

Guideline Leaflet C11: Churches, Charities and Incorporation

Most churches are not incorporated; they are 'unincorporated associations'. There are some advantages to incorporating a church, or a church project, but there are also significant issues to consider which are discussed in this leaflet. Guidance is also offered on the availability of precedent governing documents.

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

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

C11: Churches, Charities and Incorporation

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 that are considering incorporation must carefully think through all of the potential legal implications before completing the change.

In particular, the church must consider whether the action will trigger a 'Cessation Event' in relation to the Baptist Ministers' Pension Fund.

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HISTORY

Early Baptist Churches were formed when groups of individuals gathered together in fellowships where they could have freedom to pray, worship and study the Bible. They often spoke of 'walking together' as a group of Christian believers who decided 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 they appointed individuals who acted as property 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. Unincorporated churches with an income over £100k per annum should now be registered with the Charity Commission. All CIOs (Charitable Incorporated Organisations) have to be registered whatever their income level. Unincorporated churches with an income under £100k may now register voluntarily if they wish but this is entirely a matter for the local church to decide.

When churches started to register in 2008 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. This commitment to 'walk together' sharing in the life and work of the church was more than just participating in a business meeting.

In 2006 when we were preparing the Approved Governing Document most Baptist churches were already Unincorporated Associations although few had a single comprehensive Governing Document. Their arrangements had been in place for many years. 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 guideline leaflets C06 *Churches and Charity Registration*, C03 *Church Constitutions*, C05 *Using the Approved Governing Document* and C04 *Approved Governing Document*. However, this is no longer the only choice available so please read the rest of the information in this leaflet.

POTENTIAL PROBLEMS WITH UNINCORPORATED ASSOCIATIONS

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

For the members who own and use a village hall there would be an organising committee. 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.

Members have understood mutual accountability and recognised a shared responsibility. Although individuals would be making the practical arrangements and often taking some decisions, 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 accounts. Whilst potential costs could be met out of income the potential risk of a personal liability arising for the Charity Trustees (e.g. Minister, Deacons and Elders) remained theoretical.

There has always been a 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. 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.

The concern is about unmanageable risk. Maintaining comprehensive and adequate insurances will help but is this the only thing to consider?

When are the risks of acting as a Charity Trustee 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 too great and not acceptable? Are there risks that cannot be adequately managed?

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. There may also be churches concerned about pension debts or other substantial liabilities. Whilst these debts can be serviced from the income coming into church funds and where there is no disagreement about paying the regular payments the risk of a personal liability for charity trustees may be small but we can no longer say there is no risk. We also live in a society where individuals seem to be much more willing to claim compensation, again leading to a perception that there is a more substantial risk of personal liability.

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

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

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

Even if incorporation is the 'obvious answer' are there still choices for the church to make and is it possible to preserve the principles that have shaped the life of Baptist churches?

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 charity trustees and church members, in helping to limit the risk of a personal liability. Please refer to guideline leaflet *L16: Legal Liability of Church Members in a Baptist Church* for more information.

We know of no occasions where church leaders have lost their own assets to meet the liabilities of a church. Usually, 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 obligations and legal responsibilities.

When major decisions are needed, relating to investments, property transactions, or building projects, professional advice must be obtained. As already mentioned adequate and suitable insurance also offers safeguards against major risks.

Remaining as an unincorporated association can often be an appropriate response particularly in relation to the general work and activities of the local church, even if it is not appropriate to carry the risk of wider community projects within the same administrative framework. However, 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 C21 *Church Life 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 Guideline Leaflet C15 *Help I'm a Charity Trustee*. The principles in these leaflets apply to all leaders and to all kinds of organisations. It is essential that leaders operate effectively – whatever type of organisation is involved.

Health and safety guidance is available in our guidelines leaflet L10 *Health and Safety and Fire Precautions*.

Where churches decide to retain their unincorporated structure we suggest using the Approved Governing Document that we have agreed with the Charity Commission. It has the benefit of very clearly preserving patterns of congregational church government and mutual accountability by continuing and developing the principles followed by Baptists for generations. It is also reasonably similar to the patterns and practices recorded in many church property deeds (often called trust deeds or foundation deeds). The provisions are also close to the arrangements followed by Baptist churches for many generations.

