a term of 7 years or less. It is always necessary to ensure that the terms agreed for a Lease "are the best that can reasonably be obtained for the church". When an arrangement is made that will last for many years this is vital.

If churches need to identify a surveyor who might be able to offer suitable advice they may wish to ask the Baptist Union Corporation (or local Trust Company).

NEGOTIATIONS

The surveyor, other designated adviser or other appropriate valuer will help identify the area to be leased and assess its value.

Your surveyor, other designated adviser or other appropriate valuer may need to negotiate a suitable arrangement with the tenant. The letting arrangement can only proceed if it is in the best interests of the charity. Obviously, the rent needs to be reasonable but that is not the only consideration.

Depending on the length of the term, the surveyor or other designated adviser may need to consider whether it is appropriate to advertise the letting. This may not seem appropriate particularly if the church is planning to enter into an arrangement with a specific partner charity.

The surveyor, other designated adviser or other appropriate valuer will also need to decide on the length of the term of the Lease. If a charity or commercial organisation is seeking a loan or grant funding they may need a Lease that is for a minimum of twenty-five to thirty years. However, this is a long time for a church to be bound by a letting arrangement.

Sometimes it is possible to negotiate a break in the middle of the term where one party, or either party, can give notice that they want to end the arrangement early. In some ways a break clause is always beneficial but it is not always possible to negotiate this. It may be impossible to make a beneficial arrangement for the church that also allows flexibility.

Whilst the inclusion of an option to break the Lease early would theoretically be in the interests of the

charity, if there is no prospective tenant who would be willing to accept those terms, the interests of the church (charity) may be better served by agreeing to a Lease without an option to break.

A charity or commercial organisation sometimes needs a Lease for a minimum of twenty-five years if they are to obtain grants or loans. In other circumstances churches may prefer a shorter term for the Lease. Shorter Leases provide great flexibility to meet the possible changing requirements of a church.

HEADS OF TERMS

Before any documents can be prepared the church and their surveyor or other appropriate designated adviser need to consult with the future tenant as to the terms of the Lease. The 'agreed terms' are summarised in a document called 'Heads of Terms'. This will often include:

- The amount of rent.
- The amount of any capital payment (also sometimes called a premium). There may be a capital payment in lieu of rent or in addition to the rent.
- Tenant to pay all legal costs.
- Repairing obligations.
- Responsibility for insurance.
- Areas of property to be used exclusively by the tenant.
- Areas of property to be shared.
- Opening and closing times.
- Permitted activities.
- Length of the term (how long the Lease will last).
- Rent reviews. When and how is a new rent to be assessed?
- Service charges.
- An opportunity to end the Lease early (usually called a break clause)
- Assigning and sub-letting the property - is this permitted?
- Ending the arrangement.

There is obviously a relationship between the Heads of Terms and the duty of the surveyor or other appropriate designated adviser to recommend arrangements that comply with the requirements of the Charities Act 2011 - that is ensuring that the proposed arrangements are in the 'best interests' of the church.

Some lettings create a business tenancy under the Landlord and Tenant Act 1954. These can be very difficult to terminate and the tenant would have an automatic right to renew the Lease even though the initial period or Lease term had expired, unless the church can show one or more statutory grounds for resisting such renewal. This can mean that if the church wants the tenant to leave that compensation will be payable to the tenant.

If the church do not want the tenant to have the automatic right to a new lease at the end of the Lease term by virtue of The Landlord and Tenant Act 1954 the solicitors will need to be told so that they can serve some special notices before the arrangement starts.

A pro-forma Heads of Terms is included at the end of this leaflet. The list mentions issues that often need to be considered when a Lease is proposed.

The danger with this kind of list is that it is general. It is no substitute for a church, its surveyor or other appropriate designated adviser and legal advisors and prospective tenant considering in detail their local circumstances and requirements.

The benefit of a pro-forma list is that it will offer a reminder of issues that often need to be included.

