

## **Guideline Leaflet T02: Modern Model Trusts**

This leaflet explains Modern Model Trusts from 1951 onwards. The Fuller, Fairbairn, Kingsgate and Holborn Trusts will be familiar to some Baptists, although the current Baptist Trusts for Churches 2003 and Baptist Trusts for Manses 2004 are often used to update old trust deeds – or to create new ones.

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.

## T02: Modern Model Trusts

**These notes are offered as guidelines by 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.**

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T01 *Baptist Trusts – Beginnings and Patterns*

T02 *Modern Model Trusts*

T03 *Appointing Property Trustees – Baptist Trust Corporations*

T04 *Ultimate Trusts – Recycling Money for Mission*

## **MODERN MODEL TRUSTS**

### **OWNING CHURCH PREMISES**

Most churches have a building or other premises as their place of worship from which they reach out in mission to their community.

If the question is asked, 'Who owns the church building?' the answer will probably be that the church does. In many ways that is true but there are legal implications of property ownership which need to be considered in more detail.

Legally, the ownership of the church premises or the "legal title" will be in the name of trustees. The trustees may be private individuals who are, or were, connected with the church. The trustees will often be a Baptist Trust Corporation, such as the Baptist Union Corporation Limited. There is a full list of the Trust Corporations on the final page of this leaflet.

Most Baptist churches are legally 'unincorporated associations'. An unincorporated association is not like an individual or a limited company that can hold land in its own name. The trustees 'hold' the property on trust for the church, with the church being the beneficial owner. The purposes for which the property is held are set out in a legal document or foundation deed and are called 'trusts'.

Some churches choose to incorporate as a Charitable Incorporated Organisation (CIO). For further information on incorporating as a CIO, please see our Guidelines Leaflet C11.

### **TRUSTS – SPECIAL RULES AND HELPFUL FRAMEWORKS**

Our leaflet T01 *Baptist Property Trusts – Beginnings and Patterns* explains the history and development of Baptist Property Trusts. These legally binding 'special rules' indicate how property should be used. Baptist Trusts usually indicate that properties should be used by a Baptist church. Some documents also included a framework of arrangements - particularly about property.

### **THE BAPTIST AND CONGREGATIONAL TRUSTS ACT 1951**

This private Act of Parliament was promoted by the Baptists in partnership with the Congregationalists.

The Act made it easier for churches to appoint one of the Baptist Trust Corporations as the trustee of their church's property.

It also enabled standard trusts to be agreed and promoted for church property and manses.

The Act allows the Baptist Union to agree Model Trusts by passing formal resolutions at the Baptist Assembly in two successive years.

The Act allows new Model Trusts to be promoted by the Union not sooner than ten years after the previous Model Trusts have been promoted.

There are two sets of Model Trusts – one for residential property and one for chapel property. The administration and legal requirements of charity law are different for the two kinds of property.

Property used as chapels or land (not residential) is usually classed as 'permanent endowment' so there are restrictions on how money arising from a sale can be spent. It can often only be used for another purchase

of similar property, the purchase of investments, or kept in a special trust fund account.

Residential property is not usually permanent endowment so there is more flexibility.

These Model Trusts are only available to churches who have appointed the Baptist Union Corporation, or one of the regional Trust Corporations, as their property (or holding) trustees – either alone or in partnership with other private trustees. However, even if they cannot be adopted they can still be helpful precedent documents.

We will explain how they can be used but first here is a list of the trusts and the times when they were available.

## **MODERN MODEL TRUSTS – CHURCH BUILDINGS**

The first Model Trusts under the 1951 Act were the Fuller Trusts.

These were replaced by the Fairbairn Trusts from 1 May 1962.

The Fairbairn Trusts were replaced by another set of Model Trusts called the Baptist Trusts for Churches 2003 from 2 May 2003.

The Fuller Trusts, Fairbairn Trusts and the Baptist Trusts for Churches 2003 relate to church property – such as church buildings, chapels and school rooms, and caretaker's accommodation.

