church growth trust

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Hiring church premises and the Equality Act 2010

A Church Growth Trust and Edward Connor Solicitors Briefing Paper (February 2019)

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Church Growth Trust aims to help independent and Evangelical churches grow by providing a professional and complete church property management service – from trusteeship to architectural support and everything in between. It also supports church planting. It does this because it wants to help independent churches secure their future at the heart of their community by helping to keep church buildings for their original use and fit for purpose. Church Growth Trust is passionate about offering its skills, experience and practical support in a way that serves the Church and sees God's Kingdom grow.

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1.0 Introduction

How do you decide what your property should be used for? When can you let other people use it? Is it true that you cannot discriminate in who you let it to?

For many churches, their main capital asset is their building. It is a valuable resource. It enables the congregation to meet on Sundays, and other groups to meet during the week. It may also be a means of reaching out to the local community, and for caring for those in need. Sometimes, the building can also generate an income for the church, because people want to hire it. Or the church may own other buildings that it is able to let out, such as residential properties or a community centre that it uses less itself. Stewarding these resources well, to spread the gospel and in faithfulness to Christ, is a key strategic question for all churches.

This briefing paper explores the specific issues of:

- When churches can let out their premises;
- How the Equality Act 2010 applies to hiring out your premises; and
- Whether and when you can let out premises commercially.

There are lots of other issues that you will need to consider in relation to letting out premises, such as who will carry insurances for the activities on site and ensuring that you have appropriately managed any health and safety risks. If you are conducting Christian weddings, there are specific regulations allowing a church to decide what kinds of marriage ceremony it is willing to conduct, and whether or not to provide same-sex marriages. For residential properties, in particular, there are very specific regulations about the basis on which the property is rented and maintained. This article does not cover any of those other issues. For more information on them, please feel free to contact Edward Connor Solicitors or Church Growth Trust or view their briefing papers on these subjects.[1]

2.0 Charity law and church property

2.1 Using your property within your charitable purposes

Churches are also charities and are subject to charity law in how they deal with their property and other assets. Most importantly, this means that the church can only use its building in a way that either directly or indirectly furthers its charitable purposes, as set out in the church's governing documents (i.e. its constitution). "Direct" and "indirect" is explained further below. Usually the church will have purposes that are worded along the lines of "to advance the Christian faith in accordance with the statement of faith attached".

The trustees are responsible for ensuring that the church's buildings are only used within these parameters. There are two ways in which they might do this. The first is by direct use of the building (such as when church groups meet in it on a Sunday or during the week, or by letting it out to other Christian organisations). The second, "indirect", use is in order to raise funds for the church.

2.2 Furthering your purposes directly

Using the building directly to further the church's charitable purposes could include allowing other groups and organisations to hire it as part of the church's ministry and outreach. The

[1] In particular, see the Church Growth Trust papers on Same sex marriage legislation and Registration of places of worship at https://churchgrowth.org.uk/area/charity-govenance/ and the Edward Connor articles on use of property by a third party at https://www.edwardconnor.com/2018/11/02/use-of-charity-property-by-a-third-party/ and in letting out a church manse at https://www.edwardconnor.com/2018/08/30/letting-out-a-church-manse/.

trustees will need to think carefully about how "advancing the Christian faith" (or however your church's purposes are worded) should be interpreted. This would almost certainly encompass outreach activities that have a community focus, such as providing debt-counselling courses from a Christian perspective or providing a foodbank as a demonstration of Christian compassion. But it may not include, for example, hiring the building out to community groups where no-one from the church is involved and there is no Christian input. You will need to think about what kinds of usage of the building could properly be regarded as expressing a Christian worldview, in a way that enables people to make the connection between the activity they are participating in and the Christian faith.

The Charity Commission's guidance on advancing religion for public benefit, and its analysis of the law underpinning this area (both currently under review) previously indicated that advancing religion encompasses a very broad range of activities and there may be considerable overlap with other charitable purposes such as the relief of poverty, or the advancement of education or health. But it should be clear to members of the public that there is a direct link between the church's Christian faith and the particular activities that it carries out. Just because members of the church are involved with an activity, or the activity is one that is more broadly beneficial to society, the church will not necessarily be advancing the Christian faith by allowing the activity to take place on its premises. To give an example, if a church decides to let out the church hall to a local sports club or arts group, where there is no other connection with the church, it is unlikely that – in purely legal terms - doing so will be regarded as advancing the Christian faith, even if the church sees it as part of its service to the local community and is able to articulate a worldview that is positive about sport and art!

