

## **Guideline Leaflet C01: Charity Legislation and Churches**

All Baptist churches are individual charities in their own right. This applies whether or not the church has registered as a charity with the Charity Commission. As charities, churches are subject to the requirements of charity law. The implications of charity law for a church are explained in this leaflet.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at [www.baptist.org.uk/resources](http://www.baptist.org.uk/resources)

The date on which the leaflet was last updated can be found on the download page.

# C01: Charity Legislation and Churches

**These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.**

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[L17 Legal and Operations Team – Regulatory Information](#)

**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.**

## CHURCHES AS CHARITIES

All Baptist churches are charities, whether or not they are registered with the Charity Commission. A charity is legally defined as 'a body or trust which is established for a charitable purpose and is for the public benefit'.

There are considerable financial advantages afforded to organisations with charity status. These include relief from some taxes and rates and the benefits of gift aid. Like all charities, churches are subject to the general requirements of charity law which are found in the Charities Act 2011.

Churches have complex legal structures. A local church occupying church premises, owning a manse for its Minister, operating working funds and having other funds raised for a special purpose may in law constitute several associated charities. In addition, the church may work with other projects (for example a pre-school or coffee shop) which may be treated as separate charities.

The position is further complicated because most churches are unincorporated associations and their premises and some investments are held by 'property trustees'. The premises of a Baptist church are usually vested in a Baptist Trust Corporation such as the Baptist Union Corporation.

## CHARITABLE OBJECTIVES AND PUBLIC BENEFIT

A church's main charitable objective is the advancement of religion. This is one of the purposes which are defined as charitable by the law. Many churches will have other charitable objectives as well because of their activities within the community.

There used to be a legal presumption that the advancement of religion automatically met the requirement for a church to be of public benefit before it can qualify as a charity. The Charities Act 2006 removed this presumption for all charities so churches are required to demonstrate that they can provide benefit to the public when they register with the Charity Commission.

This means that the church must have a Governing Document (Constitution) containing purposes that are capable of being charitable. The Baptist Union has agreed documents with the Charity Commission that meet this requirement; please refer to C04 *Approved Governing Document*. See also C03 *Church Constitutions* and C05 *Using the Approved Governing Document*.

The Baptist Union was involved (with others) in a consultation process with the Charity Commission

about the ways in which churches (and other religious charities) can demonstrate Public Benefit.

The 2006 Act gave the Charity Commission a new objective to promote understanding and awareness of the public benefit requirement.

A guideline leaflet has been prepared for Baptist churches C09 *Registered Charities and Public Benefit*.

## THE CHARITY COMMISSION

The Charity Commission is now established by law as the regulator and registrar for charities in England and Wales (but not in the Isle of Man or Channel Islands; there is a separate Charity Commission for Scotland). They fulfil this role by securing compliance with charity law, by enabling charities to work better within an effective legal, accounting and governance framework and by promoting sound governance and accountability. They help charities follow 'best practice'.

The Commission publishes a number of comprehensive and helpful guideline leaflets which are available from their website at <https://www.gov.uk/government/organisations/charity-commission> . We would particularly recommend their guidance 'Managing Faith Charities as Trustees' which you can find [here](#). They also operate a helpline on 0300 066 9197. However, it is important to remember that the staff at the Charity Commission are not often used to the peculiarities of Baptist churches and how they operate! The Legal and Operations team guideline leaflets are an additional resource written specifically to reflect the implications of the law for a Baptist environment; these are available at [www.baptist.org.uk/resources](http://www.baptist.org.uk/resources)

## CHARITY REGISTRATION

Under the provisions of The Charities (Exception from Registration) (Amendment) Regulations 2021 some Baptist churches are currently excepted from the need to register with the Charity Commission. Churches have been charities for many years because of their activities. The advancement of religion is one of the objectives that makes an organisation or activity charitable.

Charity registration has been introduced progressively for all charities but churches (religious charities) are one of the last groups to be registered. Churches with an annual income over £100k must now register.

The technical phrase describing churches that are not registered charities (because their annual income is below the £100k threshold) is that they are 'excepted from registration' under The Charities (Exception from Registration) Regulations 1996. This arrangement is now effective until 31 March 2031 but only for churches with an annual income below £100k. The Charity Commission will not accept applications from churches with incomes below £100k unless the church is registering as a CIO (Charitable Incorporated Organisation).

