

CIPFA Bulletin 11 – Accounting for Assets Owned by Religious Bodies and Used by Schools

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CIPFA issues bulletins to assist practitioners with the application of the requirements of the Code of Practice on Local Authority Accounting in the United Kingdom (the Code), the Service Reporting Code of Practice (SeRCOP) and the Prudential Code, and to provide advice on emerging or urgent accounting issues. Bulletins provide influential guidance that is intended to be best practice, but they are not prescriptive and do not have the formal status of the Code, SeRCOP or the Prudential Code.

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Executive summary

1. This bulletin covers the issues to be considered regarding the accounting treatment of assets owned by religious bodies (church/trustees) for schools within the maintained sector.
2. *Note that until full mandatory implementation of IFRS 16 Leases in 2024/25 this bulletin will only apply to local authorities that have voluntarily implemented IFRS 16 either as of 1 April 2022 or 1 April 2023. It also only applies to English and Welsh local authorities.*
3. It replaces [LAAP Bulletin 101: Accounting for Non-Current Assets Used by Local Authority Maintained Schools](#) regarding these assets. It is important to note that there has to be separation of two distinct items, ie the 'school as a building' and the 'school as a community'.
4. Voluntary aided and voluntary controlled schools may occupy the school buildings under 'mere' or 'bare' licence (referred to in this bulletin as mere licences). This licence does not pass an interest in the property to the school or governing body.
5. There are arguments that there is no contract in place and therefore there can be no lease. However, for completeness this bulletin has considered the full tests for identification of a lease.
6. IFRS 16 specifies that there will be a lease where the customer (in this case the governing body) has both of the following:
 - a. the right to obtain substantially all of the economic benefits and/or service potential from use of an identified asset, and
 - b. the right to direct the use of the identified asset.
7. The bulletin includes an Annex 1 in the form of a flow chart to demonstrate the decisions taken. This numerically cross refers to paragraphs in the bulletin and in Annex 2 where the questions on the flow chart are discussed.
8. There is generally an identified asset, but it might be rarely the case that the churches/trustees have the practical ability to substitute the assets in question.
9. There are differing arguments in relation to whether the governing body or the churches/trustees have rights to the access to the economic benefits or service potential inherent in the asset. It might be the case that this is shared and that they both access the same service potential. It is noted that the religious bodies are of the view that they have access to the economic benefits because only they can take the major decisions on the assets.
10. The church/trustees could, at any time, exercise the decision to take the property out of the education sector, subject only to the requirement to give reasonable notice. The significant decisions on output ie the type of output which will have a major impact on the provision of educational services to pupils has already been decided upon by the church/trustees.
11. Although the governing body does have the right to use the asset and take the operational decisions on the day-to-day running of the school (though not conclusively the right to control the use of the asset) the governing body does not have the right to direct others to operate the asset and the church/trustees do have the right to change those operating instructions during that period. The church/trustees have the right to change the operating instructions whether:

- a. because the school was failing the objects of the trust which meant that this was not for the benefit of the religious purposes, or
 - b. for other less extreme reasons (this, for example, might include instructing operation from different parts of the building).
12. As the church/trustees have the right to change the operating instructions this is likely to mean there is not a lease, and a right-of-use asset need not be recognised.