If the trustees allow the church's assets to be used for activities that fall outside the scope of its charitable purposes, they are potentially in breach of their duties as trustees. It is possible that they could be investigated and sanctioned by the Charity Commission. As well as being an embarrassment for the trustees personally, any investigation of this kind could harm the reputation of the church and its outreach in the community. It is therefore very important to think clearly about these issues.

2.3 Furthering your purposes indirectly

In addition to using your property as a direct means of furthering the Christian faith, as a church you can also raise funds from the use of the premises, by letting them out commercially. There are complex issues of tax and VAT here, and churches should obtain specialist financial and legal advice before embarking on this kind of activity. But the key principles are summarised below, to help you think through what is involved.

Where you simply want to raise income from your church property, you can do so in a number of ways. It may simply let out the building on a one-off basis to various groups who are willing to pay. If the hiring fee or rental payment is purely for use of the building, and the church is not providing any services to the hirer, the money raised will be tax exempt. It is important to note, however, that you should be charging a full market rate for the hire of the building if the aim is to raise funds for the church. Charging discounted rates to community groups where there is no connection with the church's charitable purposes would represent a loss of income to the church for which the trustees may become personally liable. [2]

[2] If the letting is a longer-term arrangement which allows the user exclusive occupation of the building, additional obligations will apply under the Charities Act 2011. In particular, leases of more than seven years require that the trustees obtain advice from a chartered surveyor.

If you provide any services to the hirer, alongside the use of the building, this is likely to constitute commercial trading activity. Depending on what other activities you carry out, the income may become taxable, unless it is routed through a commercial trading company that is owned by the church. There are also likely to be VAT implications. This kind of trading structure is beyond the scope of this paper. A church that has significant income from hiring out a building and providing associated services should take professional advice.

3.0 Equality Act 2010 obligations

3.1 Aim of the Equality Act and concerns of churches

Churches are often concerned that they may be required to let out their building to groups which carry out activities that directly contravene what the church believes and teaches. There are some important exemptions under the Equality Act which help churches here; although how they apply (and how they are likely to be interpreted by a court) is not entirely straightforward. The key principles are set out below for churches to work through, but it is always worth checking the particular situation you have in mind for more detailed and specific advice.

3.2 What does the Equality Act require?

The starting-point under the Equality Act is that any kind of direct or indirect discrimination in relation to a protected characteristic (including sexual orientation, religion or belief, sex, gender reassignment, and marriage or civil partnership) is unlawful. There are however a number of exemptions. The most important for churches is the set of exemptions set out in Schedule 23 paragraph 2, which relate to religious organisations and their use and disposal of premises (as well as to some other activities).[3]

An organisation can only avail itself of the exemptions in this Schedule if it has purposes that are solely or mainly non-commercial, and if its purpose is:

a) to practise a religion or belief,
b) to advance a religion or belief,
c) to teach the practice or principles of a religion or belief,
d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
e) to foster or maintain good relations between persons of different religions or beliefs.

Such an organisation (or any person acting under its auspices) is permitted to restrict the use or disposal of premises owned or controlled by the organisation:

a) on the grounds of religion or belief, only if the restriction is imposed because of the purpose of the organisation, or to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief; and

b) on the grounds of sexual orientation, only if the restriction is imposed because it is necessary to comply with the doctrines of the organisation, or to avoid conflict with the strongly-held religious convictions of a significant number of the religion's followers.

[3] There may be other defences open to churches that face a claim of unlawful discrimination under the Act, depending on the factual circumstances. Those are beyond the scope of this paper.

The "disposal" of premises includes the whole or part of the premises, and to leasing, sub-letting or granting a right to occupy the premises. The exemptions do not apply in respect of sexual orientation if the organisation is selling the entirety of its interest in the premises.

In relation to the provision of services, the exemption will not apply in relation to anything done on behalf of a public authority and under contract with a public authority.

3.3 Do the exemptions apply to churches?

Churches will almost certainly be regarded as falling within the exemptions set out in the Equality Act 2010, because their purpose is to advance the Christian faith. If your charitable purposes are worded very broadly, however, and include other purposes such as advancing education or relief of poverty (where the wording does not directly connect those things with Christianity), these broader activities may not fall within the exemption. You may need to think about articulating your purposes so that they are more clearly focussed on promoting Christianity, and the other activities are described as an outworking of Christian discipleship.

For the purpose of assessing whether or not the exemptions apply, it is irrelevant whether or not you charge a fee for hiring your premises. The Act excludes organisations that are "commercial".[4] But just because you as a church may require other groups to pay for the use of the building this does not mean that the church is operating for commercial purposes, and the exemptions under the Act will usually still apply. (The exception here is where the church is being paid by a public authority, such as a local council, or is otherwise acting on behalf of a public authority.)