From April 2021 the excepting regulations were due to end and churches were expected to be treated the same as all other charities such that registration would be required for any church with an annual income over £5000. However the Charities (Exception from Registration) (Amendment) Regulations 2021 extended the exception for a further ten years, until 31 March 2031.

The expectation is that the Charity Commission will introduce voluntary phased registration of excepted churches, probably in groups based on income. The Government has confirmed that the Charity Commission will be in touch with church representative bodies to design and develop the voluntary registration programme and will publish guidance on the programme when it is ready to commence. We do not yet have any further details of this.

At the moment, churches only need to register if their gross annual income exceeds £100k. Gross income means all the money the organisation has received in a financial year from all sources, including:

- Grants;
- Gifts;
- Income from sales of goods and services;

- Fundraising;
- Interest on investments;
- Capital that the trustees can decide to spend as income (this figure is calculated before deduction of any costs or expenses); and
- Income from any special trusts.

**It excludes:**

- The receipt of a loan by the church;
- Loan repayments to the church;
- Money received from the sale of investments and fixed assets; and
- Gains or profits on the sale of investments and fixed assets.

If your church's income was over £100k last year but it is normally much less than that the Charities Act does require you to register but you can apply to the Charity Commission for a determination that you need not do so. Their helpline number is 0300 066 9197 or you can contact them online here: <http://forms.charitycommission.gov.uk/enquiry-form/>

More information can be found in BUC guideline leaflets:

- C03 *Church Constitutions*
- C04 *Approved Governing Document*
- C05 *Using the Approved Governing Document*
- C06 *Churches and Charity Registration*
- C07 *Registering as a Charity Online.*

**CHARITABLE INCORPORATED ORGANISATIONS**

The Charities Act 2011 provided a new vehicle for charities who want a corporate structure which is known as a Charitable Incorporated Organisation (CIO). This is useful for charities who want to be incorporated. For an expanded explanation and comment on incorporation please refer to C11 *Churches, Charities and Incorporation*. All CIOs are registered charities whatever their income level.

**CHURCHES AS REGISTERED CHARITIES**

A registered charity is required to file its annual accounts and annual report to the Charity Commission, and to submit an annual return. These must be completed and returned within 10 months of the end of the church's financial year; it is important to meet the reporting deadline.

A registered charity must state that it is a registered charity and include its charity number on all notices, advertisements and other documents issued by or on behalf of the charity, including cheques.

**ANNUAL ACCOUNTS**

Whether or not a charity is registered it must comply with the law relating to the preparation and examination or audit of its accounts. Churches are referred to guideline leaflets F02 *Guidelines on Charity Accounts with Income under £250,000* and F03 *Guidelines on Charity Accounts with Income over £250,000*.

A church must be prepared to provide a copy of its annual accounts to any person who requests them subject to payment of a reasonable fee.

**ANNUAL REPORT**

In addition to annual accounts a church which is registered as a charity is obliged to produce an annual report. The annual report and accounts are the primary means through which the church's Charity Trustees (usually the minister, deacons and elders, or Leadership Team) report on their stewardship of their charity and show public accountability.

The two documents form a package and should be sent together. The accounts provide financial

information as to how resources are obtained and used and about the financial situation of the charity.

A guideline leaflet F05 *Preparation of Annual Reports* offers further guidance but an annual report should explain what the charity is trying to do, how it is going about it, and whether it has achieved its objectives. It also provides an opportunity to explain the figures in the accounts.

## **ANNUAL RETURN**

The amount of information required will depend on the income level of the church. Registered charities with an income of £10,000 or below in their previous financial year will receive a basic Annual Information Update from the Charity Commission which includes information forming part of the charity's entry on the Register, including trustee details.

Registered charities with an income over £10,000 are required to complete an Annual Return requesting essential information which is needed to update the details which the Commission holds about the charity.