Details of the Fuller Trusts, Fairbairn Trusts and the Baptist Trusts for Churches 2003 are available as guideline leaflets:

T05 *Fuller Trusts*

T06 *Fairbairn Trusts*

T07 *Baptist Trusts for Churches 2003*

## **MODERN MODEL TRUSTS – MANSES AND RESIDENTIAL PROPERTY**

The first residential Model Trusts under the 1951 Act are called the Kingsgate Trusts.

These were replaced by the Holborn Trusts from 1 May 1962.

The current Trusts are the Baptist Trusts for Manses 2004. These have been available since 2 May 2004.

These are available as guideline leaflets:

T09 *Kingsgate Trusts*

T10 *Holborn Trusts*

T11 *Baptist Trusts for Manses 2004*

## **TWO WAYS TO USE MODEL TRUSTS**

**First**, they can be used as a precedent set of trusts for a church to adopt when buying a property for the first time. This saves time and money because the solicitors dealing with the purchase can use the Model Trusts as a reliable set of arrangements, agreed by the Charity Commission and suitable for Baptist churches and their property.

**Secondly**, they can be used to update old fashioned trust deeds by replacing many of the old provisions with modern administrative arrangements.

In the next two sections, we explain how using Model Trusts to update older or inadequate trusts will work.

## THE EFFECT OF ADOPTING MODEL TRUSTS

Where the Model Trusts are adopted in a situation where there is already an older trust deed they are superimposed on any foundation trusts.

A fresh set of 'updated' administrative arrangements are applied.

However, not everything is updated automatically. Where there is any difference between the foundation trusts and the Model Trusts, it is the Model Trusts that will apply, except in the following matters:

- The doctrines to be held and proclaimed.
- The qualifications for church membership.
- The qualifications required for a minister.
- The qualifications for other leaders.
- The identity of the beneficiary of the ultimate trust.

So, there are some things that can be changed, and other things which cannot be changed by adopting the Model Trusts.

This may not sound very important but adopting Model Trusts have allowed churches to overcome difficulties with their foundation deeds, for example, updating arrangements requiring church members' meetings to only be held on a certain day.

There are more important changes. Many of the foundation trust deeds were prepared in the nineteenth century. Those preparing the deeds met their legal requirements. These small chapels may have consisted of a group of members who met principally for worship and preaching activities. Churches and neighbourhoods grow and change. The law relating to trusteeship and property ownership has also developed and church activities are much more varied. The original deeds can be updated to permit a more flexible use of the space, for a variety of modern church and community purposes.

Many early trust documents contained few details about the sale of land or the investment of any money received on a sale. Many trust deeds specify that only the male members shall be entitled to take decisions, particularly about property matters, because that fitted with general legal requirements when the document was prepared.

Many deeds stated which organisation should benefit from a sale of the church property if the church was closed. This is usually called the "Ultimate Trust." However, some early documents lacked adequate arrangements. The Model Trusts ensure that this point is covered and that the money received from the sale of a redundant 'Baptist' building is applied to other Baptist work. The Baptist Union of Great Britain and the local Baptist Associations are named in the Model Trusts as being the organisations to decide jointly how funds should be used. This is much more straightforward than the alternative of instructing solicitors to apply to the Charity Commission for a scheme in which they specify (after some consultation) how and when the money may be used.

One of the easiest ways trusts can be changed is by the church asking the Baptist Union Corporation (or your local Baptist Trust Corporation if they are your Holding Trustee) to adopt the Baptist Trusts for Churches 2003 which overlay the Foundation Trusts.

**However, this is an important decision to be taken by the church members after they have considered the content of the Model Trusts and the implications of adopting them. The Baptist Union Corporation and the other Trust Corporations have found the Model Trusts very useful. Many churches have used Model Trusts successfully finding them to be very**

**helpful. They have enabled complicated or restrictive matters to be simplified and any 'gaps' in the original foundation deed to be 'filled in'.**

**However, this 'filling of gaps' needs to be understood by the church. In deciding whether to adopt Model Trusts, church charity trustees may wish to obtain independent legal advice.**

## **FILLING IN GAPS – SOME ISSUES TO THINK ABOUT**

Many early documents include a statement about the way money should be used if the church closes and the property is sold. This is called an Ultimate Trust. For details see T04 *Ultimate Trusts – Recycling Money for Mission*.