3.4 The "purpose/doctrine" exemptions

The church will be best protected under the Act if its constitutional documents cross-refer to clear statements of faith or ethos statements that set out the church's views on doctrinal and ethical issues. This is because the exemptions under the Act refer to the church's "purposes" and "doctrines" in order to assess whether the church has discriminated on the grounds of religion/belief or sexual orientation. While this will not be limited to what is in a church's formal "doctrinal statement", the less clear a church's position on, say, issues of marriage and sexuality, the more difficult it will be for the church to argue that the exemptions apply[5].

[4] The exemptions do not apply to organisations whose sole or main purpose is commercial. This would probably include a commercial trading subsidiary set up to raise income for the church, as described in section 2. There may be other defences that such organisations can raise, particularly in connection with human rights arguments, but these are beyond the scope of this paper. In any event, it would be extremely unlikely that a church would be regarded as having a commercial purpose, such that the Equality Act 2010 exemptions did not apply.

[5] Two examples of statements in relation to marriage and sexuality are as follows:
[Example 1] "Sexual intimacy is a gift from God and is to be enjoyed exclusively within the context of marriage. Marriage is, by definition, heterosexual and between one man and one woman. Marriage ultimately serves as a type of the union between Christ and His Church."
[Example 2] "God designed marriage to be a public union between one man and one woman for life and that sexual relations should be within the one-flesh union of marriage. Marriage ultimately serves as a type of the union between Christ and His Church (Genesis 2:23-24, Matthew 19:5-6; 1 Corinthians 7:9; Ephesians 5:31-32)"
See also the Church Growth Trust Briefing Paper on Independent Churches and the Marriage (Same Sex Couples) Act 2013 [https://churchgrowth.org.uk/area/charity-govenance/]

3.5 The "no offence/no conflict" exemptions

Even if the church does not have clear doctrinal or ethos statements which address the basis on which it is happy to let out its premises, it may be able to rely on the principles of "no offence/no conflict". This is an alternative exemption under the Equality Act, which allows organisations to limit their activities to avoid causing offence to Christian believers or conflict with their strongly-held views. However, it is unclear how the courts would apply this test in practice. It is by no means certain whether the court would take account just of the views of church members, or of the wider denomination or stream that the church belongs to, or of those who generally profess Christian faith in society. The wider the group, the more diverse the views they express are likely to be. It is also unclear how many or what proportion of people need to be offended for the exemption to apply.

4.0 Practical implications

4.1 When you can say no, and when you cannot

The exemptions do provide you as a church with some protection, but they are likely to be interpreted narrowly by the courts if ever a dispute arises, particularly if you are happy in principle to hire out your buildings to non-Christians in order to raise income.

A church will be entitled to refuse a hiring request where the proposed hiring activity would actively undermine your purposes or contravene your doctrines and beliefs. You may well decide that you would not want your property to be used for the active promotion of non-Christian faiths or for the promotion of same-sex marriages.

You are much more likely to face a legal claim under the Act, however, if you refuse to hire out the church's premises purely on the basis of the personal characteristics of the person making a request (e.g. simply because the person belongs to another faith, or because they are in a same-sex relationship). If you as a church generally allow members of the public to hire the church hall for birthday parties, for example, it is extremely difficult to see how you can refuse to let a particular individual hire the hall for a birthday party because of their personal lifestyle or beliefs. A refusal on that basis will almost certainly amount to unlawful discrimination.

4.2 What else can a church do to protect its position?

You as a church will need to think carefully in advance about how you apply these principles consistently. In addition to reviewing the church's statements of doctrine and ethos, it may well make sense for the trustees to develop a hiring policy, setting out the decision-making process for requests as they arise. This should then be communicated amongst those responsible for responding to enquiries about use of the church buildings, alongside a discussion about how to deal sensitively with the difficult judgement calls that you may have to make on occasions.

Churches sometimes draw a distinction between different types of property (e.g. the main building in which Sunday services are held, and a separate church hall or meeting rooms). The principles of charity law apply to both in exactly the same way. In terms of the equality legislation, you as a church will be best protected if you adopt the same approach (and use the same hiring policy) to all your buildings. Otherwise there is a risk that requests from prospective hirers are treated inconsistently, which will undermine your ability to rely on the exemptions in the Act;

A hiring policy may not just need to cover the purposes of hiring, but activities within that. For example, at an event attended by people of other faiths – where do they go if the event overlaps with their fixed prayer times? Should someone giving a speech be free to use blasphemous or profane language? Would alcohol be allowed on the premises? Would a raffle be inappropriate gambling? The possibilities are limitless, and it is easier and perhaps wiser to set out principles than a list of "do nots".

