

BUC GUIDELINES

C29 Churches, Charities and Incorporation (06/2010)

These notes are offered as guidelines by The Baptist Union Corporation Limited to provide information for Baptist churches.

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 property 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.

HISTORY

Early Baptist Churches were formed when groups of individuals gathered together in fellowships where they could have freedom to pray, worship, study the Bible and decide together how the life and work of the church would be organised. This contrasted with the patterns that applied at the time within the Church of England where a strong hierarchy took the decisions with little influence for those who attended. The early Baptists were called dissenters and non-conformists because they did not conform to the established patterns.

It was a long time before Baptist groups could purchase land and build their own chapels. When they did this they appointed individuals who would act as trustees to hold the legal title of the land. The legal documents also stated who should have the benefit of the property, indicating that the property should be used as a Baptist church. Each local church had its own members and local leaders, usually a Minister and Deacons, but descriptions of the way the church should operate were varied, sometimes contained in a detailed Trust Deed, Constitution, or set of Rules.

CHARITY REGISTRATION AND BAPTIST IDENTITY

Baptist churches have been recognised as charities for hundreds of years but the general exception that meant religious charities did not have to be registered with the Charity Commission was withdrawn by the Charities Act 2006. Churches with an income over £100,000 per annum should be registered with the Charity Commission.

A comprehensive and self-contained constitution or governing document was needed so that the local church could adequately demonstrate to the Charity Commission that they were a religious charity with appropriate arrangements for the management of the local funds, activities and mission. It was also important to reflect aspects of Baptist identity. The Baptist Union worked on a document that would help all our churches, especially those seeking charity registration.

One of the challenges in preparing the Approved Governing Document was balancing the established patterns of Congregational Church Government with the preparation of a clear and comprehensive document that was acceptable to the Charity Commission, and would be helpful to our churches.

But what is the legal status of local Baptist churches? What are the right legal arrangements?

CHURCHES AS UNINCORPORATED ASSOCIATIONS

Unincorporated Associations are characterised by having a group of members as well as a leadership group or committee that has responsibility for administration. There is a significant role for members. There are shared aims, mutual accountability and joint responsibility. This kind of structure can apply to churches, sports clubs or other societies, and has been a successful model.

The early Baptists were committed to Congregational Church Government because they affirmed the 'Priesthood of all believers'. It was, therefore, the members who took decisions about church life, particularly in relation to property, the appointment of those who would take responsibility for leadership and administration in the church, and the choice of Ministers.

In 2006 when we were preparing the Approved Governing Document most Baptist churches were already Unincorporated Associations. The arrangements had been in place for many years and were working well. There were good reasons why we wanted to continue with this kind of structure. It was difficult to see how any of the available incorporated structures could easily accommodate this kind of shared relationship, responsibility, and mutual accountability.

Therefore, in consultation with the Charity Commission and others, we prepared our Approved Governing Document for an Unincorporated Association. It reflected aspects of Baptist identity. It has the benefit of creating as few contradictions as possible with earlier property documents but more clearly identifies those who have responsibility for the day to day management of the church.

It also reflected the core identity of a Baptist church as a religious organisation with spiritual aims and charitable objectives. Christian mission was vitally important, together with a way of organising church life that reflected Biblical principles and created a framework that modelled good, open and accountable relationships between Christian believers, following Baptist patterns.

APPROVED GOVERNING DOCUMENT FOR BAPTIST CHURCHES – AS UNINCORPORATED ASSOCIATIONS

Churches that need to register with the Charity Commission or update their current rules may want to use the Approved Governing Document agreed between the Baptist Union and the Charity Commission. They should refer to Guidelines Leaflets C16 *Churches and Charity Registration*, C24 *Church Constitutions*, C25 *Using the Approved Governing Document* and C26 *The Approved Governing Document*.

POTENTIAL PROBLEMS WITH UNINCORPORATED ASSOCIATIONS

However, Unincorporated Associations do not have a 'legal personality' like an individual person or limited company. Practical arrangements need to be made on behalf of the organisation by authorised representatives.

In a Baptist church this would usually be a leadership team, often including the Minister, the Deacons, the Elders, the Church Secretary, or Treasurer. Arrangements would vary depending on local circumstances but in most churches there is a recognised group who carry through the decisions that the church members have taken.

