

Guideline Leaflet L16: Legal Liability of Church Members in a Baptist Church

Most Baptist churches are set up as ‘unincorporated associations’. This leaflet explains the small risk that in certain situations church members could face legal liability in an unincorporated church. It also outlines important steps that churches can take to protect their members from this liability; this includes purchasing appropriate insurance cover.

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.

L16: Legal Liability of Church Members in a Baptist Church

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.

INTRODUCTION – CHARITY TRUSTEE AND CHURCH MEMBER LIABILITY

In January 2016 the Baptist Union contacted all member churches to highlight the following information about the potential for church member liability. A letter was included from the Interim Support Services Team Leader and this can be found at Appendix 1.

It is a well-established legal principle that the Charity Trustees in a Baptist church are those who are responsible for the general control and management of the charity. These are usually the Ministers and Deacons, including the Church Secretary and Treasurer, who are in leadership in the church. Where the charity structure is that of an unincorporated association, as is the case with most Baptist churches, the Charity Trustees carry a potential personal liability in relation to any third party contracts and public liability situations. Further information about trustee liability can be found in guideline leaflets *C01 Charity Legislation and Churches* and *C15 Help I'm a Charity Trustee*.

By virtue of the nature of congregational governance in a Baptist church there is the possibility, albeit an unlikely one, that individual church members in a Baptist church might too face a personal liability. For example, this might arise in connection with contracts which require church member approval or possible claims for damages. These scenarios are discussed later in this leaflet.

It should be emphasised that the Baptist Union is not aware of any situation where church members have been held personally liable for a claim brought against a church and it is likely that church members would be entitled to be indemnified from church assets. However, even though it is rarely established in practice, it should not be dismissed as being beyond the realm of possibility. It is therefore imperative that every church, regardless of its size, has in place adequate policies and procedures to help prevent claims arising and to safeguard its charity trustees and church members from personal liability.

By highlighting good practice and procedures for churches it is hoped that this guideline leaflet will support churches in managing their risk and enable them to provide better protection for their charity trustees and church members.

ADDRESSING THE POTENTIAL FOR MEMBER LIABILITY

We recommend that the following points be considered and put in place where necessary:

1. A church's Constitution should require that suitable and sufficient public liability and employer's liability insurance is in place having regard to all of the church's activities, such as is provided for in Clause 16.2 of the Approved Governing Document for Baptist churches. We recommend that churches use a specialist insurance provider such as Baptist Insurance to ensure there is adequate cover in place to manage the financial risk.
2. Public liability insurance cover should include Trustee indemnity insurance which will offer some protection to Charity Trustees against personal liability. A church should enquire of their specialist insurance provider whether the public liability section of the cover also includes protection for church members and anyone actively involved in the church's work or authorised activities, including authorised volunteers. A checklist of suitable insurance policies can be found at Appendix 2 and this should be reviewed annually. Please note – the checklist only relates to a church's legal liability and does not include normal cover for buildings, contents and other related matters which churches should also ensure are adequate.
3. It is important for each church to keep indefinitely a full record of all insurances held by or on behalf of the church. This is so that if a historic claim does arise, there will be no difficulty in identifying any insurance which may be available to meet the claim. In relation to contractual liabilities, each church is in control of the level of risk to which it is exposed. It is possible for a contract to specify that the liability of the Charity Trustees and church members is restricted to the assets which they hold or control on behalf of the church and does not extend to their personal assets.
4. Incorporation of the church as a Charitable Incorporated Organisation (CIO) will help to manage the risk of both church members and Charity Trustees. Where a church has a CIO structure, the CIO has a separate legal identity thereby allowing the charity to enter into contracts in its own name. This allows the Charity Trustees and church members to carry on the activities of the charity without usually being exposed to any personal liability and the liabilities of a CIO are limited to its assets. A CIO will not, however, protect Charity Trustees or Church members from the consequences of wrong-doing, for example: unlawful trading; acting outside their authority, unlawful discrimination or negligence. Some of these risks can be addressed with insurance. Further information about CIOs can be found in guideline leaflet *C11 Churches, Charities and Incorporation*.
5. Churches are encouraged to make use of the BUC Guideline Leaflets on the Baptist Union website found at http://www.baptist.org.uk/Groups/220864/BUC_Guidelines.aspx for recommendations as to best practice and to take advantage of the training opportunities offered to them by their local Association and the Baptist Union Legal & Operations Team.