However, we are aware that a few churches have chosen incorporated models such as the Charitable Company, which has been available for a long time, whilst others are investigating the Charitable Incorporated Organisation model that became available more recently.

Each church – that is the members and the current charity trustees (minister, deacons and elders, or a leadership team), need to think about these issues carefully so that informed choices can be made. However, we now feel that it is unlikely that a group forming a brand new church would choose the unincorporated model because the other options have advantages.

CAN A LOCAL CHURCH BECOME INCORPORATED?

The short answer is 'Yes'.

It is possible for a 'whole' church to be incorporated as a Company Limited by Guarantee or as a Charitable Incorporated Organisation (CIO). 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 or documents prepared for general charities are not usually shaped to reflect patterns of mutual accountability or 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 charity trustees. A pattern of servant leadership may still be offered and practised in incorporated models but this may not always happen and cannot be guaranteed as easily in an incorporated structure.

Company law and the Regulations for Charitable Incorporated Organisations assume the executive authority to rest with the 'directors of a company'. There will be an Annual General Meeting when directors and Charity Trustees are appointed, and some reserved powers for members. Other meetings can be held at other times and the style of church members meetings can be creative and collaborative, subject to a very few formalities.

Company models must 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.

An alternative and newer form of incorporated body called a Charitable Incorporated Organisation (CIO) is now available. We think it is much easier to create a structure that reflects the patterns and

principles followed in a Baptist church within a CIO. There is no requirement that proxy voting is offered.

There is more information about the different kinds of incorporated organisation below (pages 7-9).

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 charity trustee (this is often those who serve as deacon, elder or minister or member of the Leadership Team). In these circumstances some may feel that creating an incorporated structure is helpful.

Where the church itself incorporates then all the activities can automatically be managed through one organisation with the benefits of limited liability achieved by incorporation. Potential leaders may not be discouraged by anxiety about personal liability.

However, there are still questions for the church members to consider carefully before deciding on an incorporated structure. Should they incorporate all the church related activities into one incorporated structure or are there activities such as a pre-school that should be incorporated separately?

Are there some benefits in sharing the workload, working with integrity in the community by creating a separate organisation? Will sources of grant funding be compromised if the whole church becomes incorporated and attempts to manage all its work and projects through a single incorporated body? Is it possible that 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 in the incorporated structure may have better protection from personal liability but the church's assets may be more vulnerable.

If grants are obtained for a single incorporated body that includes the church and community projects 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?

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 must not take reckless decisions that adversely affect others.

Each case is different and legal advice will be needed. Please refer to the section on page 15 under the side heading 'Considering Making Changes – What is Possible?'

If the church members 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.

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

The church will need independent legal advice from a solicitor with appropriate experience in charity law, incorporation and property trusts. The solicitor will also need to consider 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.

We are going to describe three kinds of incorporated organisation that local churches might want to consider depending on their local situation.

- 1 Charitable Incorporated Organisations (CIO).
- 2 A Charitable Limited Company.
- 3 Community Interest Companies may be useful in some local situations – but it is not a structure intended for charities. For more information see page 12.

CHARITABLE INCORPORATED ORGANISATIONS

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

They provide the benefits of an incorporated structure and limited liability for charity trustees whilst only reporting to the Charity Commission (companies report to the Charity Commission and Companies House). Some aspects of administration are simplified and a CIO can hold some kinds of property in their own name.

New regulations were published in 2012 that now enable Charitable Incorporated Organisations to be created.

When the structure of a Charitable Incorporated Organisation was proposed the Charity Commission listed the likely advantages as:

- 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 mergers and other changes.
- Clear duties for charity trustees and an enforcement regime that does not penalise the charity for the conduct of its trustees.
- The possibility to hold some land in its own name.

A Charitable Incorporated Organisation has an identity that is distinct from its members and trustees as individuals. There is significant protection for the charity trustees and church members from personal liability. Provided that they act responsibly and within the law their personal assets are protected. Financial claims should be made against the Charitable Incorporated Organisation's assets.

