

Guideline Leaflet L04: Church Amalgamations and Mergers

Sometimes two churches decide that they want to formally amalgamate or merge. This can be for a number of reasons and there are significant legal implications that can arise. Our leaflet outlines these legal issues and the range of decisions that need to be made before an amalgamation can go ahead.

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.

L04: Church Amalgamations and Mergers

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

The legal services undertaken by the Legal & Operations Team of the Baptist Union of Great Britain are carried out and/or supervised by a Solicitor who is authorised and regulated by the Solicitors Regulation Authority. Regulatory Information is available here:

[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 an amalgamation must carefully consider all 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.

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

BAPTIST CHURCHES

Local Baptist churches each have their own members and set their own priorities. A range of activities will take place that are agreed and organised locally.

The autonomy of each local church is important for Baptists. Each church will have a group of members who will meet together in a church members' meeting. They will value their freedom to meet together for worship, prayer and Bible study. They will also consider the future plans for the church and how the work of the church should progress. Members are usually consulted and participate in taking the most significant decisions for their church, although some routine matters will be dealt with by the church's leaders, or Charity Trustees. In a Baptist church the Charity Trustees are usually the minister, deacons and elders, although different churches use different titles.

WORKING TOGETHER

Baptist churches will often want to co-operate with other Christian groups. Sometimes this will mean working ecumenically with other denominations but it can also mean working in partnership with other Baptist churches in their area. The co-operation between Baptist churches formed the basis of local Baptist Associations. The formation of the Baptist Union is a national expression of Baptists working together.

There will often be informal co-operation at a local level. Leadership tasks may be shared, or joint

services, prayer meetings/and Bible studies will be arranged but with each church retaining their own identity and membership. There may even be a sharing of buildings, staff, and other resources for youth work or to meet social needs in the community. The 'ownership' of property and responsibility for buildings and funds will remain with the individual local church within the partnership. Whatever informal arrangements are made each church will continue to have a separate existence with their own church members' meeting, Charity Trustees and identity.

These arrangements can work well, and churches may become stronger by working together. Sometimes a church that has been isolated can benefit from the energy and expertise in another church. Each church will have strengths and experience to offer. The temporary nature of the arrangement means that patterns of co-operation can be easily varied as circumstances change. What is right at one time might not be appropriate later. Provided there is an openness and willingness to respect each other then decisions can be taken to change or end a partnership.

JOINING TOGETHER – A NEW OPPORTUNITY

Sometimes churches will want to make a permanent arrangement. This will often follow a period of informal co-operation and partnership.

The suggestion that two churches should amalgamate should be considered very carefully. A great deal of thought and prayer must be given to this decision because there are very significant long-term implications for the churches involved. Legal arrangements have to be made, financial arrangements will change, and none of this is easily reversed. Churches intending to amalgamate should be satisfied that, doctrinally, they can work together.

EARLY CONSULTATION

Churches may want to speak to other churches that have amalgamated to learn from their experience. In addition, they will almost certainly want to contact the local Baptist Association and Regional Minister. The local Baptist Association will have experience of other churches taking this kind of decision. They will be able to offer advice to the church and it may be helpful for an Association representative to chair the church members' meetings. The Association will certainly be interested if two churches are planning to amalgamate and will want to do all they can to help.

As there are significant legal implications the church's Holding or Property Trustees need to be consulted. It is likely that the Baptist Union Corporation or one of the other Baptist Trust Corporations have this responsibility. They are usually appointed alone but occasionally jointly with private trustees. They will need to look at the trust deeds and property documents for the amalgamating churches and consider whether there are any specific legal problems that need to be considered. Even without unusual complications solicitors will usually need to be involved in preparing an Amalgamation Agreement.

As mentioned above, the church must consider whether an amalgamation will trigger a 'Cessation Event' in relation to the Baptist Ministers' Pension Fund.