HOUSEKEEPING

It is very important that in considering the various terms of the Lease that the church considers the practical implications of sharing the building.

- Who will be doing the cleaning?

- Are there any shared areas?
- Who will be responsible for security?
- Will each part of the building have a separate entrance?
- What about car parking?

The practical arrangements will vary in different churches and circumstances. An expanded list of issues to consider for lettings to other churches is included in the leaflet L06 *Guest Congregations*.

If a separate hall is to be rented it may be self-contained and there may be few difficulties arising from the shared occupancy. However, if facilities, such as toilets and kitchens and car parking, are shared there could be many problems and misunderstandings.

It is worth considering these matters at the start and including basic details in the Lease document. It is often these day to day issues that cause problems later.

RESPONSIBILITIES

The church needs to understand its responsibilities. The church may be responsible for maintaining the structure of the building, providing heating or maintaining a lift, to all parts of the building, including the part used by the tenant. They will need to make financial provision for any essential work to be done - probably by creating a reserve fund to cover the costs.

It would be very tempting for a church to spend all the rental income without creating an appropriate reserve fund.

If there are obligations for the tenant to meet particular expenses, such as decorating or cleaning, then this needs to be specified in the Lease.

COMMUNAL HEATING IN PREMISES WITH MULTIPLE OCCUPANCY

The Heat Network (Metering and Billing) Regulations 2014 as amended impose obligations on landlords of some multi-let buildings who provide communal heating, hot water or cooling systems. This affects all residential and commercial premises with multiple occupiers supplied with heat by a communal or district heating system. There is an obligation on heat suppliers to notify the National Measurement and Regulation Office (NMRO) of existing systems by 31 December 2015 and thereafter to notify the NMRO of new systems before the first date of operation.

From 31 December 2016 there is an obligation on a heat supplier to ensure that individual meters are installed in all buildings with a communal heating system (where it is cost-effective and technically feasible – see below) to accurately measure, memorise and display the consumption of heating, cooling or hot water to each final customer in the building and install temperature control devices for each final customer. However, the Government is in the process of revising how cost-effectiveness is determined and it has advised that, pending resolution of this, no further assessments should be undertaken.

There is a risk of civil or criminal sanctions for non-compliance with the regulations.

WHO'S WHO

Identifying the parties involved is quite important.

The short answer might be 'the church' and 'the tenant' but it is unlikely matters will be quite so simple.

The church is likely to have Holding Trustees (Property Trustees) such as the Baptist Union Corporation. The tenant may be a charity but they may be a very informal group. They may be mentioned in the Lease but the group accepting the tenancy may be a local authority or national organisation acting on behalf of the local group. This happens frequently where a charity is benefiting from a government grant.

When the Lease is prepared it will need to refer to all the different parties involved. It is worth spending some time sorting out the details at any early stage.

THE BAPTIST UNION CORPORATION AND THE CHURCH

Many of the obligations in the Lease, such as cleaning, maintenance of the building, provision of heating and insuring the premises will be the responsibility of the local church, with the local Charity Trustees (usually the minister, deacons and elders, or leadership team). The Lease will need to show that the local church is taking on these obligations.

The Baptist Union Corporation usually has to be involved because they hold the title to the church property. However, they cannot accept obligations for insurance, boiler repairs, cleaning or other day-to-day matters that are properly the responsibility of the church.

In preparing the Lease solicitors will need to take care to ensure that the Corporation's only role is giving effect to the legal transaction, rather than taking on any substantial obligations in relation to the building or the letting arrangement.

AGREEING THE TERMS

When the terms for the Lease have been agreed the church members will need to be told about them. This will happen at a church members' meeting (usually a Special Church Members' Meeting). If the terms are acceptable to the members they need to pass a formal resolution to grant the Lease and appoint a contact person and agree that the church Charity Trustees can settle outstanding minor details.

The Church Meeting Resolution gives the church Property Trustee (often the Baptist Union Corporation) the necessary authority to seal and sign the Lease documents.