## **CHARITY TRUSTEES**

The law regards the people who actually have the general control and management of the administration of the charity as the 'Charity Trustees', whatever title may be applied to them locally. In the case of a Baptist church the 'Charity Trustees' are usually the minister, elders, deacons or Leadership Team. For churches that are registered charities this information must be notified to the Charity Commission and kept up to date using the online update function on the Commission's website which is available here: <https://www.gov.uk/change-your-charitys-details>

Charity Trustees of all charities (even if they are not registered) have a duty to ensure that the charity is being organised in accordance with its constitution. They must always act reasonably and prudently in all matters relating to the charity. They should exercise the same degree of care in dealing with the administration of the charity as a prudent business person would exercise in managing their own affairs. It is clear that Charity Trustees must make sure that funds are available before any obligations are entered into, such as a building contract.

Great care should also be taken to ensure that the provisions of the church's constitution are complied with, particularly in connection with any significant project, for example, by making sure that a special church meeting is called when appropriate. Charity Trustees must ensure that the funds under their control are correctly managed and invested, and that they are used in accordance with the terms of the relevant trusts or church constitution.

For further information about the responsibilities of Charity Trustees and other church leaders see:

C15 *Help I'm a Charity Trustee*

Where the Baptist Union Corporation holds the legal title to church premises it will assume some responsibilities as Property Trustee (also known as Holding Trustee), for example in dealing with legal requirements associated with a property transaction. However, for day-to-day matters the local 'Charity Trustees' have responsibility for the 'management' of the church and their buildings.

## **GUIDANCE FOR PROSPECTIVE TRUSTEES**

If you have been asked to consider becoming a charity trustee you should make enquiries about the church's financial situation so that you are clear what potential liabilities you might be taking on. You should ask to see the church's budget and a recent set of audited or independently examined accounts; you should read their annual reports and governing documents. It is important to know whether the church has a pension deficit and what steps it is taking to address that deficit, for example, making deficit contributions to the Baptist Pension Scheme. You should ask the existing trustees whether there are any particular challenges or difficulties that the church is facing at the present time.

In practice most people have served, do serve, and will continue to serve without facing a personal liability as a charity trustee of a local Baptist church – but we cannot promise that this will never

happen.

The trustee indemnity insurance that is available from insurers such as Baptist Insurance offers some protection to charity trustees against personal liability. The public liability insurance offered by Baptist Insurance automatically includes cover for trustee indemnity insurance, with a limit of £100,000. Higher limits can be added for an extra premium. Churches are entitled to use church funds to purchase this type of insurance for their charity trustees.

Charity trustees are encouraged to take advantage of the training opportunities offered to them including those offered within our Union.

If in doubt, trustees should obtain independent legal and professional advice.

## **INSURANCE AND LIABILITY**

Charity trustees and church members may under certain circumstances be personally liable for the obligations of the charity. They will sometimes be entitled to an indemnity from the assets of the charity for any liability undertaken on behalf of the charity. A problem arises if the charity has insufficient assets.

Charity trustees may wish to purchase trustee indemnity insurance out of the funds of the charity to insure themselves. From March 2007 the Charities Act allowed trustees to take out trustee indemnity insurance using the charity's funds without the permission of the Charity Commission, as long as there is no provision in the charity's governing document which specifically forbids this. If there is a specific prohibition in the charity's governing document then trustees will need to contact the Commission so that they can amend this before the trustee indemnity insurance is purchased.

It is very important for the Charity Trustees of the church to make sure that there are adequate and relevant insurance policies in force for church buildings and their contents and for public and employers' liability. Failure in this respect could involve personal liability.

Further information about insurance and liability can be found in guideline leaflet L16 *Legal Liability of Church Members in a Baptist Church*.

## **PAYMENTS TO TRUSTEES**

Charity Trustees are not normally entitled to be paid for their services out of charity funds, other than reimbursement of reasonable and necessary out of pocket expenses. In the same way Charity Trustees may not benefit directly or indirectly from the charity by, for example, taking a lease of property belonging to the charity or borrowing money from the charity. Similar restrictions apply to employing trustees or people related to them unless a church's constitution specifically allows this.

It has long been accepted by the Charity Commission, however, that these restrictions do not prevent the minister of a Baptist church from receiving a stipend while being a Charity Trustee. However, a church updating its constitution must include a specific provision to authorise this payment.