Section 1: Introduction

13. For England and Wales, local authority maintained schools are a category defined by the School Standards and Framework Act 1998 (as amended). This CIPFA Bulletin focuses on the accounting treatment for the non-current assets used by schools under the Code of Practice on Local Authority Accounting in the United Kingdom (the Code). This bulletin replaces [LAAP Bulletin 101: Accounting for Non-Current Assets Used by Local Authority Maintained Schools](#) (December 2014) as it refers to assets that are owned by religious bodies or trustees and used by schools, but the bulletin remains extant for all other schools' assets, or any assets not covered by the use of 'mere' or 'bare' licences.
14. The CIPFA/LASAAC Technical Information Note 14 (01) sets out *Clarification of the Relationship between Schools as Entities and the Recognition of Non-current Assets used by Schools*. The *Code of Practice on Local Authority Accounting in the United Kingdom Guidance Notes for Practitioners Accounts* (Code Guidance Notes) include more detail on the recognition of schools' transactions and consolidation issues relating to schools.
15. This bulletin focuses on whether the ability of voluntary aided and voluntary controlled schools to occupy premises provided by the Church of England, the Church in Wales, Catholic Church or other religious bodies (referred to in this bulletin as church/trustees) will meet the definition of a lease on the adoption of IFRS 16 *Leases* in the public sector.
16. CIPFA understands that these assets are used by voluntary aided (VA) and voluntary controlled (VC) schools (and may apply to foundation schools that have trustees that own the assets used).
17. *Note that until full mandatory implementation of IFRS 16 Leases in 2024/25 this Bulletin will only apply to local authorities that have voluntarily implemented IFRS 16 either as of 1 April 2022 or 1 April 2023. It also only applies to English and Welsh local authorities.*
18. CIPFA would note that the definition of a lease has changed under IFRS 16 both generally and under the approach taken for public sector adoption. As the approach to the adoption of IFRS 16 focuses on the control of an asset, the bulletin only needs to consider whether there is control of the asset under this standard (and not control of the asset under other standards or the conceptual frameworks) which was the position under IAS 16 *Property, Plant and Equipment* and IAS 17 *Leases* as adopted by the *Code of Practice on Local Authority Accounting in the United Kingdom* (the Code).
19. This bulletin will not repeat or revisit the debate on the recognition of schools (as reporting entities) in local authority financial statements as discussed in the joint HM Treasury CIPFA report [The accounting treatment of local authority maintained schools in England and Wales](#). It

will only consider whether the school should recognise a right-of-use asset on its balance sheet (or for schools in a local authority context, the local authority balance sheet).

Section 2: 'Mere' or 'bare' licences – definition and background

20. CIPFA understands that voluntary aided and voluntary controlled schools may occupy the school buildings under 'mere' or 'bare' licence (referred to in this bulletin as mere licences). This licence does not pass an interest in the property to the school or governing body.

21. A bare licence is defined as follows:

A bare licence is a licence which is not supported by any contract, such as a gratuitous permission to enter a house or to cross a field. It can be revoked at any time on reasonable notice without rendering the licensor liable in damages, but the licensee will not be a trespasser until he has had reasonable time to withdraw.

Megarry and Wade, *The Law of Real Property*, 5th Edition. pp.799–800

22. This provides confirmation that there is no contract or agreement in place for occupation or that purports to give rights of occupation to those responsible for the running of the school. A mere licence passes no rights of use to these bodies. The licence allows the school or body to use the asset, thereby preventing that use constituting trespass.

23. Mere licences are most regularly not written documents and are terminable by the church/trustees at any time. However, the precedent of the Governing Body of the Henrietta Barnett School v The Hampstead Garden Suburb and the impact of Section 30 of the School's Standards and Framework Act 1998 has established that 'advance notice to quit' is required if "the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted on its existing site" and section 30(11) specifies that a minimum two years' notice must be provided.

24. It is important to note that there has to be separation of two distinct items ie the 'school as a building' and the 'school as a community', the latter being the school as reporting entity, which has been covered by the report of the joint treasury and CIPFA LASAAC working group. It should be noted that this bulletin focuses on the use of the property asset and not the operation of the school.

25. This bulletin will cover the general circumstances of the operation of mere licences and the schools using the property, but local authorities will need to consider this on an asset by asset basis to ascertain whether an asset should be controlled by a school as a reporting entity and then under the provisions of Appendix E of the Code recognised in the local authority balance sheet.

Section 3: Is there a contract?

26. This bulletin will examine whether there is a lease under the requirements of IFRS 16 as adopted by the Code. Paragraph 4.2.2.11 defines a lease as:

"a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time."