CONTACT PERSON

The church should nominate one person to act as a contact with the solicitors, the surveyor (or other appropriate designated adviser) and the Baptist Union Corporation. This will help avoid confusion which can lead to extra costs and expenses where solicitors and surveyors/designated advisers have to do extra work because of difficulties arising from a number of different people from the church being in contact with them.

APPOINTING A SOLICITOR

Although some churches may feel that it is not necessary to create a Lease (or Licence, Tenancy at Will etc) this is usually very important. A formal document will set out clearly the responsibilities and liabilities of each party and will provide potential remedies if there is a dispute.

In all property matters a solicitor will be needed. Preparing a Lease is particularly complicated but legal advice is always needed when entering into any kind of letting arrangement. (Please note that the legal team at the Baptist Union of Great Britain cannot act on behalf of a church in relation to a property transaction. Any work that we carry out in connection with such a matter will be on behalf of the property trustee, the Baptist Union Corporation Ltd, rather than for the church).

The firm of solicitors who act for the Baptist Union Corporation Limited are:

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham
B3 2ES

Tel: 0121 200 3242
Fax: 0121 212 7442
DX 13055 Birmingham 1

www.anthonycollins.com
Email: dominic.curran@anthonycollins.com

Please make initial contact with Dominic Curran.

The staff are committed to working with us and for you in a way that reflects our shared Christian values and Baptist ethos. This firm of solicitors has experience in dealing with churches and the special trust arrangements that are required for church property.

The legal costs associated with your Lease transaction will be payable by the church, not the Baptist Union Corporation Limited. If you decide to ask Anthony Collins Solicitors LLP to do the work this may help avoid any misunderstandings or delays. They are familiar with our requirements.

At the start of a transaction or piece of work they will where possible give a formal estimate of the forecast costs and expenses. They will ask your church to formally confirm details of the work you are asking them to undertake and that you understand the arrangements for the payment of the legal costs. These estimates and instruction letters will be quite formal. This is because they need to comply with the requirements for all solicitors set by The Solicitors Regulation Authority.

If the work becomes more complicated than was originally anticipated then they will tell you as this may affect the forecast costs. You should not be presented with a larger bill than you are expecting.

The solicitors will guide you through the legal procedures involved in the Lease of the property. They will report to the contact person chosen by the church to work with them.

A PRECEDENT DOCUMENT?

There is no single document that can take into account the wide variety of arrangements that might be needed. However, the Baptist Union Corporation has worked with Anthony Collins Solicitors LLP to agree the framework for a document that will be suitable for churches.

The document will need to be adjusted to suit local circumstances and the Heads of Terms but this will provide a helpful starting point when a Lease is needed for your church.

LOCAL SOLICITORS

Sometimes a church will know a local solicitor they wish to instruct to act for them in a property transaction. Please remember that there are additional requirements in acting for a Baptist church that is governed by the various Charities Acts and where a trust corporation holds legal title. You should ensure that the solicitor you have chosen has experience in dealing with conveyancing transactions of this type.

We will provide as much helpful information as possible to a local solicitor but Anthony Collins Solicitors LLP will still act for the Baptist Union Corporation Limited. The Baptist Union Corporation Limited will need Anthony Collins Solicitors LLP to approve documents that are to be signed or sealed by the Baptist Union Corporation Limited. Any costs associated with Anthony Collins Solicitors LLP involvement in a transaction are payable by the church.

IT IS VITAL that if local solicitors are appointed that they make contact with Anthony Collins early in the process.

They will be able to explain the specific role of the church Holding Trustees as well as the specific requirements of the Charities Act 2011.

A clear understanding before the Lease is drafted should avoid costly re-drafting and amendment later.

The solicitors will guide you through the legal procedures involved in the Lease of the property. They will report to the contact person.

COSTS AND EXPENSES

Many individuals purchase houses. We are familiar with the level of costs that apply to a domestic property transaction. The paperwork is fairly standard.