More fundamentally, the church needs to consider whether it is happy to accept that letting premises out for commercial hire inevitably carries an increased level of risk, in relation to the likelihood of a claim under the Equality Act. The safer course of action is to forego the income from hiring fees, and to restrict the use of the church's buildings to the direct furtherance of its charitable purposes, as described above.

5.0 Summary

Rather than diving immediately into thinking about how equality legislation applies to your church premises, it is worth taking a step back and starting with first principles. What are your charitable purposes? How do you best use the church's property for those purposes? Does your current practice of venue hire fit within the purposes or fall outside them?

And in relation to the equality issues, the starting point is to think about how the church's beliefs are reflected in its constitutional documents and other key statements of ethos and doctrine. Then work through how those are translated into a hiring policy for the church. If you have thought carefully about your charitable purposes and your statements of belief, you can be reassured that there are legal protections in place to allow you as a church to determine how your property will be used. If it is done carefully and consistently, you should be able to refuse to accept use of your premises that would undermine your charitable purposes and stated doctrinal position.

If you find that your purposes are not worded as clearly as they might be, or that your doctrinal position is not well enshrined, you may need to get Charity Commission consent to make changes to them. Edward Connor Solicitors can help you with how to make those changes, so that the church is as well protected as it can be in legal terms. Edward Connor Solicitors can also help with the arrangements you adopt for venue hire, or for longer term lease agreements. Their and Church Growth Trust's aim is to help your church use the resources God has given you as well as possible, for his glory.

6.0 Additional information

To give some practical examples, the following are the types of activities for which the church may receive hiring requests:

Group A	Christian activities carried out by other churches or charities which have doctrines and values similar to or consistent with your church;
Group B	Activities which have no religious affiliation or spiritual component (e.g. Alcoholics Anonymous or a Wildlife Trust, social club or choir, or members of the public who wish to use the premises for a private celebration such as a birthday party);
Group C	Other activities that have a religious component (e.g. a group or individual wanting to hire the hall for a religious celebration or festival that is inconsistent with the views or doctrines of your church);

Group D Activities which have a non-Christian spiritual element, and which raise concerns for your church (e.g. martial arts, meditation, yoga, New Age, witchcraft, spiritualism or free-masons);

Group E Activities which promote or support a view of marriage or sexual relationships which is contrary to your church's values or beliefs.

While each case will depend very much on the factual situation and the documentation that the church has in place, it may be helpful to give some general guidance about how you as a church may wish to respond to organisations in each group.

Letting organisations in Group A use your church property is very likely to be a way in which you as a church can further your own charitable purposes. You may want to make clear that this is the basis on which the property is being used, even if there is an associated hiring fee or suggested donation.

For activities in Group B, you as a church will need to think carefully about the following points:

a) Is there any clear connection with your own purposes?

b) If not, the hiring is not furthering the church's charitable objects. It should probably only be permitted if it is carried out on a commercial basis and raises funds for the church, but

c) Will there be tax implications of carrying out this kind hiring (e.g. if there are associated services)? You will need advice from your accountants or tax advisers here;

d) If you accept hiring requests from community groups such as this, in order to generate income, there may be a relational and reputational risk that other community organisations (falling into Groups C, D and E) will feel disaffected if you then refuse their request. Although the legal exemptions may permit you to make such a distinction, the trustees will need to think through the implications of doing so; and

e) It should form part of the hiring agreement between the church and the organisation that the group will not carry out activities that are contrary to the church's doctrinal statements.

Activities in Groups C, D and E are unlikely to be directly furthering your charitable purposes, unless they constitute an event that enables the Christian message to be heard. Any hire for these activities will therefore need to be made on a commercial basis and at market rate, if you as a church decide to proceed with them, and all the same principles apply as for Group B.

In addition, if the proposed hiring activity within Group C, D or E is contrary to the church's stated doctrines or ethos you may well have grounds on which to decline a request for use of its property for such an activity. The refusal should only be made on the basis of the organisation's aims and activities, however, and not because of the personal characteristics of the person or people making the request. If you have generally allowed community groups to hire your premises without raising any questions about the purpose of the hire, or you act inconsistently in how you let the buildings, it will be difficult for you then to refuse a request in relation to any one particular activity. You will of course want to give that refusal gently and lovingly, and to invite the members of the group to participate in other church activities and events as it is appropriate to do so.