27. In addition the Code, consistently with other public sector accounting frameworks, includes the following adaptation at paragraph 4.2.2.18:
- “Leases for nil consideration are those that do not include the provision of consideration but that in all other respects meet the definition of a lease.”*
28. The mere licence does not take the legal form of a lease. It is neither a contract nor an agreement and it does not create any legally enforceable rights. It ‘permits’ a school to use, rather than it affording the schools’ governing bodies any rights to control the economic benefits and service potential.
29. Paragraph 4.2.2.36 specifies that an authority is required at inception of a contract to assess whether the contract is, or contains, a lease. A contract is, or contains, a lease if the contract conveys the right to **control the use** of an identified asset for a period of time, following the provisions of IFRS 16, paragraph B9. Specifically, paragraph 4.2.2.2 of the Code specifies that a contract is an agreement between two or more parties that creates enforceable rights and obligations.
30. IFRS 16 as adopted by the Code requires that there are enforceable rights that convey the right to **control** the use of the identified asset and **not** just the right to use it.
31. The fact that there is no contract would suggest that the church/trustees see no need for one because the implicit terms on which the use is permitted will generally be successful in directing the use, for example, the influence of the trust deeds and legislation. The church/trustees reserve a position where they can intervene in the use of the asset at any stage.
32. Both the legal provisions regarding the Henrietta Barnett case and the Schools Standards and Framework Act are not relevant to the issues of enforceability as these provisions relate to the ‘right to use’ not the ‘right to control the use’, which the church/trustees maintain throughout the period (see paragraph 8). The issues are then more precisely whether the occupation of the property can be extended.
33. Consequently, it is possible that arguments might stop at this position as it can be argued that the governing body does not have an enforceable right to **control** the use of the asset beyond the right to use it. However, for a thorough examination this bulletin will consider the arguments for identifying whether there is a lease under paragraphs B9 to B31 of IFRS 16.
34. This bulletin follows the approach to these paragraphs and has adapted the flow chart at paragraph B31 of IFRS 16 (see Annex 1) to respond to the questions raised to identify an asset. Each question raised and presented in the flow chart includes a numeric reference which can be cross-referred to from the flow chart to the bulletin and in Annex 2 where more information detail is presented. **(1)**

Section 4: Identifying a lease

Section 4a: Introduction

35. Paragraph B9 of IFRS 16 requires a local authority to assess whether a contract conveys the right to control the use of an identified asset for a period of time, throughout the period of use. This will be the case where the customer (in this case the governing body) has both of the following:

- the right to obtain substantially all of the economic benefits and/or service potential from use of an identified asset, and
- the right to direct the use of the identified asset.

Section 4b: Is there an identified asset?

36. Although there is normally not a written contract or a specific agreement as the governing body is using a specific asset to deliver school services it is generally agreed that there is an identified asset (though arguments may be had about specific buildings and components of the asset). **(2)**
37. However, paragraph B14 of IFRS 16 sets out that even if an asset is specified, a customer does not have the right to use an identified asset if the supplier has the substantive right to substitute the asset throughout the period of use.
38. The church/trustees have the right to substitute an asset and it is the case that this has taken place (though it is understood that the occurrence is relatively rare). However, in this instance, what must be considered is not the probability of substitution but the practical ability. This might be related to assets held by the church/trustees in a locality and size of school etc. Where this might be the case consideration will need to be made of paragraphs B14 to B19 of IFRS 16. **(3)**

Section 4c: Does the governing body have the right to obtain substantially all of the economic benefits (and service potential) from use of the asset throughout the period of use? **(4)**

39. IFRS 16 paragraph B21 indicates that, to control the use of an identified asset, a customer is required to have the right to obtain substantially all of the economic benefits from use of the asset throughout the period of use (for example, by having exclusive use of the asset throughout that period). A few points need to be noted from this. Firstly, as discussed above the governing body will need to have the right to control the use of the property (land and buildings) and it must have the right to obtain 'substantially all' of the economic benefits and service potential. In the accounting sense 'substantially all' means 'in substance all' not just 'most of' or even 'the majority of', this being evidenced by the example of exclusive use in the standard.
40. The governing body does not have exclusive use of the asset by right. The question is difficult to address because the arrangement between church/trustees and governors is fundamentally about forgoing economic benefits in providing a free service that aligns with both their objectives. The church/trustees have established a school's governing body in furtherance and in accordance with their charitable objects. It was the church/trustees' intention that the school governing body provides educational services in accordance with statutory requirements but also to conduct the provision of these services as a church school. These same benefits are also received by the church/trustees. As a part of the process the church/trustees have control over the use of the economic benefits and service potential inherent in the asset throughout the period of use. They have not forgone that 'right' or ceded it to the governing body in any way. They have the same objectives as the governing body in terms of service delivery. In terms of service potential, both parties can meet their objectives through the use of the property. The practical circumstance is that the governing body is acting as agent for the church/trustees.