FREQUENTLY ASKED QUESTIONS

Why are you highlighting the potential for liability now?

It is important to stress that there has been no change in the law regarding church member liability. The potential for liability that currently exists arises mainly because most Baptist churches are unincorporated associations, and always have been. Although we have highlighted the potential for charity trustee liability in our guidance for many years we have not offered any information about the potential for church member liability. This is because it has not been an issue in practice but we now feel that in an increasingly litigious society it is appropriate to offer more detailed guidance.

Does insurance solve the problem?

Appropriate insurance policies with adequate levels of cover are very important and will go a long way towards addressing the potential for liability. In most cases insurance will protect church members and trustees but insurance cannot cover every potential scenario. The Association of British Insurers (ABI) has produced a helpful and detailed summary of the kind of situations that can arise in a charity context

and whether insurance will cover the potential liability of trustees. The principles will apply equally to church members. This guidance can be found here:

<https://www.abi.org.uk/~media/Files/Documents/Publications/Public/2014/Voluntary/ABI%20Trustee%20Liability%20Guide.pdf>

Does incorporation as a CIO solve the problem?

Incorporation as a CIO will protect church members in most situations. The ABI guidance mentioned above also indicates where incorporation offers protection. Individual churches need to make a decision about incorporation based on their own individual circumstances and risk profile, which will vary from church to church. There are financial costs associated with the legal work involved in becoming a CIO and churches need to decide if these costs are worthwhile in their context. The guideline leaflet *C11 Churches, Charities and Incorporation* offers further information.

We are insured by Baptist Insurance. Is their cover adequate?

You need to assess the adequacy of your own insurance policies based on your own circumstances. We cannot recommend one particular insurer over another. However, since many Baptist churches are insured with Baptist Insurance, we have made specific enquiries about their cover.

If your church is insured with Baptist Insurance then your church members will be covered under the Public Liability section of the policy. This means they are covered if a claim is made against them which arises from an incident that happened whilst they were acting on behalf of the church.

It is important to bear in mind that the cover only applies if the member was acting on behalf of the church and was authorised to do so. For any incidents where a church member was acting in a private or personal capacity they would not be covered.

You can check whether your church has liability cover by looking at your latest policy schedule or by contacting Baptist Insurance on 0345 070 2223.

For those church members acting in a congregational governance capacity (taking decisions in church meeting), Baptist Insurance would also provide protection in the unlikely event church members are held personally liable whilst acting in this capacity.

Churches insured through other companies will need to check with their own insurers. As well as checking that members are covered you should also check that you are covered for incidents of abuse because some companies restrict or exclude cover for these claims. We would also recommend that insurance is taken on a 'claims occurring' basis rather than on a 'claims made' basis. This means that claims will be covered whenever the claim is made provided that the incident occurred during the insurance period.

Baptist Insurance policies do not restrict cover for abuse; their policies are on a 'claims occurring' basis.

Can you give examples of situations where members might face a liability?

1. Contracts

Members could potentially be found liable in relation to contracts with third parties. These include contracts for the supply of goods and services, including those relating to building projects, and the employment of staff. When somebody enters into a contract on behalf of an unincorporated association, liability will depend on where the authority came from for the contract to be entered into. Members may be held liable for contracts made on behalf of the church where they have authorised the contracts by voting in favour of them at a church meeting.

In relation to contractual liabilities it is important to note that the Church is in control of the level of risk to which it is exposed. It is possible for any contract to specify that the liability of the Church trustees and members is restricted to the assets which they hold or control on behalf of the Church and does not extend to their personal assets. Churches should take professional legal advice when entering into contracts to ensure that appropriate wording is included.

2. Tort

When people are injured or suffer a loss as a result of the activities of an unincorporated association they may seek compensation through the law of tort. Claims in tort will include, for example, instances of abuse and accidents that result in physical injury.

The risk of claims in relation to tort can be reduced through good practice and risk management but there will always be some risk. The best way to manage the financial risk is through insurance. It is important to keep a full record of all insurances held by or on behalf of the Church indefinitely so that, if a claim does arise, there is no difficulty in identifying any insurance which may be available to meet any claim. We would again refer you to the annual checklist of legal liability insurances at Appendix 2.

