



# Diocese of Carlisle Board of Education (the 'DBE')

## Photovoltaic Panels ('solar panels') Policy

### 1. Background

In keeping with the Diocesan vision to [Tread Gently](#) and the [Church of England's 2030 net zero carbon target](#), the DBE is keen to support schools in their stewardship of the earth's resources. To this end we encourage all our schools to consider environmentally friendly options which to reduce the carbon footprint of church school sites when undertaking any project.

Among a number of green electricity-generation possibilities, schools are likely to wish to consider solar panels. Where a school is able to purchase solar panels themselves, with a view to recouping the cost over several years, the DBE is often able to permit and support the school in making the switch to renewable energy by this means. Schools wishing to pursue this route are invited to get in touch with the DBE at the earliest opportunity.

However, many providers now seek, rather than selling solar panels to the school outright, to retain ownership of them and instead offer the school electricity generated by the solar panels on its roof at a discounted price. Such providers will wish to recoup their material and labour costs, and to make a healthy profit, over the lifetime of the arrangement. They will seek to put in place terms and conditions which protect their investment. The arrangement is likely to require a lease to be granted to the provider to give them the permission to install their solar panels on the school's roof.

Whilst this route may seem appealing (in that it saves up-front purchase and installation costs), some of the schemes currently being offered have hidden liabilities or unlooked-for consequences and therefore may not, in fact, be in the school's best interests long-term or produce the looked-for or expected savings in energy costs.

The Diocesan Board of Finance (the 'DBF') is the trustee responsible for the majority of church school sites. As a registered charity, the DBF must comply with the statutory requirements relating to charity trustees. In particular, the DBF is required not to take undue risks with charitable property and, before granting any lease, is required by law to obtain appropriate professional advice and be satisfied that the terms of the lease are the best that can be reasonably obtained.

Schools considering entering into a solar panel scheme should be aware that, because of the statutory duties of the DBF, the circumstances in which they will be able to approve an arrangement (other than an outright purchase of solar panels by the school) are extremely limited.

## 2. The role of the DBE

Section 8(4) of the *Diocesan Boards of Education Measure 2021* (the ‘Measure’), requires the consent of DBE “before entering into an agreement or arrangement in connection with the alteration to or repair of the premises of the school.” The addition of solar panels, whether by means of an outright purchase by the school or any other arrangement which may be contemplated, would be covered by this section.

Section 7(5) of the Measure requires schools to obtain the advice of the DBE before entering into an agreement for the disposal of part of the premises of the school. Granting a lease to allow a provider to install solar panels on the school’s roof, counts as a disposal for the purposes of this section.

Even where the arrangements do not constitute a leasehold arrangement, they will necessarily include a grant of rights (over the trustee land) for the purposes of installation, maintenance and repair, which is likely to constitute a disposal.

The DBE will work closely with the school and the DBF to ensure that any consent or advice given does not conflict with the DBF’s statutory duties.

The DBE requires any school considering entering into a solar panel scheme to seek appropriate advice from independent professionals, for example, surveyors and lawyers, on proposed options and agreements, in order to satisfy the requirements of the Measure and charity law. The DBE will not be able to give consent for any proposal which the school cannot demonstrate is in the best interests of the school in the long-term.

## 3. Factors for schools to consider

- Is the school roof structurally sound and are the proposed solar panels compatible with the school’s roof system and/or slope?
- Will the installation of solar panels invalidate any guarantee the school may have received in relation to its roof?
- Are solar panels covered in the school’s insurance policy or will an amendment or additional policy be required?
- Are there up-front capital costs?
- Are there ongoing or future liabilities (some schemes, although favourable for an initial period, have additional liabilities which take effect after a certain date)?
- What are the terms relating to the cost of electricity? Is it a fixed cost or variable? Remember that something which appears favourable now may not be so in 5 years’ time.
- Will the installation of the solar panels add electrical loading to the school’s supply?
- What is the nature of the agreement the school is being asked to enter into (in particular, is a leasing arrangement involved)?
- Is there provision for change and/or termination if trustees or the school wish to do so in due course? And, if so, are the terms restrictive (e.g. prohibitive penalty clause)? As technology improves or new schemes become available, if the cost of electricity no longer proves favourable, or if the school wishes to undertake alterations to buildings, the school may not wish to be locked into the agreement long-term.