41. An alternative indicator is from paragraph B23 of IFRS 16:

“the customer [lessee] is required to pay the supplier [lessor] a percentage of sales from use of retail space as consideration for that use.”

The lessee is using the premises to sell goods and the lessor benefits from those sales – a mutuality of benefit. However, that *“does not prevent the customer [lessee] having the right to obtain substantially all of the economic benefit ... because the cash flows arising from those sales are considered to be economic benefits that the customer [lessee] obtains from the use of the retail space, a portion of which it then pays to the supplier [lessor] as consideration for the right to use that space.”*

The argument here would be that in the school's case the church owns the property, and the governing body is using it. The church/trustees receive its mutual benefit as consideration for the governing body's right to use the property. However, these arguments would only apply if the church/trustee has no enforceable rights to benefit from its own use of the property.

42. Although the primary benefit from the asset appears to be service potential, the property under which the school operates does generate economic benefit. The governing body does not have enforceable rights to **exclusive use** of the property. In practice, many governing bodies might have exclusive use and expect to continue to do so but the question is not one of practice but one of **exercisable** rights that might allow things to be done differently. There are often activities on school sites outside of school hours. For example, provided the safeguarding provisions are being operated the school cannot exclude the church/trustees from using the property during the evening, at the weekends and during the school holidays. Breakfast/after school clubs and summer activities take place on school sites. Examples have been cited of schools being next to churches and being used for their purposes out of school hours and being used four to five nights a week.
43. Additionally, the objects of the trust under which the school is occupied are religious objects for the benefit of the church/trustees and therefore are not restricted to the benefit of the provision of education. Therefore, any benefits that are obtained from a religious perspective because of this would appear to indicate the benefits accrued to the church/trustees are also that of the delivery of these benefits.
44. There appear therefore differing arguments as to whether substantially all the economic benefits and service potential have transferred from the church/trustees to the governing body, with at least some benefits being accrued to the trustees.
45. However, whichever is the case the decision as to whether a lease exists under IFRS 16 is **also** driven by the question of which party to the lease **controls** the use of the underlying asset for the period of use. The governing body does not only to have the right to obtain substantially all of the benefits from the use of an asset but must also have the ability to direct the use of the asset.

Section 4d: Does the governing body, church/trustees or neither party have the right to direct how and for what purpose the asset is used throughout the period of use?

46. Firstly, it is important to note the church/trustees could, at any time, exercise the decision to take the property out of the education sector, subject only to the requirement to give reasonable notice. They would be entitled to do this if they considered that the continued licence was no

longer the best way to fulfil their charitable objects and would be obliged to do so if they considered that the continued use as a school was no longer fulfilling those objects. However, decisions might need to be made about the period governed by legislation and the case law as outlined in paragraph 23 above. **(5)**

47. For mere licences the church/trustees have agreed that the asset may be used for its charitable purposes as a school and has set the parameters in which the school's governing body must operate as it relates to the asset (and not the school as a community or reporting entity). The governing body cannot change these parameters and must continue to operate as a school, for example, the governing body cannot decide that the asset is used for non-educational purposes or other purposes outside the charitable objects which have been determined by the church/trustees (for example for non-denominational activities). Provided that proper processes are followed the trustees will retain the ability to amend the trust deeds, or the parameters of the licence, in ways which might be disadvantageous to the governing body.
48. The governing body will take the day-to-day decisions on the operation of the school and must do so in accordance with the relevant statutory prescriptions (in-line with all other schools). However, these decisions are relating to the school **as a community and a reporting entity** rather than directing **control** over how and for what purpose **the asset** (the property that is the school) is used.
49. The table below considers the examples of decision-making rights cited in IFRS 16 paragraph B26a) to d).