Care is needed when creating a CIO. Legal advice is essential. Assets and liabilities should be properly transferred and this will require a careful evaluation of any existing debts as special consultation will be needed about some existing liabilities e.g. pensions, see pages 15-17.

Charitable Incorporated Organisations have powers that enable them to hold the legal title to their charity property in the name of their organisation, although most Baptist churches that have incorporated as a CIO have chosen to leave their property with their existing Baptist trust corporation.

A Charitable Incorporated Organisation is a legal entity, and can enter into contracts in its own name, taking on liabilities and obligations. When the organisation enters into a contract, unless charity trustees have been negligent or acted improperly, the organisation will be liable for any debts. The Charity trustees are only likely to become personally liable if they have acted fraudulently or have been extremely careless.

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

Some churches (and other charities) carry debts to a defined benefit pension scheme as an 'Employer' under the scheme. The Charity Commission recognises the difficulties faced by charity trustees in

managing these long-term legal and financial obligations. They now recommend that the Annual Accounts and Report of affected churches (charities) refer to the pension debt and the ways in which the problem is being addressed. This is a complicated area and each church situation will be different.

Sometimes the charity trustees take on a specific personal responsibility if they sign a formal guarantee in which they promise to pay the debts of the church from their personal resources. This might be needed if the organisation is borrowing money on a commercial basis from a bank, whether as an unincorporated association, Company or CIO.

There will be no alternative but to carefully consider the responsibilities set out in the regulations and the detailed information issued by the Charity Commission before deciding to adopt this structure.

We have offered some general guidance in this leaflet (and elsewhere) 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?

CHARITABLE INCORPORATED ORGANISATIONS AND BAPTIST CHURCHES

Is a Charitable Incorporated Organisation a suitable framework for running a Baptist church? We think that it can be. We have worked on a precedent document and reviewed the regulations. It is not a perfect fit but it is close to the patterns and practice within Baptist churches.

We are pleased that so much of what is contained in the Charity Commission precedent documents is helpful, that the regulations are reasonable. There are choices to make but churches can avoid creating opportunities for Proxy Votes (as required in a Limited Company) making it easier to preserve Baptist patterns within this framework.

CHARITABLE INCORPORATED ORGANISATIONS – THE ROLE OF CHURCH MEMBERS

The charity trustees of the CIO have the benefit of limited personal liability. They have duties and responsibilities and must follow the law and regulations relating to a CIO.

Our CIO precedent document reserves authority for members to decide on the most important church matters. For example, the appointment of a minister, the sale or purchase of land, the closure of the church, and decisions about the appointment or removal of leaders.

Charity trustees will need to be committed to maintaining accountability in their relationships and ensure that the use of an incorporated model does not override the patterns of congregational church government that characterise 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.

Members may see some minor changes of procedure but in our CIO Approved Governing Document we have created a balance that preserves the best of our Baptist patterns and principles.

THE ROLE OF CHARITY TRUSTEES IN A CHARITABLE INCORPORATED ORGANISATION

We have already mentioned that there are formalities associated with running an incorporated organisation. Annual Returns need to be made 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 Charitable Incorporated Organisation. Failure to comply fully with regulations can lead to financial and other penalties on the Charitable Incorporated Organisation and personal consequences for any breach of duty. It is vital that the charity trustees establish patterns of seeking and following appropriate professional advice and published guidance.

For detailed information churches may be interested in the book 'Charitable Incorporated Organisations' by Gareth G. Morgan.

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 charity trustees still have important responsibilities which are set out clearly in the precedent constitution, charity law and the regulations for a Charitable Incorporated Organisation. 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 personal liability.

THE PRECEDENT CIO GOVERNING DOCUMENT

Please read the guidelines leaflet C12 *Using the Charitable Incorporated Organisation Precedent Document* for information about the precedent document we have prepared for a Baptist church considering forming a Charitable Incorporated Organisation.