Where there is no arrangement in the trust deed about what should be done with money arising from the sale of property after the church has closed adopting Model Trusts will fill in this gap. The Model Trust provision states that the funds shall be used as 'the Union and the Association shall in their absolute and uncontrolled discretion jointly direct'. This ensures that the resources released will be used for Christian purposes associated with the Baptist family. Some churches may want to try to make a different choice.

The Model Trusts also contain a provision to be used as a last resort that the Holding Trustees could decide that the church should close. It is very rare that this happens but nevertheless this is a significant provision that should be understood by a local church before Model Trusts are adopted.

The Model Trusts commit the church to membership of the Baptist Union of Great Britain and the local Baptist Association. The benefit of this provision is that the risks of the property being lost to Baptists are reduced. Both the Union and the Corporation will, if there are exceptional reasons, consider applications from a church which wishes to resign its membership of the Union provided that our pastoral procedures are followed. However, this is not always possible and cannot be agreed automatically.

We have straightforward procedures for a church wishing to transfer property trusteeship of its church property to another of the Baptist Trust Corporations linked with the Union. A transfer of property trusteeship e.g. to the Grace Baptist Association or to a church CIO can be achieved in some circumstances provided that our procedures are followed but again this is not automatic and might not be agreed, especially where there is a risk that the trusts will not be complied with following a transfer. Every request to transfer property trusteeship is managed on a case-by-case basis.

We have no standard procedures for transferring trusteeship to private individuals and would not usually retire as property trustee in favour of private individuals. The legal basis of Model Trusts is linked with the provisions of the 1951 Baptist and Congregational Trusts Act where at least one trustee must be a Baptist Trust Corporation. Reversing the adoption of Model Trusts is very complicated and independent legal advice will always be required.

The Model Trusts allow for a framework of property arrangements to be created where none are included in the earlier deeds.

**We want churches to adopt the Model Trusts where this is appropriate to their needs. We want churches to adopt the Model Trusts on the basis of an informed consent and an understanding of the important decision that is being made.**

**The number of changes to the church's legal framework created by the adoption of the Model Trusts will vary from case to case.**

## **FULLER TRUSTS AND FAIRBAIRN TRUSTS**

The Fuller and Fairbairn Trusts continue to be the trusts that apply to many Baptist churches. Many new sites were bought in the 1950s and 1960s when they were the standard or precedent trusts recommended to solicitors.

The fact that the Fuller Trusts were later replaced by the Fairbairn Trusts does not automatically change the arrangements for a particular local church that had already adopted the Fuller Trusts. Once trusts are created they continue to apply unless some formal legal step is taken to change them.

Each set of trusts reflected Baptist thinking and the legal arrangements in place at the time.

The two sets of trusts are similar recognising the local church, usually called 'the Society' as having the right to use the building for Baptist purposes. These included using the property for charitable or philanthropic work – not just preaching.

In addition to the formal paragraphs about the use of the property there was a section setting out how church life should be organised. There was a pro-forma constitution. That was probably sufficient at the time when those trusts were written but now each local church needs a separate self-contained and comprehensive document. However, if preparing an up-to-date constitution has not happened the Fuller and Fairbairn Trusts are a reasonable guide for a Baptist church – but having a modern, fit-for-purpose constitution is important so we have included a section on church rules and constitutions – see below.

Please refer to our leaflets for the text of the Fuller Trusts and the Fairbairn Trusts: -

T05 *Fuller Trusts*

T06 *Fairbairn Trusts*.

## **THE BAPTIST TRUSTS FOR CHURCHES 2003**

The present Model Trusts are the Baptist Trusts for Churches 2003 which replaced the previous Fuller Trusts and the Fairbairn Trusts. The updated trusts were needed to take account of the changing needs of churches and changes in charity law. They provided a useful tool in updating earlier arrangements.