Paragraph	Examples of decision-making rights (IFRS 16 paragraph B26 a) to d))	Commentary
B26a)	Rights to change the type of output that is produced by the asset (for example to decide whether to use a shipping container to transport goods or for storage, or to decide upon the mix of products sold from retail space).	This has already been decided by the church/trustees ie that the asset will be used for educational purposes and that this education will be conducted in accordance with its religious objects. The asset cannot be used for other purposes, for example, for non-denomination-based education or for commercial purposes.
B26b)	Rights to change when the output is produced (for example, to decide when an item of equipment will be used).	The head teacher at a maintained school will recommend the length of a school day, including session times and breaks. The governing body must agree the recommendation. However, unlike the equivalent commercial decisions it is questionable whether this might have significant impact on the use of the economic benefits or service potential taken from the asset.

Paragraph	Examples of decision-making rights (IFRS 16 paragraph B26 a) to d))	Commentary
B26c)	Rights to change where the output is produced (for example, to decide upon the destination of a delivery van or a ship, or to decide where an item of plant is used).	This is not relevant to property assets or if it is the decision has already been taken by the church/trustees.
B26d)	Rights to change whether the output is produced, and the quantity of that output (for example, to decide whether to produce energy from a power plant and how much energy to produce from that power plant).	Where excess capacity for the school is provided the church/trustees/church may often have the right to reduce the asset capacity provided. For example, if school roll numbers decrease, the trustees/church may be able to reduce the number of rooms/buildings made available to the governing body. More importantly there are cases where a large diocese may have the ability to move schools between asset sites which may lead to a right to substitute.

