



# **DIOCESE OF SHREWSBURY**

## **OCCUPATION OF SCHOOL PREMISES**

**February 2021**

# The Diocese of Shrewsbury

## Occupation of School Premises

### 1. Introduction

This document sets out the basis upon which the School occupies the Trustees' premises for the purpose of conducting a Catholic School. It replaces any previous document of this type and may be unilaterally amended or replaced by the Trustees at any time.

The primary responsibility of the Governing Body of a Catholic School is to occupy and conduct the School on behalf of its Trustees and under the supervision of the Bishop.<sup>1</sup> Traditionally that encompasses the threefold responsibilities of the Governing Body as occupier of the premises, proprietor of the undertaking and employer of the staff. This document sets out in more detail the parameters of the first of those three responsibilities. It sets out obligations imposed on the Governing Body, including important specific responsibilities relating to health and safety matters.

The Governing Body is to familiarise itself with the contents of this document and comply with the obligations this document imposes on it, obtaining professional advice as necessary.

### 2. Ownership

Ownership of the School Premises remains vested in the Trustees, and the School Premises are occupied by the Governing Body solely for the purpose of conducting a Catholic school on behalf of the Diocese of Shrewsbury in accordance with canon law and the Trust Deed.<sup>2</sup>

### 3. Delegation of Authority

Management of the occupation and use of the School Premises is delegated for the time being by the Trustees to the Governing Body of the School subject to any direction given by the Trustees or Bishop as to the use of the School Premises outside normal school hours.

**The Governing Body is to discharge the duties and responsibilities set out in this document. The Trustees will take reasonable steps to ensure the Governing Body's compliance with the terms of this occupation document and the Governing Body is to afford the Trustees every cooperation to enable the Trustees to do so.**

The Governing Body shall not, without obtaining the prior approval, in writing, of the Trustees:

- make any major structural changes or additions or alterations to any buildings which form part of the School Premises;<sup>3</sup>

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<sup>1</sup> *Governance of a Catholic School: A Clarification of Roles and Responsibilities for England & Wales*, CES September 2014.

<sup>2</sup> The objects of the general trust on which the schools are held are the Trust Deed dated the 19<sup>th</sup> September 1963, as referred to in the Deed of Appointment of New Trustees dated the 19<sup>th</sup> September 2018. In one or two schools or pieces of land, slightly different trusts may apply: diocesan advice should be sought on an individual basis if this applies.

<sup>3</sup> Major structural changes include the addition or removal of buildings from the premises, and any change in the footprint or envelope of any building. It also includes substantial alterations within the envelope of existing

- let or give up or transfer possession or control of the School Premises or any part of the School Premises;<sup>4</sup>
- use the School Premises for any purpose other than conducting a Catholic school;

The Governing Body is to notify the Trustees, in writing, if at any time the School no longer requires any part of the premises for the purposes of conducting a school and, unless the Trustees determine otherwise, that part of the premises shall no longer form part of the School Premises and shall no longer be occupied by the Governing Body but by the Trustees directly.

All profits received from the lettings of the School Premises shall be payable to the Trustees (without prejudice to the right of the Trustees to donate part or all of those monies to the School).

During its occupation, the Governing Body shall ensure that:

- the School Premises are kept in good repair and condition;
- it engages a suitably qualified building professional, approved by the Trustees, to be responsible for advising the Governing Body in relation to their responsibilities for the School Premises;<sup>5</sup>
- adequate insurance cover is maintained for the School Premises in the joint names of the Governing Body and the Trustees, which can either be:
  - insurance through the Catholic Insurance Service Limited insurance scheme arranged through the diocese;
  - an insurance policy approved by the Trustees adequate to provide for full rebuilding costs of the buildings should they be totally destroyed; or
  - with the approval in writing of the Trustees, participation in the Risk Protection Arrangement established by the Department for Education.

A properly authorised officer of the Bishop or of the Trustees shall have a right of access to the School Premises at any time.

#### **4. Specific Responsibilities relating to Health and Safety**

The Trustees consider the Governing Body, whose undertaking is the day to day conduct of the School, to be the duty holder for the purposes of any relevant health and safety legislation.

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buildings which would permanently change the educational provision (e.g. converting a hall into classrooms or vice-versa or converting the hospitality suite to a staff room or vice versa) but not smaller changes within the envelope (e.g. reconfiguring toilets). If in doubt, advice should be sought from the Trustees.

<sup>4</sup> Letting or giving up possession of any part of the school premises only refers to the granting of a lease or licence which gives permanent and exclusive occupation of part of the premises to a third party. It **does not** refer to occasional or regular use of the premises by third parties on a non-permanent and non-exclusive basis (e.g. allowing a parish group to use the school hall on a weekday evening).

<sup>5</sup> DfE "Blue Book Guidance" *Capital Funding for Voluntary Aided Schools in England*, Feb 2011.

If any health and safety duties do rest or remain with the Trustees, the Trustees hereby nominate and appoint the Governing Body to take all steps necessary to discharge that duty, and the Governing Body shall do so on the Trustees behalf.