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

TYPES OF AMALGAMATION

An amalgamation may take one of two usual forms:

1. A new church is established from two (or more) amalgamating churches. The life of each individual church ends and the two churches are transferred into the new church. The churches will not

relinquish their assets but carry them forward into the new church, pooling property, assets and resources of the amalgamating churches together.

2. A merger where one church transfers into another church. Often this will be a 'rescue' or 'takeover' merger where a larger church takes over a smaller, perhaps struggling church which might otherwise close. In this instance, the larger church will receive the assets, liabilities and members of the smaller church. The larger church will usually continue with its existing constitution and governance arrangements.

Often an amalgamated church will want to keep the pooled property assets for a while to determine how best to use them for church activities and missional opportunities but in time, the merged church may wish to sell assets and use the money towards repairs or refurbishment of retained property or ministry, if the trusts permit.

LEGAL ISSUES – FOUNDATION DEEDS

For a general introduction to Baptist foundation deeds please refer to our leaflets:

T01	<i>Baptist Trusts – Beginnings and Patterns</i>
T02	<i>Modern Model Trusts</i>
T03	<i>Appointing Property Trustees – Baptist Trust Corporations</i>

Baptist foundation deeds or trust deeds are usually created when the church purchases or is gifted its first property. Foundation deeds include trusts indicating how the premises should be used. For many Baptist churches the deeds also include detailed information about the way church life should be organised and will reflect Baptist beliefs and patterns of membership.

Some churches have open membership arrangements. This means that any person may be admitted to church membership on the basis of their profession of faith in the Lord Jesus Christ, even if they have not been baptised by immersion upon their own profession of faith.

Other membership arrangements restrict membership to a closed membership pattern. This means that baptism by immersion upon profession of faith is an essential prerequisite of church membership.

There is an obvious mismatch between the two kinds of arrangements. Where two churches, one that follows open membership and the other that follows closed membership wish to amalgamate, legal advice is essential. Creating an amalgamation in these circumstances will not be straight forward. It is sometimes possible to overcome the legal problems, but this is not easy.

Sometimes foundation deeds have quite explicit doctrinal requirements which also create difficulties, but usually the problems can be overcome with detailed legal advice and consultation with the Charity Commission.

LEGAL ISSUES - CHARITY REGISTRATION

Where one or both of the churches is already a registered charity this needs to be taken into account in making the relevant legal arrangements. It is not impossible for two separate registered charities to amalgamate, but the appropriate procedures need to be followed and the Charity Commission must be notified. This is something that the solicitors will check.

LEGAL ISSUES – ULTIMATE TRUSTS

We have already mentioned that foundation deeds vary and there can be different doctrinal statements and membership arrangements. Another important difference relates to something called 'the Ultimate Trust'.

Foundation deeds usually include arrangements that will apply when a church closes. The church members at the time the church was founded usually decided how they would want the property assets and the money arising from any sale to be used upon closure. They often nominated a Baptist charity or the Baptist Union or local Baptist Association to receive funds and trusted them to apply the money

for other useful Baptist work in future. Obviously at the time these arrangements were created, it was hoped that the churches would grow and flourish. Many Ultimate Trust arrangements have been in place for hundreds of years but if the church 'ultimately' closes then the money arising from the sale of property will be paid to the 'ultimate beneficiary' under the trust deed.

Whilst churches intending to amalgamate may have mutual characteristics, for example:

- 1) both churches may have the latest Baptist Model Trusts declared over the church and manse properties;
- 2) both churches are doctrinally aligned in terms of qualifications for membership and ministry; and
- 3) both churches are in membership with the Baptist Union and Regional Baptist Association;

the amalgamating churches may have different ultimate trust beneficiaries (for example, the Particular Baptist Fund or the Baptist Building CIO – formerly Baptist Building Fund). This is important because whilst the interests of the churches intending to amalgamate may be aligned, this may not necessarily be true of the ultimate trust beneficiaries concerned.