For example, the Church Members may decide that they want to redecorate their hall, note that there are sufficient funds available to do this, then actually authorise the Church Secretary to make the practical arrangements with a decorator and for the Church Treasurer to pay the invoice.

This kind of arrangement has worked very well for many years. Members have understood mutual accountability and recognised a shared responsibility. Although individuals would be making the practical arrangements, they were acting with the authority of the larger group. They could expect that

the funds contributed by members of the local church would be used to pay any bills, rather than facing the possibility of making the payment out of their own bank account.

There has always been a small risk that a church would enter into financial commitments that it could not manage. There was a risk that individuals who had entered into practical arrangements on behalf of the church could carry a personal financial and legal liability.

For example, if a group acting on behalf of a Baptist church, the Minister and Deacons, enter into a building contract costing £100,000 but there was only £15,000 available in church funds they would be very unwise. The builder would expect to be paid and if extra funds were not donated quickly the individuals could have a personal responsibility to meet the cost.

This kind of responsibility and liability has always existed but churches have generally managed the situation effectively. However as Charity law and information about personal responsibility has become more explicit, there has been a growing awareness and anxiety about these legal and financial responsibilities even though there are very few examples of it being a problem in practice.

The concern is about unmanageable risk.

When are the risks of acting on behalf of a church unacceptable?

When do individuals accepting responsibility in a church expose themselves to personal liability?

Are there times when this risk is not acceptable, and cannot be adequately managed?

These concerns can easily become exaggerated. However, when churches become involved with significant community projects, with the employment of a number of staff, are receiving external grants, and engagement in community work with children, adult addiction, debt counselling, or other community projects the potential risks are much greater.

Some churches are considering incorporation as a way to avoid risk and personal liability. Other organisations and charities do this, why not Baptist churches?

Is it the inevitable answer to the problem of unmanageable risk and personal liability?

Is it the obvious answer for all churches and church related organisations?

RESPONSIBILITY – LIMITED LIABILITY – RISK MANAGEMENT

One of the main reasons suggested for converting from an unincorporated structure to an incorporated structure is the benefits to the church leaders who are the charity trustees, in limiting their potential personal liability.

We have already emphasised that this risk has usually been a manageable risk. We know of no occasions where church leaders have lost their own assets to meet the liabilities of a church. Where there is appropriate care, consultation, and mutual accountability, risks can be adequately managed. Managing risk is usually achieved by good communication, mutual accountability and an understanding of shared responsibilities. Churches do not have to do this on their own. When major decisions are needed, relating to investments, property transactions, or building projects, professional advice must be obtained. Insurance can also offer safeguards against major risks.

Remaining as an Unincorporated Association can often be an appropriate response particularly in relation to the work and activities of the local church, even if it is not always appropriate to carry the risk of wider community projects within the same administrative framework.

All charities incorporated or unincorporated need to manage risk. There are risks of fraud, risks of reduced income, risks of accidents, and people problems. We have a separate Guidelines Leaflet F11 *Church Risk Assessment*, and this should help churches consider problems of managing risk.

There is further information about the role of the church leaders in our Guidelines Leaflet C17 *Help I'm a Managing Trustee*, C18 *Help I'm a Deacon*, C19 *Help I'm a Church Secretary* and C20 *Help I'm a Church Treasurer*. The principles in these leaflets apply to all leaders and to all kinds of organisations. It is essential that leaders operate effectively – whatever organisation is involved.

We would also want to recommend the book *Nothing Spiritual about Chaos* by Rachel Tole available for £5 from the publications department of the Baptist Union of Great Britain. This is principally about church administration, but is full of useful information for anybody involved in church life.

Health and safety guidance is available in our guidelines leaflet C7 *Health and Safety and Fire Precautions*.

We do not think that using the Approved Governing Document we have agreed with the Charity Commission should expose churches to unacceptable or unmanageable risk. It has the benefit of preserving patterns of Congregational Church Government and mutual accountability by continuing and developing the principles followed by Baptists for generations.

However, we are aware that some churches are choosing the incorporated model currently available, the Charitable Company, and that others are planning to investigate the Charitable Incorporated Organisation model when it becomes available early in 2011.

Each church – that is the members and the current leadership group (deacons, elders, minister) need to think about these issues carefully so that informed choices can be made.