Where the school is a maintained school the Governing Body is to comply with the requirements set out in the Education & Skills Funding Agency document, 'Terms and Conditions of grant funding for dioceses and non-diocesan voluntary aided schools groups in receipt of school condition allocations in financial year 2020-21' which also sets out the responsibilities of Governing Bodies in relation to health and safety<sup>6</sup>.

The Governing Body is to ensure it has appointed a competent person to assist it in undertaking the measures it needs to take to comply with the requirements and prohibitions imposed by the relevant statutory provisions.<sup>7</sup>

The Governing Body shall ensure it has policies and procedures that promote compliance with all relevant health and safety obligations and ensure that the buildings support the provision of a safe environment for children, staff<sup>8</sup>, visitors and all other persons that use the School Premises. The Governing Body is to appoint a competent person to assist it in discharging its duties<sup>9</sup>.

The Governing Body is to take proper account of any Approved Code of Practice (ACOP) and other guidance, including guidance issued by HM Government, setting out how duty holders are expected to discharge their duties in practice.

The Governing Body is to discharge all of its duties as duty holder under any relevant health and safety provisions in their entirety.

These duties which the Trustees consider fall on the Governing Body include, but are not limited to, duties arising under section 4(1) of the Health and Safety at Work Act 1974 ("HSWA 1974"); the Control of Asbestos Regulations 2012 ("CAR 2012"); the Construction Design and Management Regulations 2015 and the Regulatory Reform (Fire Safety) Order 2005 ("FSO 2015").

Unless the Trustees have separately notified the Governing Body, they confirm they have taken all reasonable steps pursuant to section 4 HSWA 1974 to ensure the School Premises, access and plant are safe and without risks to health so far as reasonably practicable. The Governing Body should nevertheless consider undertaking its own survey of the land and buildings, as appropriate, taking professional advice where necessary.

For the purposes of the FSO 2015, the Trustees expressly nominate the Governing Body as the 'responsible person' for the purposes of discharging the relevant duties under the FSO 2015.

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<sup>6</sup> See 'Terms and conditions of grant funding for dioceses and non-diocesan Voluntary aided schools groups in receipt of school Condition allocations in financial year 2020-21' In particular paras 10, 24.

<sup>7</sup> **The relevant statutory provisions are those defined in s53 Health and Safety at Work Act 1974. For 'competent person' see reg 7 Management of Health and Safety at Work Regulations 1999.**

<sup>8</sup> See 'Terms and Conditions of grant funding for dioceses and non-diocesan voluntary aided schools groups in receipt of school condition allocations in financial year 2020-21'

<sup>9</sup> See reg 7 MHSWR 1999

The Trustees consider the Governing Body to be duty holder and where applicable the main duty holder, for the purposes of regulation 4(1) of CAR 2012 and the Approved Code of Practice, 'Managing and Working with Asbestos' ('ACOP'), and to bear the responsibilities of the duty holder and main duty holder<sup>10</sup>. The Governing Body is to note that the Trustees do not consider themselves to be the duty holder or main duty holder, and do not intend discharging any associated functions. The Trustees will co-operate with the Governing Body to the extent necessary for it to carry out its duties.

Insofar as the Trustees are considered to be a duty holder under CAR 2012 and ACOP, they hereby nominate the Governing Body to carry out the steps necessary to discharge that duty on the Trustees' behalf pursuant to para 103 ACOP CAR 2012, and the Governing Body shall do so on the Trustees' behalf. The Governing Body is to ensure it has the competence to carry out its function as duty holder. The Trustees will co-operate with the main duty holder to the extent necessary for it to carry out its duties.

### **Definitions**

"Bishop" means the Diocesan Bishop.

"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.

"School" includes a maintained school, an academy, an independent school, a sixth form college and a non-maintained special school.

"School Premises" means the premises in the ownership of the Diocese of Shrewsbury and in the occupation of a governing body<sup>11</sup> for the purpose of conducting a Catholic School or otherwise as determined by the Trustees. Unless provided with a site plan delineating the extent of the site, the premises include the entirety of the site owned by the Diocese of Shrewsbury in the occupation of the governing body, including all appurtenances thereon which, for the avoidance of doubt, include all trees and boundary fences.

"Trust Deed" includes the Trust Deed dated the 19<sup>th</sup> September 1963, as referred to in the Deed of Appointment of New Trustees dated the 19<sup>th</sup> September 2018 and other constitutional documents of the Trustees.

"Trustees" means the Diocese of Shrewsbury (Charity Number: 234025)

*Approved by the Trustees on 1<sup>st</sup> February 2021*

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<sup>10</sup> The responsibilities of the main duty holder are principally set out in paras 82 ACOP.

<sup>11</sup> Some Catholic schools in diocesan trusteeship also occupy land which is not owned by the Diocese of Shrewsbury. This document does not apply to such land. This may include local authority owned land (typically playing fields). In ex-grant maintained schools, the same categories of land will be owned by the governing body. In a few cases (e.g. ex-religious order schools) some land may still belong to a religious order which formerly exercised the trusteeship of the school. In these cases, the Diocese of Shrewsbury will be able to advise on the particular arrangements on an individual basis.