

## **Guideline Leaflet C16: Conflicts of Interest**

Charity trustees have a legal duty to act only in the best interests of their charity. Sometimes their personal and professional connections give rise to conflicts of interest which the trustee group needs to manage. This leaflet offers guidance on this issue.

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.

# C16: Conflicts of Interest

**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.**

## INTRODUCTION

Charity trustees have a legal duty to make decisions that are in the best interests of their charity. In a Baptist church the charity trustees are usually the Minister, deacons and other members of the church leadership team. This group of people have to act in the best interests of the church; if any of them have a personal or other interest that might affect their decision making then this is a conflict of interest. Conflicts of interest have to be managed in order to protect the charity.

Charity trustees should familiarise themselves with guideline leaflet [C15 Help I'm a Charity Trustee](#)

## IDENTIFYING CONFLICTS OF INTEREST

Trustees have a responsibility to declare the conflicts of interest which affect them. They must declare the conflict as soon as they are aware of any possibility that their personal or wider interests could influence their decision making or could be perceived to do so. This will include situations where somebody connected to them stands to benefit from a trustee decision.

Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person (see below) or
- a trustee's duty to the charity competes with a duty or loyalty that they owe to another organisation or person.

The Charity Commission expects trustees to have a standing agenda item at the beginning of each trustee meeting to declare any actual or potential conflicts of interest.

## WHO COUNTS AS A CONNECTED PERSON?

The Charity Commission says that in broad terms this means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. However in some instances there is a statutory definition of 'connected person' and these occasions are mentioned below.

## PREVENTING CONFLICTS OF INTEREST FROM AFFECTING DECISION MAKING

Once an actual or potential conflict of interest has been identified the other trustees must consider the issue so that any potential effect on decision making is eliminated.

Where the conflict of interest is associated with a trustee benefit the affected trustee should be absent from any part of any meeting where the relevant issue is discussed or decided; the individual should not vote or be counted in deciding whether a meeting is quorate and their absence must be recorded in the minutes.

Examples of situations that may occur in a Baptist church and how they can be managed are discussed below.

## GOVERNING DOCUMENTS

Guidance on how to manage a conflict of interest can sometimes be found in a charity's governing document. Churches that have adopted the BUGB Approved Governing Document (AGD) for unincorporated associations or for CIOs will find that their church constitution has relevant provisions.

Most Baptist churches are unincorporated associations and if they have adopted the BUGB AGD they need to refer to clause 20 which was drafted for BUGB by the Charity Commission. This clause provides a framework within which some payments to charity trustees can be managed (see below). A similar clause for churches that have incorporated as CIOs can be found at clause 9.

## CHARITY COMMISSION GUIDANCE

The Charity Commission publishes comprehensive guidance on conflicts of interest which charity trustees need to be aware of. In particular you should refer to:

Conflicts of interest: a guide for charity trustees: <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

## MANAGING CONFLICTS OF INTEREST AND PAYMENTS TO TRUSTEES:

### PAYMENTS TO MINISTERS

Although charity trustees are not normally entitled to be paid for their services out of charity funds it has long been accepted by the Charity Commission that these restrictions do not prevent the minister of a Baptist church from receiving a stipend while being a charity trustee. **However, a church updating its Constitution must include a specific provision to authorise this payment such as clause 23 of the BUGB Approved Governing Document (clause 16.11 in the CIO AGD).**

Although the stipend will need to be discussed from time to time the Minister should not participate in this decision making process. They will need to leave any meeting where their remuneration is discussed and this should be formally recorded in the minutes.

It is also important to be careful if the church's funds are being used to benefit other family members of the Minister who will qualify as connected persons, such as paying the Minister's spouse for administration work (see 'Employing a charity trustee or a connected person' below).

### PAYMENTS FOR GOODS OR SERVICES

Charity trustees are not normally entitled to be paid for their services out of charity funds, other than reimbursement of reasonable and necessary out of pocket expenses which must be supported by receipts. **They cannot be paid for acting as a trustee.**

The Charities Act 2011 does allow charities to pay an individual charity trustee or a connected person for providing goods or an additional service to the church **if this is in the best interests of the charity**. For example: a trustee who is a plumber may be the best choice to provide plumbing services to the church; this might happen because the trustee is charging a more competitive price or is delivering a better service than the trustees could obtain elsewhere.