It is available free of charge to churches through our solicitors:

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: esther.campsall@anthonycollins.com

The precedent CIO constitution is issued under copyright licence and you will be asked to agree to the terms of the licence on behalf of your church before the document is sent to you. **It is important to note that under the terms of the licence no amendment may be made to clause 31.5 or any of the clauses referred to in clause 31.5 without written consent. Applications for such consent should be sent by email to Justine Higgin (jhiggin@baptist.org.uk).**

There are still important decisions to take before the document is completed even if the precedent is used. Legal advice is essential and the potential difficulties listed on pages 16-18 must be considered and managed appropriately.

We have produced a guideline leaflet for churches that want to complete the online registration form themselves rather than asking solicitors to complete this part of the process for them. This is *C08 Registering as a CIO Online*.

Churches that are part of an LEP (Local Ecumenical Partnership) should contact Hilary Treavis in our Faith and Society team to obtain the model CIO governing document for LEPs and associated guidance (htreavis@baptist.org.uk).

COMPANIES AND CHARITABLE COMPANIES

A LIMITED LIABILITY COMPANY

We think that the CIO model is best suited to a Baptist church. A company model is possible but we do not recommend it for a Baptist church.

A limited liability company formed under the Companies Act also 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. Financial claims should be made against the company's assets.

A Company Limited by Guarantee was the most common form of incorporation used by charities before Charitable Incorporated Organisations became available. When a limited company is also a charity the company directors are also the charity trustees with responsibilities under both charity law and company

law. Before the CIO became available about twenty Baptist churches in membership with BUGB incorporated as a company.

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 the Directors have been negligent or acted improperly the company will be liable for any debts. The Directors 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 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.

Care is needed when forming a company to adequately assess assets and liabilities and to carefully consider issues such as pension debt (see pages 15-17).

COMPANIES LIMITED BY GUARANTEE

Most charities that set up a company chose this structure. A Company Limited by Guarantee avoids the need for shareholders but allows a role for the 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.

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 also 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 as a company they might want to consider creating a Company Limited by Guarantee, although the CIO structure is what we would recommend. Each person who is already a member of the church could become a member of the company or Charitable Incorporated Organisation 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 company document 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

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 and supporters but there will be many occasions when they do not have to do so legally.

It would be an unwise 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 guaranteed 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 characterise the life and work of Baptist churches.

THE ROLE OF DIRECTORS - RESPONSIBILITIES

We have already mentioned that there are formalities associated with running a charitable company. Annual Returns need to be made to Companies House and to the Charity Commission and the directors need to comply with both charity law and company law requirements. 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. So it is vital that the Directors establish patterns of seeking and following appropriate professional advice and published guidance.

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 personal liability.

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: [Office of the Regulator of Community Interest Companies - GOV.UK \(www.gov.uk\)](http://www.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. However the CIC structure is not likely to be suitable for a church since a CIC is not charitable.

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

PEOPLE WITH SIGNIFICANT CONTROL OF COMPANIES – REGISTRATION REQUIREMENTS

From 6 April 2016 Companies (including Community Interest Companies but not Charitable Incorporated Organisations) are required to draw up a register of people who have significant control of the company. Even where a company does not have any such persons, such a register must be maintained and be kept available for inspection. (This is in addition to the current company record keeping requirements and there are criminal sanctions for non-compliance).

Detailed guidance is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502114/Non-statutory_guidance_for_companies_SEs_and_LLPS_V6_.pdf

There is also guidance on the meaning of "Significant Influence or control" which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498275/Statutory_comp_any_PSC_Guidance.pdf

Please note, however, that since that guidance was written, the law has changed: now, generally, a company must send a PSC notification form to Companies House within 14 days after the day the company makes a change to its PSC register.

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. Churches should consider creating a separate Charitable Incorporated Organisation for the project, under the general control of the church.

If the church wanted to remain as an unincorporated charity it could do so whilst having the benefits of incorporation for the project. This is an important decision and needs careful consideration. Any new governing 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 incorporated structure, with income and expenditure being accounted for within the

incorporated organisation. Staff would be recruited as employees of the organisation, 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 and church members.

The creation of a new organisation with its own 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 charity trustees for the project recognise their ongoing relationship with the church. The incorporated organisation 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 incorporated organisation 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 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.

