

## **Guideline Leaflet T01: Baptist Property Trusts – Beginnings and Patterns**

Who owns the church building and land? The ownership arrangements for Baptist Churches developed over centuries but are still important today. Church property is often subject to Trusts, special rules that define how the building can be used.

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.

# T01: Baptist Property Trusts – Beginnings and Patterns

**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.**

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T02 *Modern Model Trusts*

T03 *Appointing Property Trustees – Baptist Trust Corporations*

T04 *Ultimate Trusts – Recycling Money for Mission*

## **BAPTIST TRUSTS – BEGINNINGS AND PATTERNS**

### **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.

In most cases, the ownership of the church premises (what lawyers call the title) will be in the name of trustees. The trustees may be private individuals who are, or were, connected with the church. More often the trustees will be a Baptist Trust Corporation, such as the Baptist Union Corporation.

Most Baptist churches are 'unincorporated associations'. Most are not like an individual or limited company or a Charitable Incorporated Association that can hold land in their own name.

The trustees 'hold' the property for the church. The purposes for which the property is held are set out in a legal document and are called 'trusts'.

### **HISTORY – EARLY PROPERTY TRANSACTIONS**

Early Baptists were not permitted to purchase land for chapels, but once this became possible it was necessary to identify the land owners and the purposes for which the property could be used.

Many modern Baptist churches are built on land purchased soon after the first Baptist churches were founded in the sixteenth and seventeenth centuries.

The churches had limited legal status so trustees would have been appointed. They were needed to hold the legal title (to be named formally as legal owners). These would have been men of good reputation in the church or, perhaps, in a neighbouring church. The number of trustees varied but there were usually between nine and twelve.

In early documents women were not named as trustees. This was not because of limitations imposed by their Baptist congregations but the general legal restrictions that applied to women who only had limited property rights.

It was important for the trustees, and the church, to be clear about the special rules, or trusts, which applied to their ownership so they were recorded carefully.

### **HISTORY – EARLY CHURCH TRUSTS**

These trusts would often be set out in the legal purchase document which passed legal ownership of the premises to the trustees, or in a separate trust deed. We call these the foundation trusts.

If a church has occupied a chapel, or other premises, for many years the trusts which apply to the church will often still be those set out in the documents prepared at the time of the original purchase.

The earliest foundation trusts were quite short, simply stating that the premises were to be used 'as a place of worship for a congregation of Protestant Dissenters called Baptists' or something similar.

As Baptist life developed so the foundation trusts became more detailed containing things that described the core characteristics of a Baptist congregation such as:

- A doctrinal statement.

- Rules for the appointment of a Minister.
- The qualifications for church membership.
- Rules for the calling of Church Members' Meetings.
- The powers of the trustees to borrow money for the construction of buildings and their right to sell the premises, perhaps in exchange for other property.
- How new trustees were to be appointed – usually including how many trustees there must be.
- Instructions about what would happen if the church closed and who would benefit from the proceeds of sale if the premises were sold (this is now known as the ultimate trust).

Although Baptist churches are independent there are similarities among the trust deeds and patterns indicating a progression as ideas and circumstances changed.

For example, many early deeds made no provision for how money arising from the sale of a chapel if it closed should be spent. However, later deeds include more detail, perhaps because of problems, but also because there was a growing recognition of interdependency between the churches. Neighbouring churches and local Baptist Associations often contributed to the purchase of land and construction costs. Over time it became common for Associations, and other Baptist organisations to be nominated to help take the important decisions that are needed if a church closes and a building is sold. This arrangement is called an "Ultimate Trust" and is a way of safeguarding assets so they can be used for mission again. Please see our leaflet T04 *Closed Churches, Ultimate Trust and Recycling Money for Mission*.

As a result of co-operation between churches and Baptist organisations repeated patterns in the wording were used within trust deeds. This suggests that precedent documents were used by the various lawyers employed by Baptist churches.

We may think that all this history is not relevant. However, these old trust documents are not just historical curiosities; they are often still relevant today.

Even where the church sold the original chapel and purchased other premises the same trusts will normally apply because money from the disposal of one site has been used to purchase a new site.

## **FOUNDATION TRUST DEEDS**

The diaconate (church leaders) are now generally referred to as Charity Trustees (previously they may have been called Managing Trustees). Each local Baptist church should have a formal Constitution (or other governing document) but the Charity Trustees still ought to know what the trust deeds contain because they often still apply to elements of church life today, especially its property assets.

We are sometimes asked to provide photocopies. Older Trust Deeds are handwritten on parchment and run to several sheets each measuring some 3 feet by 2 feet (900mm by 600mm). It is virtually impossible to produce an acceptable copy on an office photocopier. If we cannot supply a photocopy of a Trust Deed we will provide a summary of the main provisions which you can keep with your church records for future reference.

These deeds are irreplaceable. Where these are held by the Baptist Union Corporation we are not usually willing to release them to a church. Usually arrangements can be made for them to be inspected, upon prior appointment, at Baptist House. Alternatively they can be lent to a local Solicitor who accepts responsibility for them temporarily, at the church's expense. If you want to read your church's trust deed, especially if you are doing research, please ask. We will try to help.

## **TRUSTEES, PEOPLE, AND PROBLEMS**

Many early foundation deeds required a large number of trustees to be appointed, perhaps 12 or 15 individuals. Every time somebody died, moved, or resigned a new Deed of Appointment was needed. The legal document would need the signature of all the previous trustees, the present and continuing trustees, and any new trustees. The legal and practical difficulties are obvious.