The BUGB Approved Governing Document – see C04 *Approved Governing Document* – does include clauses that create a framework for this kind of payment at clause 20.

If a church wishes to pay a Charity Trustee as an employee, they must either seek consent from the Charity Commission or have specific provisions authorising payments in the local church Constitution.

The Charities Act 2006 allows charities to pay an individual Charity Trustee for providing an additional service to the charity – if they think it is in the best interests of the charity – without having to go to the Commission for authorisation. An example of this could be a trustee who is a plumber providing plumbing services to the charity, as long as the trustees agree that it is in the charity's best interests. This might happen because the trustee is charging a more competitive price or is in some way delivering a better service than the trustees could get elsewhere.

There are important points to remember:

- the number of trustees (or their relatives) receiving payment in this way must be in a minority;
- the amount paid must be reasonable and set out in a written agreement between the trustee and the charity; and
- the governing document must not contain any specific provision forbidding this type of payment.

Before agreeing to pay any Charity Trustee all of the other trustees must be satisfied that there is a clear advantage to the church. Where there is no favourable cost comparison and no special expertise possessed by the trustee concerned this is unlikely to be the case.

Where a Charity Trustee is being paid the unpaid trustees must put procedures in place to manage the conflict of interest and to monitor the performance of that trustee. Paid trustees cannot represent the charity as trustees in relation to matters which affect their paid employment and must always be in the minority on the trust body.

The Charity Commission recommends that payments to trustees be disclosed in the church's annual report and accounts. Detailed guidance and a checklist of the factors to be considered before a trustee receives payment are available at <https://www.gov.uk/government/organisations/charity-commission> (information leaflet CC11 'Trustee Expenses and Payments').

Further information on this issue can be found in guideline leaflet C16 *Conflicts of Interest*.

## DISQUALIFICATION OF CHARITY TRUSTEES

Almost anyone asked to serve as a church leader will be a Charity Trustee. Consequently, there are certain legal restrictions that a church needs to be aware of when appointing its leadership.

From 1 August 2018 changes to the automatic disqualification rules mean that there is an increase in the number of legal reasons that disqualify someone from acting as a charity trustee.

The updated reasons for disqualification are below, those marked \* only applied from 1 August 2018:

1. being on the Sex Offenders' Register\*
2. **unspent** conviction for an offence involving
  - deception or dishonesty
  - terrorist offences\*
  - money laundering\*
  - bribery\*
  - misconduct in public office\*, perjury\*, perverting the course of justice\*
  - contravention of certain preventative Orders of the Charity Commission (s.77 of the Charities Act 2011) \*
  - attempting, aiding or abetting these offences\*
3. contempt of court\*
4. designation under specific anti-terrorist legislation\*
5. found guilty by the High Court of disobeying a Commission order or direction\*
6. removed from:
  - trusteeship, or as an officer\*, agent\* or employee\* of a charity by the Court or the Commission for misconduct or mismanagement
  - a position of management or control of a charity in Scotland for mismanagement or misconduct
7. disqualification order under the Company Directors Disqualification Act 1986
8. undischarged bankruptcy
9. composition or arrangement with creditors which includes an individual voluntary arrangement (IVA), and is currently on the Insolvency Service Register.

In special circumstances the Charity Commission can waive these requirements but each case will be considered on its merits. It is good practice to ask current and prospective trustees to confirm that they



are not disqualified from being a trustee. The easiest way to do this is to ask them to complete a declaration of eligibility form. The Commission publishes a suitable form [here](#) and have also published a supplementary form to cover the new reasons for disqualification which can be found in [this](#) guidance in the 'Preparing for the rule changes' section.

The Commission has prepared a [detailed table](#) which outlines the current and future criteria for automatic disqualification. Further advice from the Commission on how the automatic disqualification rules apply can be found [here](#).

People who are disqualified from acting as a trustee are also disqualified from holding certain senior manager positions at a charity. Relevant senior manager positions are both Chief Executive (or equivalent) positions and Chief Finance Officer (or equivalent) positions. The new 'senior manager' provisions are not expected to have an impact on many Baptist churches because in a church context anybody in a role of this kind would usually be a trustee as well.