You say that the potential for liability arises because most churches are unincorporated associations. Can you explain further?

The vast majority of Baptist churches are unincorporated associations. This kind of arrangement has no separate 'legal personality' which means that legally an unincorporated association is no more than an aggregate group of its individual members; it does not possess a legal personality distinct from those members. In legal terms the purpose of an unincorporated association is for individuals to group together under a contractual relationship for a common purpose. A 'contract' exists between the members of the association and the terms of that 'contract' are the rules of the association, which we refer to as the church constitution.

Is there any way I can be a church member without facing this potential liability? I am worried about the risk to my personal finances.

The potential for liability applies to all church members. As with all things some people will be more worried about these issues than others. We would not want any church member to be unduly concerned about the information contained in this leaflet. We would stress again that we are not aware of any situation where church members have been held personally liable for a claim brought against a Baptist church.

If you feel worried then we suggest that you have a conversation with someone from your leadership team. Church leaders are also members and they will already be familiar with the principles of liability that apply to them as charity trustees.

As a church member what can I do to help protect myself from liability?

The most important form of protection for any church to have in place is insurance. Your church leadership team should ensure that proper insurance cover is in place and we would encourage them to check the terms of that insurance in accordance with the recommendations in this leaflet. As a church member you might like to ask them to confirm that they have done this!

If you use your own car during the course of volunteering for the church then you should mention this to your own insurer. This will not usually result in any extra charge but it is important that your insurer knows that you are a volunteer for a charity and that you drive your own vehicle on charity business. You should mention this to your insurer to ensure that you have appropriate car insurance cover.

How might good practice, procedures and policies help us to avoid a liability?

It is impossible to eliminate all risk in a church situation. However good practice and effective policies are important elements that help to avoid incidents occurring that might give rise to a legal claim. For example, robust safeguarding procedures will help to protect the children and vulnerable adults who attend church activities; detailed guidance on appropriate good practice can be found on the Baptists Together website under 'Safeguarding'.

Health and safety incidents can be reduced by undertaking comprehensive risk assessments and putting appropriate safeguards in place. Please refer to guideline leaflet *L10 Health and Safety and Fire Precautions* for further guidance. You may also be interested in our leaflet *C21 Church Life Risk Assessment*. Your insurer may also provide advice on their website about how risk can be managed and we would recommend the Baptist Insurance website in this regard.

We are part of the Baptist Union. Won't the Union cover us for any liability that arises?

Our Union is made up of over 2000 churches, thirteen regional associations, six Baptist colleges and three specialist teams based in Didcot. Member churches are all independent and autonomous charities. There is no 'central pot of money' that can be drawn on to compensate individual church members if a liability arises. Equally, there are no 'central insurance policies' that can offer protection to individual churches.

Would we be able to sell our building to cover a large liability claim?

You should first look to your insurance policies to cover you. If these are inadequate then in many cases the financial and other assets of the church would be available to compensate members in the event of a personal liability arising. However the property may not be available in all cases and much would depend on other factors such as the individual trust arrangements and any debt that is due to the Baptist Pension Scheme. A church manse is more likely to have flexible trust arrangements and so be available as an asset that could be sold rather than the church building itself but this might also be available in some cases.

Any more questions?

If you have further questions that are not answered by this leaflet these can be sent to the Legal and Operations department who are part of the Support Services specialist team in Didcot. Please email buc.corp@baptist.org.uk

APPENDIX 1 (Letter from Interim Support Services Team Leader)

29 January 2016

Dear friends

Liability of church members and insurance

I am writing to bring to your attention a matter which has been considered at length over the past year by the BUGB Legal and Operations Team. It followed the involvement of one of our member churches in litigation proceedings where the church and the Charity Trustees were named as co-Defendants in the proceedings. A legal opinion obtained by the church from a QC stated that the Claimants in the case would be entitled to claim against the membership of the church but that the members would probably be entitled to be indemnified from the church's assets.

Some detailed legal research has subsequently been carried out and discussed with the Directors of the Baptist Union Corporation Limited and we have also taken advice from Anthony Collins Solicitors LLP in this regard. As is the case for most Baptist churches, where the charity structure of a church is that of an Unincorporated Association, the Charity Trustees carry a potential personal liability. However, the nature of congregational governance means that a potential liability could apply to church members. Whilst this is a very unlikely scenario, it is one which the Baptist Steering Group feels should now be brought to your attention.

