

## **Guideline Leaflet L02: Pre-Schools**

Many churches run a pre-school as part of their community activities. This leaflet outlines issues that need to be considered.

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.

## L02: Pre-Schools

**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.**

### WHAT KIND OF PRE-SCHOOL?

This leaflet applies to the situation where children between the ages of two and five are cared for, without their parents, on a regular basis and the activity is registered with Ofsted. This type of pre-school facility is usually provided on the basis that the children's parents pay a fee for the service, perhaps using childcare vouchers.

Many churches operate more informal activities for young children such as a Parent and Toddler group. The usual distinction between these more informal groups and a pre-school is that parents remain responsible for their children during the toddler activity and there is no requirement for it to be registered with Ofsted. It is also unusual for a charge to be made for activities such as a Parent and Toddler group which forms part of the church's usual activity.

### NON CHURCH PRE-SCHOOLS

Many churches are 'hosts' to pre-schools run by an organisation or an individual where the pre-school itself is not directly controlled or connected to the church. In other words, the church are giving permission for others to use their premises and in these circumstances it is strongly recommended that the arrangement should be by way of formal agreement. This could be a hiring agreement, licence or lease depending on the degree of use and level of security of tenure that is required. Reference should be made to the guideline leaflet PC10 *Hiring of Church Premises*. Difficulties can occur when the arrangements for the use of the premises are not clear.

Problems may also arise if it is unclear whether the pre-school is being run by the church. It is important to establish whether it is the church operating the pre-school or whether it is an individual or outside organisation operating the pre-school with the permission of the church. The remainder of these guidelines assume that it is the church which is operating the pre-school.

### PREMISES

No planning permission is normally required for the operation of a pre-school on church premises. A church comes within Use Class D1 of the Town and Country Planning Use Classes Order which allows church premises to be used for a creche, day nursery or day centre.

If alterations are required to the premises for the operation of the pre-school then both planning permission and building regulation approval may be necessary (see Guidelines Leaflet PC04 *Redeveloping or Altering Church Premises*).

## OFSTED REGISTRATION AND INSPECTION

Any pre-school that provides day care for children for more than two hours a day must register with Ofsted (Office for Standards in Education) and be inspected regularly. Nursery education settings which are on their local authority's directory to provide free places for three to four year olds must also be inspected regularly by Ofsted. Inspection will ensure that the pre-school is able to meet the national standards that are set in law. After inspection at registration the pre-school will usually be inspected again within thirty months. Since many childcare providers also offer funded nursery places the inspection will judge both care and education. In addition to registration and inspection Ofsted is also responsible for investigating complaints about pre-schools and taking enforcement action if necessary.

Further information about registration can be found here: <https://www.gov.uk/register-childminder-childcare-provider>

Ofsted has issued guidance on how to meet the national standards for sessional day care. These are available online at [www.ofsted.gov.uk](http://www.ofsted.gov.uk). The website provides a wealth of useful information and Ofsted also offer a helpline on 0300 123 1231. In addition, a number of informative publications are available to download. Ofsted can be contacted by email at [enquiries@ofsted.gov.uk](mailto:enquiries@ofsted.gov.uk).

## PRE-SCHOOL LEARNING ALLIANCE

The Pre-School Learning Alliance is a charitable organisation that promotes and supports good practice in pre-schools through a network of local branches. Their web address is [www.pre-school.org.uk](http://www.pre-school.org.uk) and a range of useful publications and teaching resources is available from them.

## SAFEGUARDING

It is important that those responsible for looking after children are in all ways suitable and that there is an appropriate ratio of staff to children. The leaders of the pre-school will need to have received some training. Reference should be made to the Baptist Union of Great Britain safeguarding publications at [www.baptist.org.uk/safeguarding](http://www.baptist.org.uk/safeguarding).

## HEALTH & SAFETY

The pre-school will need to adopt a Health and Safety policy for the operation of the group and its equipment and maintain appropriate records. The pre-school leaders will also need to be aware and comply with the church's own Health and Safety policy which relates to the premises (see guideline leaflet L10 *Health and Safety and Fire Precautions*).