A Lease is a much more complicated document. Churches and tenants need to be realistic about the time and costs that will be involved. An estimate of the forecast costs can only be given by solicitors after receiving a clear indication of the type of arrangement that is proposed.

Wherever possible the tenant should be asked to pay the costs and expenses incurred by the church in negotiating and completing the Lease. Ideally, this should be unlimited but tenants will seek to negotiate a fixed sum to cover surveyors'/designated adviser's and solicitors' costs. Where there is a shortfall the church will usually need to pay the balance themselves.

BUT ISN'T THIS PAPERWORK A WASTE OF GOOD MONEY?

Sometimes the amount of rental income is low - but the legal costs are high. If the Lease is for five, ten or twenty-five years at a good rent then the proportion of cost in creating the Lease is more easily offset against future income.

Nobody likes to pay bills but it is vital that appropriate professional advice is obtained. If the tenant proves to be unsatisfactory then the rights to recover possession of the property and obtain payment of outstanding rent will depend on the terms set out in the Lease document.

However, settling a dispute with a tenant may involve Court action. If the Lease is not clear the time and costs involved in solving 'problems' will increase. Costs paid initially to obtain a suitable Lease will be 'money well spent' if the tenant creates problems later.

MINIMUM ENERGY EFFICIENCY STANDARDS

Where a new tenancy is granted, if the property that is let must comply with minimum energy efficiency standards, the solicitors instructed should ensure that all the relevant legal requirements in relation to energy efficiency are met. Churches should simply follow their advice.

However, a legal requirement to comply with minimum energy efficiency standards **can also apply to certain tenancies that are already in existence and will still be in existence on 1 April 2023** (even where the tenancy was entered into *before* 1 April 2017 when the minimum energy standards rules came into force).

The energy efficiency of a property is usually recorded in an energy performance certificate ('EPC') and the minimum acceptable energy efficiency standard for rented non-domestic properties is rating 'E'. Any property that has an EPC with an energy efficiency rating of 'F' or 'G' is called a 'sub-standard' property.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 provide that, from 1 April 2023, a landlord may **not continue to let** a 'sub-standard' non-domestic property. This is unless a valid exemption applies and has been registered on the Exemptions Register.

This potentially problematic provision means that churches with certain existing letting arrangements that will still be in place on 1 April 2023 may be required to bring the property that is rented-out up to the required energy efficiency standard (at least rating 'E') or register a valid exemption. Affected churches church cannot simply do nothing. (There are exceptions to this requirement, for example:

- where no EPC is required, eg because the relevant building is used as a place of worship or the leased property is a nationally listed building where compliance with

minimum energy performance requirements would unacceptably alter the building's character or appearance;

- in connection with a lease of 99 years or more; or
- in connection with a tenancy granted for a term certain not exceeding six months, (unless the tenancy agreement contains provision for renewing the term or for extending it beyond six months from its beginning)).

Unless one of the exceptions applies, churches need to consider their position very carefully. An EPC lasts for 10 years. Because of the way the law is written, any energy performance certificate (EPC) that was registered on or earlier than 31 March 2013 would no longer be 'valid' at the relevant date of 1 April 2023. Therefore, churches with ongoing letting arrangements that were entered into on or earlier than 31 March 2013 where either:

- the lease was granted in connection with an EPC that was registered on or earlier than 31 March 2013; or
- no EPC was required, for example, because the letting occurred before EPCs became necessary in relation to that letting (see below)

do not have to bring their property up to the minimum standard E or register an exception (unless there has been a later EPC that is still valid on 1 April 2023).

(The requirement to obtain an EPC in relation to a letting was introduced in a phased way from 6 April 2008 to 1 October 2008 depending on the floor area of the building let. If any church is in doubt as to whether they should have had an EPC, they should contact us at the e mail address below).