The BUC publishes a guideline leaflet L02 Pre-schools which can be downloaded from the BUGB website. A model CIO document for pre-schools is available from Anthony Collins LLP and more information can be found in the guideline leaflet. Information about setting up a coffee shop, or similar, can be found in leaflet L03 Churches and Coffee Shops.

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. For guidance about grants please refer to our leaflet [M06 Grants for Building 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 as a charity trustee 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.

A separate 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 for 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 overseeing the project will have a primary duty to act in the best interests of their particular charity. This could mean that a community charity could grow and its board may wish to develop the work in ways that are not necessarily '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. Thought should be given to how conflicts of interest are to be avoided if some of the church's charity trustees are also carrying responsibility for the project; there must not be a complete duplication of personnel between the two trustee groups since this would make conflicts of interest impossible to manage.

GOVERNING DOCUMENTS – CAN THE BAPTIST UNION HELP?

For many years precedent documents have been prepared for local Baptist churches – and precedent documents are available to help churches that want to be an Unincorporated Association or a CIO.

For churches choosing to be a **Charitable Incorporated Organisation** please see our guideline leaflets:

C12 *Using the Charitable Incorporated Organisation Precedent Document*

C14 *Church Handbook (Optional Extra)*

We have prepared a precedent form of constitution for churches that want to consider becoming a CIO. The precedent document is available free of charge to Baptist Churches from:-

Esther Campsall
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: esther.campsall@anthonycollins.com

The precedent CIO constitution is issued under copyright licence and you will be asked to agree to the terms of the licence on behalf of your church before the document is sent to you. **It is important to note that under the terms of the licence no amendment may be made to clause 31.5 or any of the clauses referred to in clause 31.5 without written consent. Applications for such consent should be sent by email to Justine Higgin at jhiggin@baptist.org.uk.**

For churches choosing to be an **Unincorporated Association** please see our guideline leaflets:

C03 *Church Constitutions*

C05 *Using the Approved Governing Document*

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 to create a new Charitable Incorporated Organisation or Charitable Company.
- It is possible to change from an Unincorporated Association to be a Charitable Incorporated Organisation or Charitable Company.
- It is now possible to change from a Charitable Limited Company to be a Charitable Incorporated Organisation since new regulations came into force on 1 January 2018 that allowed this change (see below).

ISSUES TO CONSIDER

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.

In particular, the church must consider whether the action will trigger a 'Cessation Event' in relation to the Baptist Ministers' Pension Fund. This is a recent difficulty for many churches especially those whose particular circumstances have already triggered a 'Cessation Event'. Each case will be different and guidance is needed.

For further information please contact:

Steve Kaney
Pensions Manager
Baptist Pension Scheme
129 Broadway Didcot Oxon OX11 8RT
Email: skaney@baptist.org.uk
Telephone: 07787 033485

Issues to consider:

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 will 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.
Banks	The church's bank may wish to renegotiate the terms of accounts; new accounts may need to be opened. It may be necessary to renew all Standing Orders in and out.
Property	<p>The arrangements regarding church property should be reviewed but there may be no need to change them, especially if one of the Baptist Trust Corporations is the Holding Trustee.</p> <p>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. Each case will be different.</p>
Pensions	<p>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.</p> <p>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.</p> <p>This is a potential problem for many Baptist churches. Guidance must be sought from:</p> <p>Steve Kaney Pensions Manager Baptist Pension Scheme 129 Broadway Didcot Oxon OX11 8RT Email: skaney@baptist.org.uk Telephone: 07787 033485</p>
Legacies	<p>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? Careful consideration must be given to whether the unincorporated church structure should be closed or whether it should continue alongside the new incorporated church in order to safeguard potential legacies. This issue will require legal advice.</p> <p>Please refer to extra information about this in the leaflet C10 <i>Churches and Change of Name</i>.</p>
Members	<p>Members of the church will need to be consulted. These are important issues.</p> <p>Comprehensive and up to date information about members of a Charitable Incorporated Organisation will need to be retained so as to be available if requested by the Charity Commission or others.</p>
Governing Documents	<p>New documents will be needed and precedents that are suitable for Baptist churches have been agreed with the Charity Commission.</p> <p>For a CIO the governing document is called a constitution. For a company it is called a Memorandum and Articles of</p>

	Association.
Guarantees and Warranties	The church may have the benefit of warranties that do not pass automatically. Where these relate to small items, e.g. a kettle, there is no problem. Where they relate to a building it is a more significant issue.