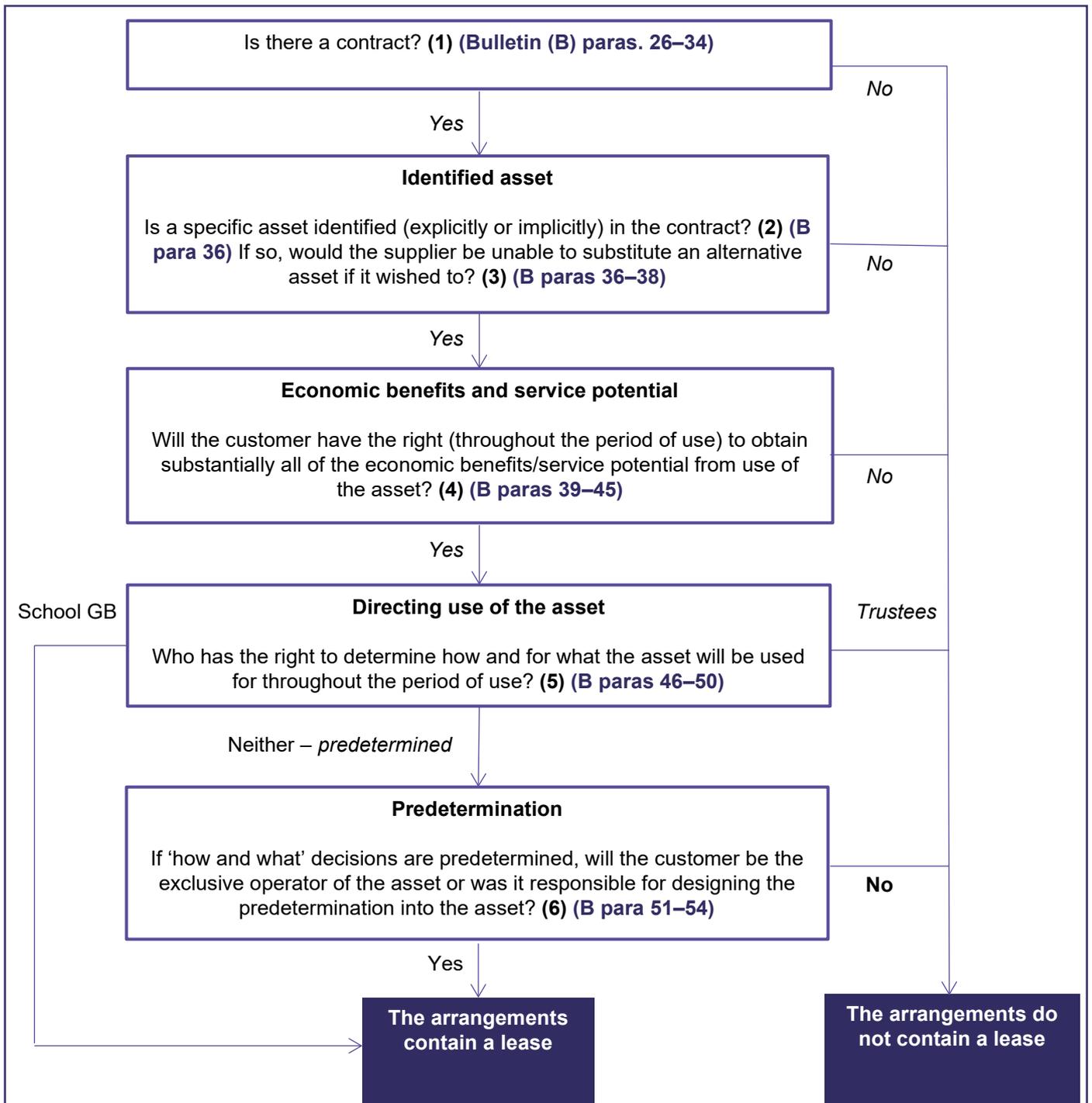
50. The table demonstrates that the decision for the property to be used as a school has already been taken by the church/trustees. The significant decisions on output, ie the type of output which will have a major impact on the provision of educational services to pupils, has already been decided upon by the church/trustees. It is considered that the decisions available in schools would be B26 a) and d). The decision to operate as a religious school has already been decided and the governing body could not take decisions to expand the school.
51. It appears then that as the decisions for what the asset is used are predetermined by the trustees consideration will need to be made of IFRS 16 provisions paragraphs B24 b)i). **(6)**
52. Under IFRS 16 paragraph B24 b) a customer (the governing body) has the right to direct the use of an identified asset throughout the period of use if the relevant decisions about how and for what purpose the asset is used are predetermined and the customer has the right to operate the asset (or to direct others to operate the asset in a manner that it determines) throughout the period of use, **without** the supplier having the right to change those operating instructions. *[Note that paragraph B24b)ii) is not thought to be relevant although there are some adaptations to the buildings (installing gym equipment and white boards etc). It is not thought that the adaptations are significant enough to impact on the service potential or the economic benefits of the asset.]*
53. Although the governing body does have the right to use the asset and take the operational decisions on the day-to-day running of the school (though not conclusively the right to control the use of the asset) the governing body does not have the **right** to direct others to operate the asset and the church/trustees **do** have the right to change those operating instructions during that period. Even though in practice the church/trustees do not specify operating instructions at the

start of the agreement, the question is whether they would be able to do so at any point during the agreement. The church/trustees have the right to change the operating instructions, whether:

- a. because the school was failing the objects of the trust, which meant that this was not for the benefit of the religious purposes, or
- b. for other less extreme reasons (this, for example, might include instructing operation from different parts of the building).

54. As the church/trustees have the right to change the operating instructions this **is likely** to mean **there is not a lease**, and a right-of-use asset **need not be recognised**. Note that this is demonstrated in the Annex 1 flow chart by the confirmation of the bold 'no' response.

Annex 1: Flow chart on IFRS 16 decisions on whether a mere license includes a lease (See also next page for additional commentary)



Annex 2: Table providing more detail on the questions in the flow chart
 (Abbreviations: Catholic Education Service: CES; Governing body: GB)

Flow chart no.	Question	Response of the religious bodies
Existence of a contract		
(1)	Is there a contract?	<p>In the case of church schools there is no agreement, and therefore no contract in place. The governing bodies of the schools occupy the land and buildings under a mere licence which does not convey any rights to the occupier. They are in occupation solely by virtue of a permission by the owners of the land, without which they would be trespassers. Since there is no contract or agreement in place then there is no need to proceed any further.</p> <p>In addition, the other elements in the definitions are also absent. There are no legally enforceable rights and obligations (Paragraph 2.7.2.14 of the Code, using the same definition of ‘contract’ as set out above, provides that: “Enforceability of the rights and obligations in a contract is a matter of law.”), which means that the test for a contract is not met. Equally, no rights have been conveyed to the occupier.</p> <p>In England and Wales, a simple contract (whether oral or written) generally requires the simultaneous presence of all the following elements:</p> <ul style="list-style-type: none"> • an offer by one party and acceptance of that offer by the other (an agreement) • consideration, and • intention to create legal relations. <p>In the absence of any one of these elements, there is no contract – the presence of one or two of the elements without a third is insufficient to constitute a contract. All three of these elements are absent from a mere licence.</p>