Unless an exception applies, any church that is continuing to let non-domestic property in connection with an EPC that was registered on or later than 1 April 2013 will still have a 'valid' EPC on 1 April 2023 and, therefore, if that EPC is at rating 'F' or 'G' the church will need to take action now to bring the property up to the required standard or register a valid exemption if the lease will be continuing on 1 April 2023. The action that can be taken will depend on the terms of the lease. The church probably will need to take legal advice and can, in the first instance, e mail us at: legal.ops@baptist.org.uk . We can look at the lease to see what rights the church may have as landlord and advise generally in relation to exemptions.

Enforcement action can be taken and there are heavy fines for non-compliance – potentially up to £150,000 plus a publication penalty which may cause reputational damage.

All churches who are letting property need to, take urgent action now to check the date of registration and energy rating of any EPC issued in relation to any non-domestic letting that may be in place on 1 April 2023 and, if necessary, undertake the required compliance action before the 1 April deadline.

(Because of the way the law is worded, any church that is letting property where there is no EPC – either because one was not required or where there was one but it will have expired by 1 April, 2023 should think very carefully before obtaining an EPC of the property unless, of course it is legally obliged to obtain one for some reason). This is particularly the case where the church is not entirely confident that the property will not be 'sub-standard'.

The rules are quite complicated and, if the church is in any doubt, it should e-mail us in the first instance at legal.ops@baptist.org.uk for further advice.

ENDING THE LEASE

There are almost as many formalities to end a Lease as to create it. They will vary according to the terms of the original document.

Churches will need to consult surveyors and solicitors when the Lease term expires or the arrangement is terminated.

THE CHURCH'S TRUST DEEDS

The deeds of the church will need to be checked to ensure there is no reason why the church should not allow other organisations or individuals to use premises. If the Trust Deeds are restrictive, the problem can usually be overcome by adopting Model Trusts (please refer to leaflets T01 *Baptist Trusts – Beginnings and Patterns*, T02 *Modern Model Trusts* and T03 *Appointing Property Trustees – Baptist Trust Corporations* for more information).

PLANNING LEGISLATION

Unless there are some very special planning conditions affecting the church general planning law allows church premises to be used for a variety of uses without the need for further planning permission. These uses are listed in the Town and Country Planning (Use Classes) Order 1987. The relevant paragraph which is F.1 which includes:

'learning and non-residential institutions comprising any use (not including residential use):

- (a) for the provision of education
- (b) for the display of works of art (otherwise than for sale or hire)
- (c) as a museum
- (d) as a public library or public reading room
- (e) as a public hall or exhibition hall
- (f) for, or in connection with, public worship or religious instruction
- (g) as a law court.'

INSURANCE

For a long term arrangement the Tenant will usually have responsibilities to obtain insurance for their own activities.

The Lease must define insurance responsibilities.

The church must ensure that they have appropriate Public Liability cover and that there is no mismatch between the terms of the insurance policy and the cover obtained and the church's obligations under the Lease. If in doubt, seek advice.

Churches may wish to approach The Baptist Insurance Company plc as it has considerable expertise in advising and issuing policies in relation to Baptist churches

IF IN DOUBT ABOUT INSURANCE - check the church policy carefully - and if necessary double check with the church's insurers or solicitors.

TAXATION

Some churches believe that they must only accept 'donations' for the use of the premises for fear that in some way the church will be taxed if they receive an income from lettings. This, like the belief that the church will become liable for business rates, is a misunderstanding. The church, as a charity, are entitled to receive income from the use of their premises without being liable for tax.

PRO FORMA

HEADS OF TERMS

CHURCH OR CHURCH HALLS OR OTHER CHURCH ACCOMMODATION (not residential property)

The following is intended as a guide outlining principal terms and which might or should be incorporated in a Lease. These will need to be reviewed/amended and negotiated as necessary for the particular circumstances.

1 **LANDLORD (Lessor)** The Baptist Corporation as Holding Trustees on behalf of Church.