There are important points of principle to remember when paying a trustee or a connected person:

- the total number of trustees (or people connected to them) receiving any payment must be in a minority on the trustee body;
- the amount paid for providing the goods or service must be reasonable and set out in a written agreement with the church (see below);
- the trustee must not take part in decisions made by the trustee group regarding any aspect of the agreement or sign or enter into the agreement on behalf of the church;
- the governing document must not contain any specific provision forbidding this type of payment. None of the BUGB standard governing documents contain such a prohibition.

Where a charity trustee is being paid the unpaid trustees must put procedures in place to manage the conflict of interest and to monitor the performance of that trustee. A suitable framework is provided at clause 20.2 of the BUGB Approved Governing Document (9.2.8 of the CIO AGD) where the Charity Commission asked us to insert a clause that says:

*Where it is proposed that a Charity Trustee (or person, firm or company, connected with the Charity Trustee) is to be employed or receive remuneration or sell goods or services or any interest in land to the Church and where this gains the approval of the Church Members' Meeting then this shall be permitted only if:*

- *the Charity Trustee or any person connected with the trustee who may benefit directly or indirectly from the proposed remuneration declares an interest in the proposal before discussion on the matter begins;*
- *absents himself or herself (or in the case of any connected persons themselves) from any part of any meeting at which the proposal is discussed and takes no part in any discussion of it and is not counted in determining whether any such meeting is quorate;*
- *does not vote on the proposal;*
- *the remaining Charity Trustees who do not stand to receive the proposed benefit are satisfied that it is in the interests of the Church to contract with or employ that Charity Trustee (or connected person) rather than another independent person and must record the reason for their decision in the minutes;*
- *in reaching that decision the Charity Trustees must balance the advantage of contracting with or employing a Trustee against the disadvantage of doing so (especially the loss of the Trustee's services as a result of dealing with the Trustee's conflict of interest);*

*The Charity Trustees authorising the proposed transaction comprise a majority of the Charity Trustees body and have not received any such benefit.*

The Charity Commission recommends that payments to trustees are disclosed in the church's annual report and accounts. Detailed guidance and a checklist of the factors to be considered before a trustee receives payment are available from the Charity Commission, information leaflet CC11 'Trustee Expenses and Payments':

With regard to the provision of goods and services there is a statutory definition of 'connected person' at clause 188 of the Charities Act 2011 which states:

- (1) For the purposes of sections 185 and 186, the following persons are connected with a charity trustee or trustee for a charity -
  - (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
  - (b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
  - (c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
  - (d) an institution which is controlled -
    - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
    - (ii) by two or more persons falling within sub-paragraph (i), when taken together.
  - (e) a body corporate in which -
    - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
    - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

## **DRAFTING A WRITTEN AGREEMENT FOR SERVICES**

There must be a written agreement with the church and there are certain elements that the agreement must contain:

- an accurate description of the service to be provided;
- the name of the trustee or connected person (including a business) who will receive the payment;
- details of the amount, if a 'one-off' or fixed-term payment, or else the maximum amount for services to be provided over the duration of the agreement. Where the benefit is a 'payment in kind', details of the benefit and its approximate value must be given.

As a matter of good practice the agreement should also contain the following statements to show that the trustee group has considered these factors and has therefore complied with its duties when reaching a decision:

- a statement that the trustee concerned (including one who is connected to a person providing a service) will withdraw from any discussion of the trustees which has any bearing on the terms of the agreement or the acceptability of the standard of service provided; this should not, however, prevent a trustee or connected person from providing information which the trustees may need in order to reach a decision;
- a statement that the trustee concerned will not vote on any of these matters, and must not be included when deciding whether a quorum exists at a meeting to discuss them.

The agreement must be signed by someone authorised by the trustees to do so. This could be one or more of the trustees who do not stand to benefit under the agreement, or someone who is not a trustee

but who has a sound knowledge of the matter. The agreement should also be signed by the trustee or connected person who is to be paid.

As the agreement forms part of the charity's accounting records it must be retained for at least 6 years from the date that it ends.