## FOOD HYGIENE

Churches are advised to contact their local Environmental Health Department for advice on food hygiene regulations. Most local authorities are able to offer relevant guidance leaflets and can also highlight appropriate training courses. The pre-school is likely to need to register with their local Environmental Health Department if food is provided as part of the pre-school's activities.

## INSURANCE

If the church premises are insured through the Baptist Insurance Company they should be notified of the pre-school activity before it begins as insurance cover can be given under the church's insurance policy for an additional premium. In other cases, proper insurance cover must be taken out to cover the operation of the pre-school which should also include employer's liability insurance. It is essential that insurance is in place before the pre-school opens. The Pre-School Learning Alliance is also able to offer an insurance package which churches might like to consider but it is important to note that the PLA cover excludes incidents of child abuse; such incidents can be covered through Baptist Insurance.

If the pre-school is established as a separate charity then, whatever level of control the Church has through the governance structures, the Church can properly make it a condition of the use of its premises that appropriate insurance is in place and ask for evidence of it. It is essential for separate pre-schools to have their own insurance in place as soon as they are separated from the church.

Whether the pre-school is established as part of the Church or independently the Church should check with their insurers that any claims against the Church or church leadership arising from the pre-school are covered – this is important in the light of recent case law which appears to extend the scope of vicarious liability for claims for child abuse beyond “employers” to include those otherwise involved in the governance of the school.

The Church should ask for and retain indefinitely copies of any insurance which it or the pre-school puts in place. We have experience of churches being confident that insurance was obtained but no longer being able to find evidence of it. Personal injury claims, for example, may be made many years later.

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

## **EMPLOYMENT LAW**

If any leaders or helpers are paid then proper steps must be taken to ensure that a PAYE system is in operation. Paying helpers out of the ‘petty cash’ is not acceptable.

The law requires paid staff to be given written particulars of their employment and gives staff employment rights which include the right not to be unlawfully dismissed if the employment has lasted for more than two years. (For further information see guideline leaflet L08 *Employment*).

## **EQUAL OPPORTUNITIES AND DISCRIMINATION LAW**

The Equality Act 2010 sets out provisions to protect individuals against discrimination on grounds of religion or belief (including lack of religion or belief) when goods, facilities and services are being provided. These provisions include pre-schools.

The principles of inclusion are linked to the Early Years Foundation Stage which means that early years providers must oppose all discrimination and prejudice and have regard for children’s entitlement and right to be treated fairly in relation to their home belief or religion.

If the church intends to provide a pre-school which is to operate in a Christian environment this principle should be clearly stated in the pre-school’s constitution and in any literature given to parents. If this is done it will be clear that the pre-school welcomes all children regardless of their background but that the environment in which the pre-school is to operate will be a Christian one. Obviously great sensitivity is required in dealing with children of different religious backgrounds.

When recruiting staff, it is unlawful to discriminate on the grounds of religion or belief, race, age, disability or sexual orientation. However, there is an exemption for organisations with a religious ethos where, having regard to the employer’s ethos and to the nature of the employment or the context in which it is carried out, being of a particular religion is a genuine occupational requirement of the job and it is proportionate to apply that requirement in the particular case. In some cases, this will enable churches to stipulate that pre-school employees be Christians. Where the job in question is not obviously ‘spiritual’ churches should ensure that they can justify why the job must be held by a Christian. The job description should include all aspects of the job which result in a requirement for it to be held by a Christian and the day to day reality of the job should reflect this position. A Christian content should not be added to the job description in an attempt to bring what is essentially a ‘secular’ post within the scope of the exemption.

Please refer to the guideline leaflets L08 *Employment* and L09 *Christian Ethos Audit*.

Care should be taken to adopt a suitable Equal Opportunity statement such as that contained in Guidelines Leaflet L08 *Employment*.

## **CONSTITUTION AND LEGAL STRUCTURE**

It is strongly recommended that a church pre-school should operate under its own constitution. A church will want to see the pre-school as part of its work and witness; the fact that the pre-school is,

from a legal point of view, a separate charity should not be seen as contrary to this concept.