The same problems occurred if a sale of any land was contemplated. All the trustees had to be traced, and everyone would need to agree to sign the final Conveyance deed. Property transactions involving a church became extremely complicated and time consuming.

The administration was difficult at the best of times but if a trustee would not co-operate with decisions taken by the Church Members Meeting the problems were hard to overcome.

Foundation deeds generally specified a minimum number of trustees, but many small churches had difficulty recruiting sufficient people.

In 1890 the Baptist Union Corporation was formed to help overcome these problems. The Baptist Union Corporation could act as trustee in place of individuals. The Charity Commission were involved in giving effect to this decision for each church individually until the process was simplified by The Baptist and Congregational Trusts Act 1951.

Later, other local Baptist Associations formed their own Baptist Trust Corporations.

However, the administration of the variety of foundation deeds, and the lack of adequate trust arrangements in some of them continued to cause problems. At this time the Charity Commission had to agree every time the Baptist Union Corporation (or one of the other Baptist Trust Companies) were appointed.

## **THE BAPTIST TRUST CORPORATIONS AND EARLY 'MODEL TRUSTS'**

A major change in practice came after the Baptist Union Corporation, and the regional Trust Corporations were formed. For more information about Baptist Trust Corporations please see T03 *Appointing Property Trustees – Baptist Trust Corporations*.

When new sites were purchased in the name of one of the Baptist Trust Corporations their solicitors used precedent documents, like the one promoted by the Baptist Union in 1902. Although there are many similarities between older trust deeds it is easier to find standard sets of trusts in twentieth century documents.

As existing churches invited the Trust Corporations to become their trustees, where possible, they were placed on the same trusts as other existing churches but usually this could only be done with the agreement of the Charity Commission.

When it was clear that the church's deeds were inadequate or the arrangements unworkable the Charity Commission could use their legal powers to create a new set of trusts, but this was not automatic. Baptist churches were not all the same so a variety of arrangements were applied. When time and trouble had been taken to solve a problem, and the Charity Commission had issued a replacement set of trust arrangements called 'a Scheme' these were often applied to more than one church.

We need to remember that all this was happening before the invention of word processing so to save time these standard trusts were set out in full the first time they were used, and in an abbreviated form later. It became common for churches to be subject to the Wolverhampton Trusts, the Boscombe Trusts or the Tre Alaw Trusts although they were not in those places.

These are examples of standard or 'Model Trusts' established under Schemes made by the Charity Commission but they are not the only 'standard' documents, these were lots of them.

They were all helpful but the administration was still cumbersome and so a further development took place.

## **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 possible for churches to appoint one of the Baptist Trust Corporations without involving the Charity Commission each time. This was cheaper and easier.

It also made possible a further development in the way in which Model Trusts could be made available and adopted by individual churches acting on their own initiative.

The Act allows the Union to promote Model Trusts. This is done by resolutions of the Baptist Assembly in two successive years but the form of document must meet the requirements of charity and property law, and be accepted by the Charity Commission.

A church can then adopt the Model Trusts by a simplified procedure involving passing a resolution at a Church Members' Meeting and the completion of a standard legal document. This is particularly useful when churches buy their first site and when existing churches need to update their inadequate or old Foundation Deeds.

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. The last trusts for churches were created in 2003 and for manses in 2004.

These Model Trusts are only available to churches who have appointed the Baptist Union Corporation, or one of the regional Trust Corporations, as their trustees – either alone or in partnership with other private trustees.

## **MODERN MODEL TRUSTS**

For an explanation of Modern Model Trusts please see T02 *Modern Model Trusts*. The first Model Trusts under the 1951 Act were the Fuller Trusts. These were replaced by the Fairbairn Trusts on 1 May 1962.

The Fairbairn Trusts were replaced by another set of Model Trusts called the Baptist Trusts for Churches 2003. These became available 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.

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

T05 *Fuller Trusts*

T06 *Fairbairn Trusts*

T07 *Baptist Model Trusts for Churches 2003*

There are separate arrangements which normally apply to residential property. The first residential Model Trusts are called the Kingsgate Trusts, followed after 1 May 1962 by the Holborn Trusts and then on 2 May 2004 by the current Trusts are the Baptist Trusts for Manses 2004.

See leaflets:

T08 *Manse Trusts*

T09 *Kingsgate Trusts*

T10 *Holborn Trusts*

T11 *Baptist Trusts for Manses 2004*

There are two sets of Trusts one for residential property and one for chapel property. The administration and legal requirement of charity law are different.

Property used as chapels or land (not residential) is classed as permanent endowment so there are limits (usually) 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 in using money from a sale.

## **CHURCHES RULES AND CONSTITUTIONS**

Some foundation deeds such as the Fuller Trusts and Fairbairn Trusts contain a basic constitution or a framework of key elements to include in a constitution. Sometimes churches added local rules to deal with matters such as how new church members are to be admitted and exactly how Charity Trustees and Ministers are to be appointed.

However, all churches should now have an appropriate separate constitution that explains how they are to be organised as well as explaining what the church also does and why it exists.

For more information about constitutions please see leaflets:

C03 *Church Constitutions*

C11 *Churches, Charities and Incorporation*

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<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
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<b>Yorkshire Baptist Association</b>	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
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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:**

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