This could put the ultimate beneficiaries as a disadvantage so it is important that they are consulted. This is something that solicitors would normally deal with. As the ultimate beneficiaries will need to be a party to any Amalgamation Agreement which will set out their future interests in the properties, before a formal amalgamation can take place the ultimate beneficiaries need to agree.

Most ultimate beneficiaries will agree to this. Their future interests are safeguarded by having all the properties (church buildings and manses) professionally valued. This will provide a total value for the combined property portfolio and will enable percentages to be agreed for the assets of each of the amalgamating churches. These values and percentages are recorded in the formal Amalgamation Agreement which will provide that if the new church closes, the proceeds of sale of any remaining premises will be divided between the ultimate beneficiaries in accordance with the agreed percentages. Some ultimate beneficiaries may also require the church to agree to a restriction being registered against the Land Registry property title for the property over which they have a future interest. This will mean that the ultimate beneficiary will be notified of any disposal of the property.

LEGAL ISSUES – BAPTIST MODEL TRUSTS

Many foundation deeds are old and they may not include up to date administrative arrangements. There is a convenient way to update the administrative arrangements in older trust documents by adopting Baptist Model Trusts – known as the Baptist Trusts for Churches 2003 or the Baptist Trusts for Manses 2004. As well as creating a modern framework for future property transactions this can also have the effect of enabling future sale proceeds to be used in a more flexible way. Some older foundation deeds limited the way monies could be used.

LEGAL ISSUES – GOVERNING DOCUMENTS

The newly amalgamated church will usually need a new Governing Document or Constitution unless the merger is where a larger church is taking over a smaller church. (Even in the latter case, it is a good opportunity for the larger church to ensure that it has a modern, fit for purpose constitution, and the church may even want to consider becoming a CIO.) This needs to be agreed before the final decision to amalgamate is taken. The new organisation needs to have a working Governing Document even if this is formally adopted at the beginning of the first church members' meeting of the new church.

In preparing a Constitution some consideration must be given to the trust deeds but the focus for a local church Constitution is the local activities and working funds of the church. If there are conflicts with the trust deeds these can usually be overcome, possibly by declaring Model Trusts, or by using statutory powers that allow for administrative matters to be updated. If there are particular problems the Charity Commission may need to be consulted, but this does not happen very often. The Charity Commission has power to authorise alterations that are unusual where this is essential to the smooth-running future of the amalgamated church.

The Baptist Union Corporation has a recommended precedent form of Constitution or 'Approved

Governing Document' for unincorporated churches which has been approved by the Charity Commission. There are also leaflets and an Approved Governing Document for churches wanting to become a Charitable Incorporated Organisation (CIO). We encourage churches to look at our guidelines leaflets:

- C03 *Church Constitutions*
- C04 *The Approved Governing Document*
- C05 *Using the Approved Governing Document*
- C12 *Using the Charitable Incorporated Organisation Precedent Document*

If churches are considering creating a new governing document some may ask questions about the legal status of a local Baptist church and the responsibilities of Charity Trustees.

There is more information on this in:

- C01 *Charity Legislation and Churches*
- C11 *Churches, Charities and Incorporation*
- C15 *Help I'm a Charity Trustee*

LEGAL ISSUES – EMPLOYEES, APPOINTED MINISTERS AND OTHER LEGAL CONTRACTS

Solicitors need to be told who is employed by each church or serving as minister by the merging churches. The church may have a minister, caretaker, administrator or youth worker. Ministers are normally appointed as office holders but other employees will usually have a contract of employment. They are entitled to the same protection and have the same employment rights after the amalgamation as existed before. This is a matter that solicitors should consider and their advice should be followed.

MAKING DECISIONS

It will probably be necessary for several meetings to take place in each of the amalgamating churches before the final and formal decision to amalgamate is made. There will be many issues that need to be considered. Sometimes it will be helpful for the churches to meet together for a discussion, at other times it may be helpful for the churches to meet separately.