A Baptist church is a charity which does not at present require registration with the Charity Commission unless its income exceeds £100,000 per annum. A church pre-school, although seen as part of the work of the church, is an activity which is primarily for the advancement of education and as such is charitable and needs to be registered under the Charities Act if it is an unincorporated association and has income of more than £5,000 per annum. If the pre-school is a Charitable Incorporated Organisation (CIO) it will already be registered with the Commission.

Our recommendation would be that anyone who wishes to establish a pre-school should do so through a corporate entity rather than as an unincorporated association. A pre-school could be set up as a company limited by guarantee but for many church pre-schools the CIO structure is likely to be most suitable. Further information on the incorporation of church community projects such as a pre-school can be found in leaflet C11 *Churches, Charities and Incorporation*.

A model CIO constitution for Baptist church pre-schools can be obtained from the BUGB solicitors Anthony Collins LLP. Please contact Esther Campsall, email [esther.campsall@anthonycollins.com](mailto:esther.campsall@anthonycollins.com).

Churches that are adopting an incorporated structure for their pre-schools are likely to need to take professional legal advice.

## **THE CHURCH'S INVOLVEMENT IN THE PRE-SCHOOL**

Even though the pre-school should be established as a separate legal entity most churches will want to ensure that the church maintains some level of control or involvement in the pre-school. There are various ways to achieve this. The governing document could include a requirement that some of the charity trustees of the pre-school are members of the church. Other options are to give the church the power to appoint or nominate some or all of the trustees of the pre-school; or to provide that the leadership team of the church are ex-officio members of the pre-school (either alone or with others) and give the members of the pre-school the power to appoint the pre-school trustees.

Membership of the pre-school is also significant because the members will have the power to amend the pre-school's governing document and the church will want to be sure that it can retain or amend the level of control that was put in place at the outset.

## **NAME**

What will the organisation be called? Any reasonable name is acceptable but it is important to ensure that you do not use somebody else's registered trademark. The name should not be one that is easily confused with another organisation.

If you are engaging in trading activity and have identified an innovative and unusual name you may want to consider protecting it as a trademark. This is a complicated area of law and specific legal advice may be needed. It is often the name and the graphics used in any logo or publicity material that is protected rather than the actual words or title themselves.

Please view the Intellectual Property Office website <http://www.ipo.gov.uk/tm.htm> and check that the proposed name has not already been registered by somebody else. If it has then (apart from certain exceptions) it is their property and it would be best to choose another name. Using a name that has been registered can lead to a legal claim for damages from the person who has already registered the trademark, or result in a demand for a substantial annual licence fee.

## **OBLIGATIONS IN RELATION TO PEOPLE WITH SIGNIFICANT CONTROL OF COMPANIES**

Where a church has been involved in setting up their pre-school as a company (including a Community Interest Company (but not a Charitable Incorporated Organisation)) it should be aware of requirements relating to people with significant control that are in force from 6 April 2016.

Company officers have obligations in relation to keeping and maintaining a register of people and legal entities 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. There are criminal sanctions for non-compliance.

In addition to this, individual church members may meet the criteria for being a registrable person with significant control of that company (a 'PSC'). It is also possible that the church might (if it is incorporated) be a registrable relevant legal entity in relation to the company (a 'RLE').

The company will have its own obligations which include: taking reasonable steps to identify PSCs/RLEs; contacting known or suspected PSC/RLEs to obtain and confirm information; making necessary entries on the company's own PSC register, filing information at Companies House; and keeping the register up-to-date.

Relevant church members and/or incorporated churches may have to comply with obligations in their capacity as an actual or potential PSC/RLE. If the church or a church member receives a notice from a company of which it is or may be a PSC/RLE asking it to confirm or supply details, a response must be given within one month. Failure to comply could be punishable by a fine or imprisonment. In addition, if church members and/or a church should be on a company's PSC register but no notice is received from that company for one month, every relevant church member and/or the church must within one further month notify the company of its registrable status and provide further details required by the law. Similarly, if there is any change which means that a company's PSC register is no longer complete or correct in relation to a church and/or a church member, the church and/or church member must notify the company and provide relevant information within two months of the change or, if later, one month of discovering the change.

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](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](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.

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 BMS Birmingham 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
<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:**

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Date Reviewed: May 2018 Date of Issue: May 2018