CHURCH PROJECTS AND INCORPORATION – IS THIS SOMETIMES HELPFUL?

Community based mission activities can carry a significant budget, particularly where money is drawn from community resources. The church may choose to create a separate Charitable Limited Company for the project, under the general control of the church. The church is still an unincorporated charity but can access the benefits of incorporation for the project. This is an important decision and needs careful consideration. Any new company documents need to be specifically prepared to ensure that any intended long term link between the church and the project is maintained.

The benefit is that any potential legal and financial risks associated with the project are contained, within the company structure, with income and expenditure being accounted for within the company, and staff being recruited as employees of the company, rather than employees of the church.

This can reduce any risk to the church and ensure that the tasks related to the management of the project are more widely shared, reducing the risks of personal liability for the church's Charity Trustees.

The creation of a new board to 'manage' the project will enable tasks and responsibilities to be shared.

Where there is a specific church project that becomes incorporated it is usually important that any Board of Directors recognises its ongoing relationship with the church. The company should be required to remain in sympathy with the church's wider aims and objectives since the original purpose of the project was to contribute to the mission of the church in the community. This clarity is especially important when projects are created to operate alongside the church in partnership with other community groups but the church is making a long term commitment.

If the project is wholly organised by the church but is only short term then the company can be wound up when the projects ends. Any liabilities can be managed without affecting the whole life, work, and leadership structure of the church.

Decisions would need to be made about the way any surplus of funds are used. Should these be reinvested in the project or passed back to the church?

In some cases the church might continue to make a contribution to the community project, either in terms of funds, personnel, or allowing the use of premises at a discounted rent.

These arrangements can apply to projects like pre-schools or coffee shops, where the aims of the project, whilst being linked to the church's wider mission priorities, may be more focused on meeting particular community needs.

These separate the identity of a charitable community project from the religious objectives of a local church and can sometimes be helpful in attracting grant funding.

COMMUNITY PROJECTS - GRANTS, FUNDS, STAKEHOLDERS, AND INTEGRITY IN MISSION

Some grant making bodies are unwilling to offer support to religious charities but are able to contribute to community work.

A church could not with integrity disguise its religious principles but may feel it is necessary and appropriate to benefit from public funding in its community work.

Many churches see their engagement with the community as an expression of the Christian gospel in action. Whilst there may be hopes that those involved with the project may become interested in the Christian message – the community work is offered without strings attached!

Creating a separate body to manage and support the community work may mean there is a separate charity that can seek general grant funding. The objects of that charity will not be religious. It will stand at 'arms length' from the church. The charity can function according to the principles and values of the church, whilst being free to work creatively in delivering a useful project and service to benefit the wider community.

When grant funds are offered they will often come with conditions. Users of the services offered by the project, and representatives of the grant making body may need to be included in the management group – or the board of an incorporated charity.

Church leadership groups and the members of Baptist churches are asked to affirm the church's Christian beliefs and a personal faith response. This is entirely appropriate. Including individuals who use or fund a community project in deciding how the project can be advanced is also appropriate, but it may not be appropriate for them to share in the leadership of the church. They may share the church's concern for the community but not its beliefs.

The project may be able to work creatively with local authorities and other strategic partnerships in ways that the church would find difficult. The church does not dilute its principles. These remain and will be a key motivation of their work, and important to volunteers from the church working in the project. The church will offer models of welcome, belonging, and patterns of relationship that can be reflected in the work of the community project.

There can be problems where a community project becomes strong. The Charity Trustees of a project will have a primary duty to act in the best interests of their particular charity. This could mean that a community charity, to run a pre-school could grow, and its board may wish to develop the work in ways that are not necessary 'in step' with the local church. Safeguards can be created but this is a problem that should be considered at the start and managed during the life of the project.

CAN A LOCAL CHURCH BECOME INCORPORATED?

The short answer is 'Yes'.

It is possible for a 'whole' church to be incorporated. This would include the local church, its spiritual and mission activities and any community projects. With very careful drafting of the initial documents it is possible to achieve incorporation whilst maintaining many of the principles of Congregational Church Government, but a standard commercial document is not usually shaped to reflect patterns of mutual accountability and the religious or faith aspects of church life.