The decisions are important. It is usual for decisions about amalgamations to be taken at a Special Church Members' Meeting. This usually means that notice of the meeting, and an indication of the purpose of the meeting, must be given at the services on the two previous Sundays. To be successful a resolution at a Special Church Members' Meeting must usually have significant support, usually of at least two thirds of the members present entitled to vote and voting at the meeting.

Proxy or postal voting is not normally used within Baptist churches, particularly for complex decisions. The fundamental principle of the members gathering to pray, worship and consider the future of the church together is very important. The members want to make a decision that is right, and this will involve sharing ideas and listening to other members as they share their thoughts and concerns. Ideally, the members should be able to work together towards a clear understanding of the way the church should advance its work in future. Practical aspects of consultation and decision making are important, but spiritual issues are important too. Baptist churches will often want to be confident that God is showing them that the proposed amalgamation is appropriate at this stage of the church's life.

Some churches may want to achieve a unanimous decision, but this is not always possible. Some churches may not feel that a two thirds vote is sufficient and might want to set a higher voting tariff for this particular decision. Where this is felt necessary the members need to agree before the final vote is taken that they will require a higher proportion of votes in order to pass the resolution. This overrides the general arrangements in a set of church rules or Constitution and enables the members to test more strongly the level of support for the proposal. (A clause that allows for this to be done is included in the leaflet C04 *Approved Governing Document*, clause 13.10).

WHICH DECISIONS?

The following matters need to be dealt with at the church members' meetings for both churches. They

do not all have to be resolved in one meeting but need clarification before the amalgamation or merger is completed.

- **Give thanks to God** for the faithful witness down the years by the members of the church, past and present, and resolve that the church will amalgamate with the other church on an agreed date to form a new church to be known as Baptist church.
- **Church Members.** Agree that the present members of the amalgamating churches will become the founding members of the new church or that they will become members of the larger church.
- **Agree on a Constitution** for the new church (if necessary).
- **Consider** what changes may be needed to practical arrangements, e.g. time and place of meeting.
- **Agree who will serve as the Charity Trustees** for the merged church (e.g. minister, deacons, elders, secretary and treasurer).
- **Agree** a target date for the start of the new church (if appropriate).
- **Consider** if a new name is needed, and what it shall be. See guidelines leaflet C10 *Churches and Change of Name*
- **Amalgamation Agreement and/or Transfer Agreement.** The Holding or Property Trustees to work with the church and solicitors in creating a formal Amalgamation Agreement. This will involve consulting solicitors in helping the church take whatever steps may be legally necessary.
- **Church Funds.** Agree that all church funds which are not subject to special trusts or restrictions will become part of the funds of the new or merged church.
- **Consider** whether Model Trusts should be adopted.

Signed copies of the minutes of the final meeting should be sent to the Holding Trustee.

Where there are trust funds or other special funds to be taken into account the information needs to be passed to the Holding Trustee and the solicitors. It is possible that some of the funds could be wound up if they are small or applied differently with the consent of the Charity Commission.

VALUATIONS

Valuations of the property will have to be undertaken by a qualified surveyor, ARICS or MRICS. Your Holding Trustee or the Baptist Union Corporation can provide further details of what is needed.

Churches should expect ultimate trust beneficiaries to require valuations of church properties before an Amalgamation Agreement is entered into.

PENSION FUNDS – IMPORTANT ISSUES

It is vital that each church checks with the Baptist Pension Scheme the pension arrangements for Baptist Ministers and follow their guidance before an amalgamation is finalised. Please contact:

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

APPOINTING A SOLICITOR

A solicitor will need to be appointed to prepare the Amalgamation Agreement. For churches that have the Baptist Union Corporation as their Holding Trustee we anticipate that churches will appoint the Corporation's solicitors to advise the church and Corporation on any legal matters associated with the amalgamation. The Baptist Union Corporation's solicitors are:

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham
B3 2ES

Tel: 0121 200 3242

Fax: 0121 212 7442

DX 13055 Birmingham 1

www.anthonycollins.com

Email: esther.campsall@anthonycollins.com

Please make initial contact with Esther Campsall.