LEGAL ADVICE

We have prepared a precedent document for Unincorporated Associations and for a Charitable Incorporated Organisation (CIO).

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

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: esther.campsall@anthonycollins.com

Please make initial contact with Esther Campsall.

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.

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 Charitable Incorporated Organisation or Company or creating a Community Interest Company may 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.

However, there is much to recommend 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 charity trustees 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 is an advantage in incorporation. In a context where churches operate a broad range of activities and projects, and in a society where individuals are perhaps more likely to seek compensation there are some very important issues to consider.

A training webinar 'Introduction to CIOs' can be found on the Baptists Together website [here](#)

CHURCHES THAT INCORPORATED AS COMPANIES – MOVING TO THE CIO STRUCTURE

A small number of Baptist churches incorporated as companies before the CIO structure became available in 2012. The legal regulations that enable charitable companies to convert to the CIO structure were delayed but came into effect on 1 January 2018. There was a phased implementation timetable to enable the Charity Commission to manage demand.

Converting an existing corporate body into a CIO is intended to be relatively straightforward. The CIO will not be a new corporate body to which the undertaking of a charitable company is transferred. The existing corporate body is simply re-registered as a CIO. The conversion process will not affect the business relationships of the organisation or its legal personality.

There is no need to transfer the company's assets, contracts (including employment), pensions or debts and there are no TUPE implications which will arise as a result.

The solicitors who advise our pension scheme have said that a charitable company which intends converting to a CIO need not go through the pension general easement process provided for by the Employer Debt Regulations as the conversion results in a change in the nature of the company, rather than a change in the legal entity. So there are no pension implications in the change.

Converting your company to a CIO would require you to replace your company memorandum and articles with a CIO constitution. The CIO Approved Governing Document for Baptist churches is available free of charge from our solicitors Anthony Collins LLP; please contact Esther Campsall esther.campsall@anthonycollins.com

To convert into a CIO, a charitable company may submit an application to the Charity Commission for conversion into a CIO and registration of the CIO as a charity. The Charity Commission must be supplied with:

- 1 a copy of a resolution of the company (either a special resolution or a unanimous written resolution) that it be converted into a CIO;
- 2 a copy of the proposed constitution of the CIO;
- 3 a copy of a resolution of the company adopting the proposed constitution of the CIO; and additional documents or information as required.

Resolutions must contain the company number and the charity number or the conversion request will be rejected by the Commission.

The proposed constitution of the CIO must provide for the amount up to which the members of the Company are liable, unless the guarantee of the company was £10 or less. Guarantees of £10 or less are extinguished following conversion of the company into a CIO.

CIO NAMES AND 'SENSITIVE WORDS OR EXPRESSIONS'

From 1 January 2018, Companies House will need to provide approval when a CIO's proposed name includes 'sensitive words or expressions' set out in [The Company, Limited Liability Partnership and Business Names \(Sensitive Words and Expressions\) Regulations 2014](#). This will not affect most churches but those based in Sheffield should note that 'Sheffield' is a word included on this list and in order to use it they must also consult The Company of Cutlers in Hallamshire! Their email address is admin@cutlers-hallamshire.org.uk

Where the proposed name for the CIO includes 'sensitive words or expressions' applicants will need to email Companies House enquiries@companies-house.gov.uk to obtain their non-objection before applying to the Charity Commission. Please include 'CIO' in the subject line of your email to Companies House.

Before applying, applicants are advised to view [Companies House website guidance \(Annex A\)](#). This sets out the criteria for approval. Applicants are also advised to view Annexes B and C.

Association Trust Company	Contact
Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd	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 480 Chester Road Sutton Coldfield B73 5BP Office Mobile: 0730 505 1770
London Baptist Property Board	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
Yorkshire Baptist Association	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
West of England Baptist Trust Company Ltd	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

Website: www.baptist.org.uk Registered CIO with Charity Number: 1181392

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