Flow chart no.	Question	Response of the religious bodies
		<p>The religious bodies would therefore conclude that as there is no contract that there is no reason to proceed with the further analysis but for the avoidance of doubt have also provided information on the other issues required to identify whether there is a lease.</p>
Identified asset		
(2)	Is a specific asset identified (explicitly or implicitly) in the contract?	NA it is generally agreed that there are likely to be identified assets.
(3)	If so, would the supplier be unable to substitute an alternative asset if it wished to?	<p>The standard refers to the need for the churches to evidence practice of moving GBs to different premises for its own purposes and sourcing of alternative assets demonstrating the churches as having and exercising substantive substitution rights. Further, that the purpose of the asset once vacated by the GB must be for faith-related activities. We are unclear as to where the requirement for subsequent use for faith-related activities arises, as this is not explained in the HMT response, and why the sale of the asset to provide funding for the trustees' charitable purposes would not be sufficient.</p> <p>The CES has already provided examples of where schools have been moved and the GB required to vacate school premises. These examples were only those know to the CES through information gained from assisting dioceses. The CES is confident that many more examples could be provided had the churches been asked to conduct such an exercise.</p> <p>There may be a more positive position that the churches/trustees have the practical ability to substitute than reflected in the bulletin.</p>

Flow chart no.	Question	Response of the religious bodies
Economic benefits and service potential		
(4)	Who has the right to determine how and for what the asset will be used throughout the period of use?	<p>The position of the churches is that the legal framework established by the trustees does not give the governing body enforceable rights that would reflect any diminution of rights that the trustees have over their property. The trustees assert their control over the property by permitting it to be used for precisely the purposes for which they have established the school. The trustees' objectives about how the site is used are the same as those of the governing body, with both of their objectives being met. However, it is the trustees that must first decide that their site is to be used for these purposes within their charitable objects, and who continue to have the rights to the resources in the site. In practice the continued agreement to permit the school as an entity to use the site means that the trustees are perpetually reasserting this control, and this has not been passed to the governing body.</p> <p>(Note it is understood that arguments for academy schools believe that the application of paragraph B9a) of IFRS 16 is split. This is similar to arguments in the bulletin in Section4c.)</p> <p>It should be noted that the governing body cannot carry out any work to the property or make any decisions that would go to the heart of the objects, without the prior consent of the trustees. The trustees may at any time enter the premises for any reason and without notice. The trustees may, at any time, issue instructions to the governing body in relation to its use of the property. This might include the trustees requiring part of the premises occupied by the governing body to be used for specific purposes as directed by them or restricting the ability of the governing body to use the premises for specific purposes or adding or altering the conditions under which the governing body occupies the land.</p>

Flow chart no.	Question	Response of the religious bodies
		<p>Conversely the governing body cannot restrict the access of the trustees to the economic benefits. As stated previously, schools are merely allowed to occupy for the purposes of conducting church schools subject to the control of the trustees.</p> <p>The church/trustees appear to be arguing that they have the right to determine how and for what period of use the schools' properties are used.</p>
Predetermination		
(5)	<p>If 'how and what' decisions are predetermined, will the customer be the exclusive operator of the asset or was it responsible for designing the predetermination into the asset?</p>	<p>The trustees would have the right to intervene with the operational activities of the governing body if they were of the view that the school was not being conducted in accordance with the objects of the trust deed or where the governing body was not adhering to the parameters for use set down by the trustees. This may well include intervening if the education being provided by the school or any activities of the school or any individual teacher were not in keeping with the religious character of the school.</p> <p>Note also the arguments in paragraphs 51–54 of the bulletin.</p>