- What are the implications for site maintenance – will it become more complicated and expensive? What are the access arrangements for maintaining any parts of the roof which will affect the provider's equipment – will permission from the provider be required to maintain parts of the school's roof?
- Who is responsible for the removal of the solar panels at the end of their economic life?
- What will be the impact on the school of the provider becomes insolvent (e.g. duty to remove solar panels, duty to maintain solar panels, ability to remove solar panels to swap to a new provider etc.)?
- What are the implications for the school if the solar panels do not generate the amount of energy predicted?
- What are the implications for the school if it chooses to or is required to change status to an academy and/or join a multi-academy trust?
- What are the implications for the school if it chooses to or is required to relocate?
- What are the implications for the DBF if the school closed?

## **4. Process**

### **4.1 School to seek consent of DBE**

Once the Governing Body of a church school has undertaken due diligence and can evidence that they have taken appropriate advice and considered all options, if they consider the proposed scheme to be in the best interests of the school, they should write to the Director of Education as Secretary to the DBE seeking consent for the proposed scheme.

#### **The request for consent should include, as a minimum:**

- a copy of the land ownership information for the school site
- a copy of the school site trust deed (if available)
- a copy of the proposed agreement
- a copy of the independent legal and/or surveying or other advice taken by the Governing Body (or a detailed explanation as to why this was not obtained) and
- details of any negotiations undertaken on the proposed agreement.

### **4.2 DBE to consider proposal**

Whether or not the DBE will consent to the proposal will depend on a range of factors including:

- the nature of the proposed agreement
- the experience and reputation of the provider
- any advice obtained by the school
- the DBE requiring further independent professional advice before consenting (please note that where the DBE reasonably considers that such advice is needed, the school will be required to meet the cost of such advice)
- the DBE determining that the DBF also need to consent (which will always be the case if the proposal

includes the granting of rights over DBF building or land to a provider) in which case, the DBE's consent will be conditional on the DBF's approval of the proposal (the DBF may also require legal or other independent professional advice before being able to consent which the school will be responsible for meeting the cost of).

#### 4.3 Indemnity

If a proposal is approved by the DBE, the Governing Body of the school will usually be required to sign an indemnity to the DBE and the DBF (or other site trustees if not the DBF) before entering into an agreement with the provider. A template indemnity can be found in the Appendix below.

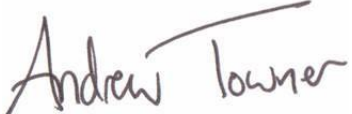
An indemnity will always be required in circumstances where the DBE and DBF or (site Trustees) note an adverse impact on the site of the Church school, its buildings and land and or where there are significant potential liabilities.

Neither the DBE nor the DBF (or site Trustees) will accept liability for any faulty equipment or legal claims made by either party in the future.

Neither the DBE nor the DBF (or site Trustees) will provide funding to the school in the event of any unforeseen costs to the school relating to the agreement or the panels.

#### 4.4 Agreement

A copy of the signed agreement together with any supporting documentation and building survey should be sent to the Director of Education.

<b>Date ratified:</b>	22 <sup>nd</sup> September 2022
<b>Signature of Chair of DBE:</b>	
<b>Review date:</b>	May 2023

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## Indemnity

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**From:** The Governing Body (“the Governing Body”) of [NAME OF SCHOOL] (“the School”) of [ADDRESS].

**To:** The Carlisle Diocesan Board of Finance Limited as trustee of the School and the Carlisle Diocesan Board of Education (together being “the Diocese”).

In this indemnity, references to “Claims” means all demands, claims, proceedings, penalties, fines and liabilities (whether criminal or civil, in contract, tort or otherwise) and “Losses” shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

The Governing Body of the School must indemnify and keep indemnified the Diocese from and against all Claims suffered or incurred by the Diocese arising from or as a result of:

1. the exercise or the purported exercise of any powers, authorities or discretions vested in the Governing Body and affecting the provisions of an agreement entered into by the Governing Body in respect of the installation, maintenance, ownership and/or use of a new Solar PV System at the School and which is dated [DATE] (“the Agreement”);
2. any matter or thing done or omitted or to be done relating to the provisions of the Agreement and/or the enforcement of the Agreement;
3. any breach by the Governing Body of its covenants or other obligations owed to the Diocese arising in the relation to the Agreement.

**Signed:**

**Chair of Governors of the School**

**Dated:**