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.

The legal costs associated with your amalgamation will be payable by the church. If you decide to ask Anthony Collins Solicitors LLP to do the work this may help avoid any misunderstandings or delays. They are familiar with our requirements.

At the start of a transaction or piece of work they will where possible give a formal estimate of the forecast costs and expenses. They will ask your church to formally confirm details of the work you are asking them to undertake and that you understand the arrangements for the payment of the legal costs. If the work becomes more complicated than was originally anticipated then they will tell you as this may affect the forecast costs. You should not be presented with a larger bill than you are expecting.

Sometimes a church will know a local solicitor they wish to instruct to act for them in a property transaction. Please remember that there are additional requirements in acting for a Baptist church that is governed by the various Charities Acts and where a trust corporation holds legal title. You should ensure that the solicitor you have chosen has experience not only in dealing with conveyancing transactions of this type but also is familiar with charity law requirements.

We will provide as much helpful information as possible to a local solicitor but Anthony Collins Solicitors LLP will still act for the Baptist Union Corporation Limited. The Baptist Union Corporation Limited will need Anthony Collins Solicitors LLP to approve documents that are to be signed or sealed by the Baptist Union Corporation Limited. Any costs associated with Anthony Collins Solicitors LLP involvement in a transaction are payable by the church.

Generally, amalgamations can take around one year to complete from the date solicitors are first instructed, depending on the complexity of the arrangements. The legal costs will depend on a number of factors e.g. the type of amalgamation, the identity of the ultimate beneficiaries and any Pension Scheme considerations. By way of a general indication of costs, a merger where a formal Amalgamation Agreement and Transfer Agreement are required may cost in the region of £4,000 plus VAT. However, every church amalgamation is different and the costs and timescales involved can vary considerably.

COMPLETION AND CELEBRATION

It is difficult to estimate the amount of time that will be involved in completing an Amalgamation Agreement. Sometimes the solicitors review church deeds and trust documents and find that matters are very straight forward. Sometimes where there are complications it can be very time consuming to deal with the various legal issues involved. Whilst it may be tempting to set a date for a service of celebration it may be best to wait until the solicitors can give a clear indication of the timescale involved.

Until the formal Amalgamation Agreement or merger is completed the two churches still exist independently.

Each church should maintain its own leadership and bank accounts. Any merging of the finances, membership lists and leadership should only happen after the Amalgamation Agreement has been completed.

This does not prevent the churches working together informally, as if they are one new church, but the legal issues are important and need to be resolved properly.

TELLING OTHERS

We have assumed that you will already have notified your Association and through them other churches in your area. The Association will help you to deal with the administrative arrangements that enable the new church to be recognised as members of the local Baptist Association and the Baptist Union of Great Britain. The Association may want to share in any service of celebration for the new church.

The local Superintendent Registrar will also need to be informed. The Registrar will advise you that action needs to be taken concerning Marriage Registers and point out any other changes which need to be made.

The church's insurance company will need to be informed.

If a new church is formed, it will almost certainly create new bank accounts and it will be important for the new Charity Trustees, particularly the new treasurer, and details of cheque signatories to be resolved with the bank. There are probably numerous other organisations that need to be told, for example, electricity, gas and water suppliers, as well as tenants who pay rent on any properties to one of the churches. There is no alternative but to check through all the administrative arrangements for both churches to ensure that the appropriate letters are sent and acknowledged. Where leases are involved it can be necessary to send a formal notice, but solicitors will be able to advise on this.

It is also important to note that any expected legacies to one of the churches may fail if the church is no longer in existence, having amalgamated and formed a new church. Appropriate wording should be included in a Will to ensure that the legacy is still effective. Legal advice should be sought by the Testator/Testatrix and by the merged church in relation to anticipated legacies.

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

Date Reviewed: January 2024 Date of Issue: June 2022