2 **TENANT (Lessee)**

3 **DEMISE**

- (a) What is the area to be let? (This should be identified on a plan for subsequent incorporation into the Lease).
- (b) Will the tenant have shared use of kitchens, toilets, storage areas or any other space?
- (c) Will the tenant have the use of any car parking spaces or external areas. These might be on a non exclusive basis capable of being varied by the landlord from time to time.

4 **LENGTH OF LEASE AND HOURS OF USE**

- (a) For what period is the lease to be granted?
- (b) What are the proposed hours of use, ie 8 am to 5 pm?
- (c) Will the letting be for certain days of the week, ie Monday to Friday?
- (d) Will the use be throughout the year or limited to an agreed number of weeks?
- (e) Are any specific periods to be excluded, for example, Easter, Christmas holidays and polling days?

5 **RENT**

- (a) The rent will need to be negotiated on the advice of a surveyor or other appropriate valuer.
- (b) Is the rent to be inclusive of outgoings to include electricity, gas, water, cleaning and insurance, or will there be a service charge provision?
- (c) How will the rent be paid, is this to be quarterly or monthly? Rent will normally be payable in advance.
- (d) Is a rent deposit to be provided by the tenant? This may be dependant upon the financial status of the tenant. It may for example be inappropriate to seek a rent deposit from a local authority.
- (e) Is an initial rent free period to be given at the outset of the lease? This might be given in return for the tenant undertaking certain agreed works of repair to the premises. If so the works need to be listed, specified and an agreed timetable prepared so progress and quality can be monitored.

6 **RENT REVIEW PROVISION**

Depending upon the length of the Lease, upwards only rent reviews should be incorporated at fixed periods, (ie every five years and to market value would be a normal pattern).

7 **PREMIUM**

Is a premium (capital payment) to be paid by the tenant at the outset of the Lease instead of rent? Alternatively there may be a combination of a premium and rent payable.

8 **BREAKCLAUSE**

Is the Lease to incorporate break clause provisions at defined time(s)? If included and negotiated, it is preferable for both parties to be able to operate a break clause provision and not only the tenant.

9 **USE**

The use of the accommodation by a tenant should be clearly defined. For example, the premises shall only be used as a nursery school for children between the ages of etc.

10 **INSURANCE**

The responsibility for insurance should be defined. It would be normal for the landlord to be responsible for insuring the whole building against loss or damage by fire against all usual perils.

A tenant should obtain their own insurance in respect of contents and third party liability and indemnify the landlord against any claims by a third party for injury, loss or damage. This may mean the tenant is to insure against such liability for an agreed amount.

11 **REPAIRS AND OUTGOINGS**

Who is responsible for:

- 1 The cost of maintaining, repairing the exterior of the property?
- 2 The cost of maintaining, repairing the interior of the property?
- 3 The cost of outgoings to include electricity, gas, water, cleaning, refuse collection and insurance?

If the tenant is to be responsible for the whole or some of these costs, a basis for payment needs to be agreed, and which could be by means of service charge provisions in the Lease.

Where it is difficult to apportion costs, perhaps where the accommodation to be let is not self-contained, and/or there are limited hours of use, a rent inclusive of these costs might be agreed. To help acknowledge increased costs over a period of time for these items fixed annual increases to the rent might be negotiated.

12 **RATES**

If business rates are imposed as the result of the tenant's use, the tenant should be made responsible for these costs.

13 **ALTERATIONS/SIGNAGE**

- (a) A tenant will not normally be allowed to make any structural or external alterations to the property.
- (b) A tenant might be allowed to make non structural alterations to the accommodation subject to the prior consent of the landlord.
- (c) Any external signage sought by a tenant would need to be discussed and agreed.

14 **CONTRACTING OUT - IS THIS A BUSINESS TENANCY?**

Is it intended for the lease to be contracted out of Part II of the Landlord and Tenant Act 1954? If contracted out, the tenant would not at the end of the Lease have a right to renew the lease (but this would not prevent the landlord quoting terms for a new lease if they are happy to continue with the tenant) or be entitled to compensation.