A lot of responsibility for the style of the relationship with church members will rest with the board of directors. A pattern of servant leadership may be offered and practiced, but this may not always happen and cannot be guaranteed in a company structure.

Company law expects the executive authority to rest with the directors of a company. Whilst there might be an Annual General Meeting when directors are appointed, and some reserved powers for members, this may not be a sufficient safeguard. Corporate models often allow for proxy voting but the pattern within Baptist churches is for one member, one vote, usually exercised in person at a Church Members' Meeting where members intentionally gather together to pray, listen, discuss and reach a joint decision. Standard commercial practice may not be appropriate.

INCORPORATED CHURCHES? ISSUES TO CONSIDER

Some individuals within churches are so anxious about any potential personal liability that they are uneasy about accepting responsibility as a deacon, elder or minister (or member of the leadership team). In these circumstances some may feel that creating an incorporated structure is helpful.

It is suggested that if the church itself incorporates then all the activities can automatically be managed through one company with the benefits of limited liability achieved by incorporation. Potential leaders may not be discouraged by anxiety about personal liability, and separate administration of different parts of the church's wider work and mission is avoided.

However, there are still questions for the church members to consider carefully before deciding whether an incorporated structure would be better than the unincorporated model, and whether incorporating all the church related activities into one incorporated structure is helpful.

The directors of a company have statutory responsibilities, since the privilege of limited liability is not without obligations. Company directors have a responsibility to operate with integrity, and to protect the assets of the company. They can only operate within the arrangements set out in the company documents and the law. While churches too require their affairs to be managed with integrity and prudence, some aspects of the church's administration and finance may not fit easily into a company structure.

Creating a company may affect the relationships within the church, between the members, the minister (if any) and the directors (whatever name they may choose to use). These may be altered by the new structure, especially in the long term.

In addition, some of the benefits of sharing the workload, working with integrity in the community, and grant funding may be compromised if the church becomes incorporated and attempts to manage all its work and projects through a single incorporated body.

Instead of protecting the church's assets by isolating the project, the church could, potentially, be at greater risk of a legal claim for compensation arising from the community work. The Charity Trustees may have better protection from personal liability, but the church's assets may be more vulnerable.

A church also needs to understand its responsibilities, whether as an unincorporated association or in an incorporated structure. It cannot be appropriate for a church to take on commitments but hide behind the screen of an incorporated structure if it cannot fulfil its responsibilities. Church leaders must act honestly and fairly in their relationships – and not take reckless decisions that adversely affect others.

If grants are obtained how will the church include stakeholders and partners, who may want a 'place on the board'? Would they become joint managers of the church as well as the community project?

Each case is different and legal advice will be needed. Please refer to the section on page 12 under the side heading 'Making Changes – What is Possible?'

So, a church can become incorporated but it may not always be necessary or wise. Careful thought is needed. Even if incorporation is favoured choosing the right framework will be important, see below.

If the Church Members consider the balance of risks and benefits and decide that they want to create a corporate structure for their church or for, an individual project, they need to proceed carefully. The Holding Trustees for any property used by the church should be consulted.

Companies should be able to hold some kinds of church property in their own name, but not all property. Some trust property – or church assets – is already held on special terms and conditions that need to be followed exactly.

The church will probably need independent legal advice from a solicitor with appropriate experience in charity law, company law and property trusts. The solicitor will also need to take into account the beliefs, ethos and principles of a Baptist church, carefully taking into account the information in the church's current constitution, rules and property trusts.

WHAT ARE THE OPTIONS FOR A CHURCH THAT WANTS TO INCORPORATE SOME OR ALL OF ITS ACTIVITIES?

There are many kinds of incorporated organisations, Friendly Societies, Town Councils or Universities created by Royal Charter, and organisations created by Act of Parliament.

The only opportunity currently available for charities seeking to incorporate is the Charitable Limited Company – more information is included below.

It is anticipated that Charitable Incorporated Organisations, an alternative form of incorporated structures, will become available at the beginning of 2011. Information about this is set out below – but do not be surprised if this information is changed when the regulations are published! For more information see page 10.

Community Interest Companies may be useful in some local situations – but is not a structure intended for charities. For more information see page 11.