## **AMENDING ADMINISTRATIVE RULES**

From March 2007 the Charities Act gave the trustees of all non-company charities power to pass a resolution to alter the parts of their charity's governing document which set out how they administer their charity, for example the number of trustees needed to form a quorum at meetings. They only need to use this power if it is not already included in the charity's governing document. The power applies to administrative matters only.

## **REPORTING SERIOUS INCIDENTS TO THE CHARITY COMMISSION**

Sometimes when incidents occur they have to be reported to the Charity Commission. All Baptist churches are charities whether or not they are registered with the Commission, and all Baptist churches have to comply with the Commission's serious incident reporting procedures. Charity trustees should refer to the Commission's guidance on reporting serious incidents which can be found [here](#). The Commission has a dedicated ['Report a serious incident' online form](#) which should be used to report serious incidents.

If your charity has been (or even if you suspect it has been) the victim of a fraud you must report this as a serious incident to the Charity Commission. You must also report the matter to Action Fraud [www.actionfraud.police.uk](http://www.actionfraud.police.uk)

Further guidance can be found in leaflet [C17 Serious Incident Reporting](#). This leaflet explains what a 'serious incident' is, how to report it, and the further action that you need to take.

## **LAND TRANSACTIONS AND MORTGAGES**

There is now no general requirement to obtain the consent of the Charity Commission for the disposal or mortgage of land except where the transaction is to a 'connected person'. A connected person is a trustee or employee of the charity, one of their close relatives or someone with whom there is a shared business or partnership. In all cases where there are proposals to purchase or mortgage property the Baptist Union Corporation, or your own property trustees, can help to ensure that all the rules are complied with. Reference should be made to the guideline leaflets dealing with buying and selling of property:

- PM01 *Buying a Manse*
- PM02 *Selling a Manse*
- PC08 *Buying Land or Premises for a Church*
- PC09 *Selling Church Land or Premises*

## **SMALL CHARITABLE FUNDS**

There are now more flexible arrangements for churches with small charitable funds with an annual income less than £1,000 but with permanent endowment restrictions. The Charities Act enables the capital to be spent more easily. In the past, churches were only able to spend the income from such funds, not the capital, unless they applied to the Charity Commission for permission.



The new Act permits Charity Trustees to spend capital if they 'are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund could be expended as well as income'. Churches who would like to wind up small trust funds held by the BUC should contact the Legal and Operations team.

For larger funds it may still be possible to spend capital but the Charity Commission will still need to be involved.

## **FUNDRAISING**

Fundraising by a 'professional fundraiser' or with the help of a 'commercial participator' is subject to strict rules. A 'professional fundraiser' is someone who carries on a fundraising business or who for reward makes appeals for money or property for the benefit of a charitable organisation. A 'commercial participator' is a person who engages commercially in any promotional venture, representing that contributions are to be given to a charitable institution. It is unlikely that a church will be involved with a professional fundraiser or commercial participator, but if it is, professional advice must be obtained.

## **CONCLUSION**

The requirements of charity law are sometimes seen as irksome burdens unnecessarily placed on hard pressed church volunteers and leaders but it should be remembered that churches as charitable organisations enjoy very significant financial advantages and have a duty to all who support their work to be properly accountable.

Association Trust Company	Contact
<b>Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd</b>	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
<b>Heart of England Baptist Association</b>	Heart of England Baptist Association 480 Chester Road Sutton Coldfield B73 5BP Office Mobile: 0730 505 1770
<b>London Baptist Property Board</b>	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
<b>Yorkshire Baptist Association</b>	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
<b>West of England Baptist Trust Company Ltd</b>	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

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 Legal and Operations Team 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 in the Legal and Operations Team 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 Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

**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 is provided above. If you have private trustees they too should be consulted as appropriate.**

**Contact Address and Registered Office:**

Support Services Team, Baptist Union of Great Britain, Baptist House, PO Box 44,  
129 Broadway, Didcot OX11 8RT  
Tel: 01235 517700 Fax: 01235 517715 Email: [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk)  
Website: [www.baptist.org.uk](http://www.baptist.org.uk) Registered CIO with Charity Number: 1181392

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