15 **ASSIGNMENT/UNDER LETTING**

Will a tenant be able to assign the Lease or underlet the premises to a third party subject to the landlord's consent?

16 **POSSIBLE GENERAL MANAGEMENT ISSUES TO BE CONSIDERED**

A policy for cleaning the premises and the associated costs thereto should be agreed.

Any damage caused by the tenant to the property or furnishings, fittings and fixtures should be notified to the landlord on the day of occurrence. Provisions for repair or replacement by the tenant should be agreed.

The tenant should only dispose of waste material in the waste bins provided and in such fashion that cannot be dispersed by weather or animals.

The tenant shall not dispose of or allow others to dispose of waste materials (such as paint or disposable nappies) that could cause blockage to the toilets or sink and drains .

To permit the landlord to enter the premises on reasonable prior notice (but without notice in the case of emergency) for the purpose of repairing and inspecting the state and condition of the property.

The tenant shall leave the premises in a clean and tidy condition for other users at the end of each period of use. A policy for the storage of any items kept in the premises by the tenant outside their hours of use should be agreed.

The tenant to ensure all fire escapes are kept clear at all times.

The tenant to provide a list of all employees who hold a set of keys to the premises.

The tenant to comply at their own expense with all statutory and other Local Authority regulations relating to their intended use.

In the case of accommodation let for educational purposes, the tenant should provide written confirmation that they are familiar with the Home Office Code of Practice 'Keeping Children Safe in Education 2022', and that they understand these policies and procedures and undertake to follow their recommendations in relation to work with children and young people. Such an undertaking should form part of the lease.

To agree a policy for use of existing internal notice boards and wall space (if required) with provision for the tenant not to display anything that might be offensive to other users.

17 **LEGAL AND SURVEYORS COSTS**

The tenant to pay the whole or make a contribution towards the landlord's legal and surveyors'/valuer's fees.

18 **OTHER TERMS**

The Lease to contain such other terms as the Landlord's solicitors deem to be necessary and appropriate to the circumstances.

19 **CONSENTS**

The grant of the Lease to be subject to the approval of the Charity Trustees of the local Church and Holding Trustees (Property Trustees) of the Church.

20 **CHURCH AND TRUSTEE REQUIREMENTS**

- 1 Has the Church identified their property trustees?
- 2 Is the letting permitted under the Church's trust deeds?
- 3 The church is responsible for the day to day management of the arrangement and for meeting any expenses in relation to the letting. As between the Church and their property trustee, the Church will indemnify the property trustee from any claim arising from the Lease.
- 4 If the Church, as an organisation, ceases to exist then and only then will the property trustee become involved in the management of the letting arrangement. In relation to any liability to the tenant the liability of the property trustee is limited to the assets held for and on behalf of the Church.

21 **CHARITIES ACT 2011 - REQUIREMENTS AND FORMALITIES**

Solicitors and surveyors will need to advise as to the requirements in your particular circumstances. These will vary depending on the length of the Lease and the commercial value of the arrangement.

The purpose of these 'rules and regulations' is to ensure that churches (that are also charities) enter into arrangements that are appropriate and reflect the true commercial value of their assets.

Association Trust Company	Contact
Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
Heart of England Baptist Association	Heart of England Baptist Association 480 Chester Road Sutton Coldfield B73 5BP Office Mobile: 0730 505 1770
London Baptist Property Board	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
Yorkshire Baptist Association	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
West of England Baptist Trust Company Ltd	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff in the Legal and Operations Team at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details is provided above. If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

Support Services Team, Baptist Union of Great Britain, Baptist House, PO Box 44,
129 Broadway, Didcot OX11 8RT
Tel: 01235 517700 Fax: 01235 517715 Email: legal.ops@baptist.org.uk
Website: www.baptist.org.uk Registered CIO with Charity Number: 1181392

Date Reviewed: 2022

Date of Issue: June 2023