COMPANIES AND CHARITABLE COMPANIES

A LIMITED LIABILITY COMPANY

A limited liability company formed under the Companies Act has an identity that is distinct from its members and directors as individuals. There is significant protection for the directors of the company from personal liability. Provided that they act responsibly and within the law their personal assets are protected. Financial claims should be made against the company's assets.

A Company Limited by Guarantee is the most common form of incorporation used by charities. When a limited company is also a charity the company directors will be the Charity Trustees with responsibilities under both charity law and company law.

A charitable company is prohibited from paying Dividends to members.

A company is a legal entity, and can enter into contracts in its own name, taking on liabilities and obligations. When a company enters into a contract, unless Charity Trustees/Directors have been

negligent or acted improperly the company will be liable for any debts. The Directors/Charity Trustees are only likely to become personally liable if they have acted fraudulently or have been extremely careless.

A company should not 'trade' or enter into contracts when it is insolvent, having fewer assets than liabilities. If the company directors allow the company to take on new financial obligations it cannot pay they may become personally liable for those debts. In these circumstances they will almost certainly be in breach of their statutory responsibilities and thus lose the benefit of limited liability.

Sometimes the Charity Trustees or Directors of a company do take on a specific personal responsibility if they sign a formal guarantee in which they promise to pay the debts of the company from their personal resources. This would often be needed if the company was borrowing money on a commercial basis from a bank.

COMPANIES WITH SHAREHOLDERS

Many commercial companies have shareholders. The original shareholders would have contributed money to the company in return for their shares. The funds would have enabled the company to invest and to grow, with the shareholders receiving a share of the profits usually called a dividend.

Maintaining a list of shareholders and dealing with the administration of the shares and dividends can be complicated. The shareholders will usually be entitled to attend the Annual General Meeting and to appoint, or remove the directors of the company. In a large commercial company shares are traded so that over time the shareholders change. This can have a significant influence on the way the company operates, particularly where one person or one company has acquired a lot of shares.

Although this model is good for business it is less suited to charities, voluntary organisations and churches.

COMPANIES LIMITED BY GUARANTEE

Most charities that are setting up a company choose this structure. It avoids the need for shareholders but allows a role for members of the company.

Many charities choose a few people to act as the first members when the company is founded. They will probably also be the first directors. This pattern can be maintained so that new directors become directors and members of the company. When people cease to be directors they also cease to be members. Over time the composition of the board and the membership list will change, but the number of members and directors will always be in balance. The board of directors will appoint their successors so the founders of the company will eventually hand over to their successors whom they have chosen and appointed.

However, it is possible to maintain a larger group who serve as members of the company. They participate in the company and will have a continuing role in appointing the directors. This will usually happen at an Annual General Meeting, when there will also be an opportunity to ask questions about the work the company has been doing and to raise any problems for discussion. As members they are entitled to information about the company.

The Members of a Company Limited by Guarantee have few legal responsibilities. These are limited to making a promise to contribute a specific sum of money if the company is wound up because it is closing down, or in debt. The sums of money involved are often very small, usually £1 or less, so this is not a big financial burden!

The fact that the company has a larger membership will usually mean that the directors need to take account of the wishes of the members. The directors have to comply with the law, and cannot behave improperly and use the demands of the members as an excuse, but the members can make suggestions and help to shape the priorities of the company.

This model mirrors some of the ways in which a Baptist church might operate. The members have a role in appointing leaders, but then it is the leadership group that carries the legal and financial responsibility.

If a Baptist church was considering incorporation they would probably want to consider creating a Company Limited by Guarantee. Each person who is already a member of the church would become a member of the company as well.

There are some restrictions about who can be appointed as a director but almost no limits on who can join as a member. There is often a minimum age limit, usually 16 or 18.

Churches expect their members to make a commitment to support the mission of the church. In many Baptist churches it is the current members who decide who can join. In a company it is necessary for there to be more formality, and the welcoming of a new member will normally need to be confirmed by the directors. This can be an administrative formality after the current members have expressed their view, but this needs careful thought because in some cases the company might be set up so that the directors take the decisions.

Voting in a company limited by guarantee is most commonly on a one member, one vote basis, but the articles may specify some other pattern of voting.

A company must have a minimum of one member. As the single member may be another organisation, a one-member company is a useful legal form for subsidiaries.

Company documents can vary these arrangements to a limited extent to suit local circumstances.