They were prepared in anticipation of charity registration for those Baptist Churches with higher incomes. This is a requirement for churches with an annual income over £100,000. Unincorporated churches with an annual income of between £5,000 and £100,000, may now voluntarily register with the Charity Commission, but registration is not compulsory. Further details on this can be obtained from our Guidelines Leaflets C06 and C11, available on the Baptists Together website.

As much flexibility as possible has been provided, including a change from the previous patterns in the Fuller and Fairbairn Trusts of including a detailed proforma church constitution. The schedule (annexe) to the Baptist Trusts for Churches 2003 includes a list of basic elements that should be included in a local church's constitution but does not prescribe detailed arrangements. This is in recognition of the wide variety of Baptist churches and different ways of working.

There are, therefore, distinct advantages of adopting the Baptist Trusts for Churches 2003.

- They contain modern provisions which are as flexible as possible and include modern powers of sale, letting and arrangements for the investment of the proceeds of any sale. For example, as to the investment of the sale proceeds, whilst the capital would be restricted under the trusts, the income on such capital can be used for the church's general charitable purposes.
- There is a safety net of provisions to safeguard the use of the property as a Baptist church.
- There is scope for using the building in very flexible ways to advance the mission of the church.

- Within a basic framework there is scope for more flexible administrative arrangements.
- They can enable money to be used in more flexible ways.
- They can be adopted by a short deed prepared by solicitors. This avoids the need to draft a lengthy and costly document prepared from scratch.
- Model Trusts have been in existence for a long time and have been found to work. There is no need to reinvent the wheel!
- There is consistency between churches.
- The risks of the property being lost to Baptists are reduced.

If a church is purchasing premises for the first time, we recommend adopting the Baptist Trusts for Churches 2003. If a church is purchasing additional premises, or if for some reason the present church trusts are not adequate, the church should consider asking the Baptist Union Corporation to adopt the Baptist Trusts for Churches 2003 for those premises.

A sample resolution is reproduced at the end of this leaflet.

This will be the start of a process. Solicitors will need to prepare a document confirming that the new trusts have been declared. In a property transaction context, the legal costs will be payable by the local church. The Solicitors for the appropriate Baptist Trust Corporation will be involved.

In relation to declaring Baptist Model Trusts over existing church property, the Legal and Operations team can support churches whose property is held by the BUC or EMBTC in drafting the Declaration of Trust, at no cost to the church.

Please refer to the separate leaflet T07 *Baptist Trusts for Churches 2003* for the text of the trusts.

## **CHURCHES RULES AND CONSTITUTIONS**

The Fuller Trusts and Fairbairn Trusts contain a basic constitution. Sometimes churches have added local detailed rules which will deal, for example, with matters such as how new church members are to be admitted and exactly how deacons and church officers are to be elected. However, it is now necessary for all churches to have an appropriate constitution that explains how they are to be run and sets out at least a minimum framework.

For more information about charity registration, please see our leaflets C06 and C11.

**BAPTIST UNION CORPORATION LIMITED**  
**RESOLUTION TO ADOPT BAPTIST MODEL TRUSTS**

**1 DETAILS OF SPECIAL CHURCH MEETING**

**Name of Church**

**Place of Meeting**

**Date of Meeting**

**Time of Meeting**

**Name of Chairman**

**2 RESOLUTION**

It was resolved:

That pursuant to the Baptist and Congregational Trusts Act 1951 the Church's Holding Trustees be requested:

- 1 To adopt the Baptist Model Trusts for Chapels and Halls known as the Baptist Trusts for Churches 2003 in respect of the Church premises described below,

(insert description of church property already owned and any property to be purchased)

and if applicable

- 2 To adopt the Baptist Model Trusts for Manses known as the Baptist Trusts for Manses 2004 in respect of the Church's Manse at

(insert address of Manse)

Signed as a correct record of the resolution passed by the Church Members' Meeting mentioned above.

Signature.....

Position in Church .....

Date .....

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 Email: [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk)  
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