We have therefore prepared two documents which are being circulated to all of our member churches; a briefing note on church members' liability and a checklist of legal liability insurances for churches. The aim of these documents is to highlight the potential personal risk to church members and to emphasise the importance of having adequate insurance cover in place, alongside the need for good practices and procedures to be implemented in our member churches. These documents are enclosed for your careful consideration having regard to your own church's risk profile.

Whilst we felt that it was important to bring this matter to your attention, we understand that it may be of some concern and give rise to further questions. The Legal and Operations Team have therefore prepared a new guideline leaflet L16 which provides more detail on the subject which can be read online or downloaded from the BUGB website. The team will also be available to respond to any questions by email and telephone as usual. Please email buc.corp@baptist.org.uk.

With kind regards.

Yours sincerely

Richard Nicholls
Interim Support Services Team Leader
Support Services Team - Legal and Operations

APPENDIX 2

LEGAL LIABILITY INSURANCES FOR BAPTIST CHURCHES

Baptist churches must have sufficient and appropriate insurance from a specialist provider to protect the church, its charity trustees and members against legal liability arising out of church activities.

Legal liability insurance is a key element of any church's general insurance package. There are three main areas of cover. A description of the three covers is set out below together with a checklist of questions to be reviewed on an annual basis and kept as a record by the church.

Employers' Liability Insurance

This is a legal requirement where your church has employees and it will protect you if you are held legally liable to pay damages to an employee who is injured whilst working on behalf of the church. This insurance is required even if your only 'employee' is a Minister. A Certificate of Insurance will be provided by your insurer and you are required by law to display it. This can be in an electronic form.

Much of the work undertaken in a church is carried out by church members and other volunteers and some specialist insurers will treat volunteers as employees for the purpose of insurance.

- *What limit of indemnity do you hold and is it sufficient for the church's needs?*
The legal requirement is for a limit of indemnity of at least £5m, however most insurers will provide £10m as standard.
- *Do you keep a record of your insurers over time?*
Employers' liability claims may take a number of years to emerge.

Public Liability Insurance

This covers your church if it is held legally liable for injury to a member of the public or damage to their property. For example, if someone slips or trips and is injured whilst on church premises, you may be held liable to pay damages to them, and any associated legal costs. There is no legal obligation to display or hold a Certificate of Public Liability Insurance.

- *What limit of indemnity do you hold and is it sufficient for the church's needs?*
You will need to consider an appropriate level of cover and given the level of Court awards, many churches are likely to insure for at least £5m.
- *What cover is provided in relation to acts of abuse where your church may be held legally liable?*
Some insurers may apply a restriction or not provide cover at all.
- *Do you keep a record of your insurers over time?*
Public liability claims may take a number of years to emerge.

Trustee Indemnity Insurance

Trustee indemnity insurance protects the charity trustees for wrongful acts (but not acts of a reckless, dishonest or criminal nature) whilst acting in their capacity as trustees which results in legal liability to pay damages and legal costs. Some specialist insurers include a broad definition of 'trustee' which includes employees and volunteers who act in the capacity of a trustee.

- *Is cover automatically provided as part of your insurance package?*
Some specialist insurers will include a measure of cover as an extension to the public liability cover with an option to purchase a higher limit.
- *If you have cover, what limit of indemnity do you hold and is it sufficient for your needs?*

General points to remember:

Insurance is not a substitute for carrying out risk assessments or having adequate policies in place, for example in regard to safeguarding and health and safety.

Charity trustees should determine an appropriate level of cover for their church, bearing in mind all of its activities and number of employees and volunteers.

TYPE OF INSURANCE COVER	DATE COMPLETED
EMPLOYERS' LIABILITY INSURANCE	
PUBLIC LIABILITY INSURANCE	
TRUSTEE INDEMNITY INSURANCE	

Policy Details:

Insurance provider _____

Policy Number _____

On behalf of the Charity Trustees we confirm that there is adequate and up to date insurance cover in place which meets the specifications set out above.

Signed _____ Minister/Trustee

Signed _____ Deacon/Trustee

Date _____

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