Charitable Limited Companies have to prepare their accounts to comply with both Company Law and Charity Law, and since the requirements differ, the accounts can become particularly complicated.

CHURCHES AS CHARITABLE COMPANIES – THE ROLE OF CHURCH MEMBERS

The directors of the company have the benefit of limited personal liability but a standard company structure tends to place all decision making with the board of directors. A sensitive board will still seek to engage with its members, shareholders and supporters but there will be many occasions when they do not have to do so legally.

It would be a foolish board of directors in a Baptist church that chose to ignore the members of the church who provide most of the funds and act as volunteers. However, it is possible to have only a very limited role for members with perhaps one decision making meeting each year that involves church members. The members may have an opportunity to reappoint or dismiss directors, but they may not have any significant role in general decision making or shaping strategy.

It should be possible to reserve authority for members to decide on the most important matters, for example the appointment of a minister, the sale or purchase of land, the closure of the church, and decisions about the appointment of leaders. However, unless the directors are committed to maintaining accountability in their relationships, the corporate model could easily override the patterns of Congregational Church Government that have characterised the life and work of Baptist churches. It is however fair to say that an overbearing leadership operating in an unincorporated model could also be far removed from the best ideals of church life, spoiling relationships, destroying trust and mutual accountability.

THE ROLE OF DIRECTORS - RESPONSIBILITIES

We have already mentioned that there are formalities associated with running a company. Annual Returns need to be made to Companies House and to the Charity Commission. Limited liability is a privilege that depends on finding out what is required, complying with the law, and following the essential procedures for a company. Failure to comply fully with regulation can lead to financial and other penalties on the company, and personal consequences for breach of duty as a director. However, if there is a pattern of seeking and following appropriate advice this should not be a problem.

However, limited liability is not an automatic protection from poor decision making and the failure to take appropriate professional advice. It may offer some shelter, but directors still have important responsibilities. They need to approach these responsibilities with as much care as they would if they were acting on behalf of an Unincorporated Association where there is a more obvious potential for a personal liability.

It is inappropriate for an Unincorporated Association to enter into contracts that it cannot afford; it is inappropriate for a company to enter into contracts it cannot afford. It is inappropriate for a group of Charity Trustees to act recklessly. It is inappropriate for a group of directors to act recklessly.

CHARITABLE INCORPORATED ORGANISATIONS

The Charities Act 2006 created the legal framework for this new type of charitable incorporated structure.

It is anticipated that they will provide the benefits of a Company structure whilst only reporting to the Charity Commission. Some aspects of administration will be simplified and it is anticipated that they will be able to hold some kinds of property in their own name.

New regulations are necessary for these statutory procedures to be implemented – these are not expected until spring 2011 – although they could be later.

A charitable limited liability company must comply with all aspects of charity law and company law. A Charitable Incorporated Organisation will only be accountable to the Charity Commission. A Charitable Incorporated Organisation will avoid the problems of dual regulation by the Charity Commission and Companies House because it will be subject to charity law but not company law.

There is information on the Charity Commission website – a key link to it is:

<http://www.charity-commission.gov.uk/registration/charcio.asp>

The Charity Commission listed the likely advantages, these are summarised here:-

- A simpler registration process.
- More straightforward accounting and reporting requirements.
- A clear structure and legal personality.
- Lower costs.
- Simpler constitutional form, with easier arrangements for merges and other changes.
- Clear duties for directors and an enforcement regime that does not penalise the charity for the conduct of its directors.
- The possibility to hold some land in its own name.

Draft documents have been produced, and have been subject to consultation. We responded to the consultation. We had been hopeful that the promised framework for a membership organisation would be helpful to us, but the requirements for creating and maintaining a membership list were more complicated than we had expected. We await the revised documents with interest but are not

convinced that the expected benefits of a simplified set of arrangements will be achieved. New precedent documents and regulations are expected in spring 2011.

The arrangements need to be rigorous, to ensure that the individuals who accept appointment as trustees of a Charitable Incorporated Organisation recognise the responsibilities that underpin the privilege of operating an organisation with limited liability.

There will be no alternative but to carefully review the regulations and the detailed information issued by the Charity Commission when it becomes available.

We will try to offer general guidance but this kind of change is likely to require detailed legal advice.

Please refer to the section below under the side heading 'Considering Making Changes – What is Possible?'

COMMUNITY INTEREST COMPANIES

A Community Interest Company is not a charitable organisation but a charity can apply to register a Community Interest Company as a subsidiary organisation. It may run trading enterprises to support deprived communities in the UK or abroad, run a business to generate profits that benefit the community, or provide services to the community.

Its structure is designed to be flexible and to provide an alternative to charities and industrial and provident societies. It will be organised in ways that are the same as a limited company – because it will be a special kind of company and still registered at Companies House.

It will also be accountable to the Community Interest Company Regulator, an independent public official. This will be the Regulator who decides if a Community Interest Company can be formed and who will oversee its continuing activities.

For more information see:

<http://www.cicregulator.gov.uk>

Some of the advantages that can arise when a community project is organised through a charitable limited company could apply to a Community Interest Company.

Please also refer to the section below under the side heading 'Considering Making Changes – What is Possible?'

CONSIDERING MAKING CHANGES – WHAT IS POSSIBLE?

It is difficult to provide general guidance to churches – as they are all different.

For many churches there will be a decision not to change their legal structures. They may decide, after reviewing the options that being an Unincorporated Association is still their preferred model.

Others will want to change – and will need to consider which type of organisation will best suit their needs.

Here are some answers to frequently asked questions.

- It is possible already to create a new Charitable Company.
- It is possible already to change from an Unincorporated Association to be a Charitable Company.

- It should be possible to create a Charitable Incorporated Organisation in future.
- It may be possible to change from an Unincorporated Association to a Charitable Incorporated Organisation, but we are awaiting detailed information.
- It should be possible to change from a Charitable Limited Company to be a Charitable Incorporated Organisation, but again we are awaiting detailed information.
- It will be possible to change from a Community Interest Company to be a Charitable Incorporated Organisation.

Legal advice will be necessary, particularly as a change in legal status may affect different churches in a variety of ways – here is the beginning of a list of the issues to be considered, but we expect it is an incomplete list and that there may be other very important issues that affect individual churches. We hope this is a helpful list. It focuses on a possible change to become a Charitable Incorporated Organisation but many issues also apply to Limited Companies.

Contracts	Existing contracts entered into before the change will need to be reviewed.
Employees	The change of structure will mean a change of employer. The TUPE regulations could apply. You will need specific legal advice and must ensure employees are informed about any changes.
Tenancies/Lettings	If the church rents or lets property the arrangements must be reviewed – documents may need to be changed. The church may need to serve formal notices on tenants or landlords with whom formal arrangements already exist.
Finance and Accounts	The accountants, or other financial advisors, Independent Examiners or auditors will all need to be informed.
Financial Commitments – loans/grants	If the church has accepted loans or grants the lenders/partners must be consulted. Can the new organisations still meet the terms of these arrangements? If not the loans may need to be repaid or renegotiated.
Tax and National Insurance	The old PAYE scheme will need to be closed and a new one opened. Any discrepancies in place will need to be renegotiated.
Banks	The church's bank may wish to renegotiate the terms of accounts which are likely to be altered. It may be necessary to renew all Standing Orders in and out.
Property	The arrangements regarding church property should be reviewed, but there may be no necessity to change the property arrangements, especially if one of the Baptist Trust Corporations is the Holding Trustee of church property. It should not be assumed that property in trust for the church can be transferred to either a Charitable Company or a Charitable Incorporated Organisation.
Pensions	Take special care – and advice if you run or pay contributions to a pensions scheme, for example making the change will trigger a cessation event within the Baptist Ministers' Pension Fund, and may have implications for other funds. A cessation event occurs in relation to a pension fund when an employer ceases to have an employee for 12 months. The law is complicated but there can be very significant costs involved.
Legacies	Thought must be given to this – might somebody have left a legacy to your church in its old name and structure? Might the benefit be lost?

Members	<p>Members of the church will need to be consulted. These are important issues.</p> <p>Personal information about members may need to be obtained and retained so as to be available if requested to the Charity Commission in a more comprehensive membership list for Charitable Incorporated Organisations – but these are not available until the Spring of 2011 at the earliest. Such lists are also required by Companies House at regular intervals, and are put on public display.</p>
Governing Documents	<p>New documents will be needed – it is unlikely that the precedents produced by the Charity Commission will be suitable for a Baptist church/Association.</p> <p>For a company the Governing Document is called a Memorandum and Articles of Association. Please check with your Trust Company as to whether any guidance can be offered.</p>
Guarantees and Warranties	<p>The church may have the benefit of warranties that do not pass automatically. Where these relate to small items, eg a kettle, there is no problem. Where they relate to a building it is very important.</p>
Administration	<p>It will be different, and it will be important to understand the new requirements – and new deadlines for actions. The new arrangements are not necessarily more complicated, they are different and need to be understood clearly.</p>

NEW GOVERNING DOCUMENTS – MEMORANDUM AND ARTICLES FOR A CHARITABLE COMPANY

We have prepared a document for Unincorporated Associations and emphasised that standard documents for incorporated organisations may not be suitable for a Baptist church.

Specialist legal advice from lawyers who understand Baptist churches is important if such a significant change is proposed.

We cannot prepare model documents for a Charitable Incorporated Organisation until the regulations are published.

The Baptist Union may be able to offer some precedent documents for a charitable company through our solicitors.

APPOINTING A SOLICITOR

The solicitors who act for the Baptist Union Corporation Limited would be able to offer guidance. They are

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham
B3 2ES

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

Website: www.anthonycollins.com
Email: jenny.smith@anthonycollins.com

Please make initial contact with Jenny Smith or Phil Watts.

The firm has a strong Christian ethos and all their 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. They have particular expertise in charity law and company law.

If a church is considering a change of structure then Anthony Collins LLP (or the local Trust Company's solicitors) would be good solicitors to consult.

DECISIONS

If a church converts to an incorporated structure they need to continue to act prudently and carefully. Incorporation is not some form of 'magic' protection for those who are reckless.

Changing a church to a Limited Company, Charitable Incorporated Organisation or creating a Community Interest Company may permanently affect the pattern of relationships between members and leaders. A wise leadership would still involve members but there could be a shift away from established patterns over time.

Protecting the Charity Trustees from personal financial liability by incorporating all the church's activities, in contrast to the incorporation of particular projects, might create a different kind of risk for the church. The protection of Charity Trustees personally through the incorporation of the whole church could limit their personal liability, but expose the church's funds and assets to different risks.

So, is there anything positive that can be said about incorporation for local churches? As part of a clear and considered strategy for the effective use and protection of assets for mission, incorporation can be a useful tool. Maintaining an appropriate balance between the role of company directors and church members will require special care to preserve, mutual accountability, and a shared commitment to advance the work of the church together.

If potentially gifted leaders are discouraged from offering service as Charity Trustees because of personal liability, a local church may conclude that there may be an advantage in incorporation. Only when we look back over time may we know whether the benefits will have outweighed the potential problems only with the benefit of experience will we be able to establish whether this kind of change to our administration and structures will bring fundamental and unwelcome changes in our churches.

Association Trust Company	Contact
Baptist Union Corporation Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
East Midlands Baptist Trust Company Ltd	The 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 BMS International Mission Centre 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
London Baptist Property Board	London Baptist Association 235 Shaftesbury Avenue London WC2H 8EP Telephone: 020 7692 5592
North West Baptist Association	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
South West Baptist Trust Corporation	South West Baptist Trust Corporation Wonford Baptist Chapel 36-38 Wonford Street Exeter Devon EX2 5DL Telephone: 01392 433533
West of England Baptist Association	West of England Baptist Association The Old Forge Broom Hill Stapleton Bristol BS16 1DN Telephone: 0117 965 8828
Yorkshire Baptist Association	The Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700

As at Jan 2010

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 Baptist Union Corporation Limited 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 at the Baptist Union Corporation, 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 Baptist Union Corporation staff also deal with churches that are in trust with the East Midland Baptist Trust Company Limited, the North Western Baptist Association (Incorporated), and Yorkshire Baptist Association.

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 has been included.

If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

The Baptist Union Corporation Ltd, Baptist House, PO Box 44, 129 Broadway, Didcot, Oxfordshire OX11 8RT England

Telephone **01235 517700** facsimile **01235 517715** e-mail **buc.corp@baptist.org.uk DX 40852 Didcot**

A Company Limited by Guarantee. Registered in England No 32734. Registered Charity No 249635