## **EMPLOYING A CHARITY TRUSTEE OR A CONNECTED PERSON**

If a church wishes to pay a charity trustee or a connected person as an employee they must either seek consent from the Charity Commission or have specific provisions in their church constitution. A church that has adopted either of the BUGB Approved Governing Documents as their constitution can rely on clause 20 (or clause 9 of the CIO AGD) to provide a suitable legal power to pay an employee who is also a trustee, provided that the wider provisions of the clause are adhered to. The wording is quoted above.

Paid trustees cannot represent the charity as trustees in relation to matters which affect their paid employment.

A church that has not adopted a BUGB Approved Governing Document as their constitution is unlikely to have a suitable legal power in their church constitution and will need to contact the Charity Commission for permission to employ a trustee or connected person. **It is a legal requirement to seek this permission** even if your church is exempted from registration.

The Charity Commission can be contacted here: <http://forms.charitycommission.gov.uk/trustee-payments/>

You will need to provide them with:

- the reason for the payment;
- details of any recruitment process, demonstrating that it was open and fair;
- a copy of any contract or agreement to pay the trustee as a PDF file;
- a job description for any paid work;
- your charity's most recent accounts as a PDF file (if you haven't already sent them to the Commission).

**Permission must still be sought even if the individual intends to step down from their trustee position when they become an employee.**

## **APPOINTING A MEMBER OF STAFF AS A TRUSTEE**

Similar principles apply if you intend to appoint a member of staff as a trustee. The legal powers in the BUGB Approved Governing Documents can be relied on if one of them is your constitution but if not then you will need the express permission of the Commission which you can obtain from them using the link above.

The trustee-employee should take no part in collective discussion or voting on the contractual terms and conditions of the employed post, or in any review of performance relating to it. This also includes any decision on whether it is in the charity's interests to continue with the post. For greater transparency, any withdrawals from relevant meetings by the trustee-employee should be clearly minuted.

## **SALE OR LEASE OF PROPERTY TO SOMEONE CONNECTED TO YOUR CHARITY**

If you want to sell or lease church property to somebody who is connected to the church, such as a trustee, a connected person or an employee, then you will need to obtain permission from the Charity

Commission. You should complete the Commission's form 'Disposal of charity land to a connected person' which can be found here: <http://forms.charitycommission.gov.uk/disposal-of-charity-land/>

The Charities Act 2011 (s118) has a specific definition of 'connected person' in relation to the disposal of charity land. The persons are:

- (a) a charity trustee or trustee for the charity;
- (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity);
- (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor;
- (d) an officer, agent or employee of the charity;
- (e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d);
- (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e);
- (g) an institution which is controlled -
  - (i) by any person falling within any of paragraphs (a) to (f), or
  - (ii) by two or more such persons taken together, or
- (h) a body corporate in which -
  - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or
  - (ii) two or more such persons, taken together, have a substantial interest.

## **CONFLICTS OF INTEREST POLICY AND REGISTER OF INTERESTS**

Churches that are registered with the Charity Commission are asked whether they have a conflicts of interest policy as part of the Commission's annual return process. There is no obligation on churches to have such a policy and it is fine to answer 'no'. However as a matter of best practice churches may consider it helpful to draw up a policy. The policy does not have to be complex, but it should be regularly reviewed and updated.

The Commission also recommends that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily by individual trustees and the trustee body. The register of interests should be regularly updated.

As a minimum, a conflicts of interest policy should:

- define conflicts of interest;
- explain that trustees have a personal responsibility to declare conflicts of interest if they are to fulfil their legal duty to act only in the best interests of the charity;
- give an account of what the charity's governing document says about conflicts of interest;
- define all interests that trustees should declare, including business and personal interests and those of their spouse, partner, family and close relatives;

- define trustee benefits and highlight the requirement to obtain legal authority before any transaction involving trustee benefit is undertaken;
- include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:
  - recording trustee interests in the charity's register of interests;
  - declaring interests at the beginning of each meeting;
  - removing the trustee concerned from the decision making process;
  - recording details of the discussions and decisions made;
- set out how and by whom the policy will be monitored and enforced;
- be widely communicated and understood within the charity;
- be part of a wider policy framework, for example a trustee handbook. It should also signpost and advocate the values contained in all relevant codes of conduct and other policies that the trustees are obliged to follow.

## **CHARITABLE COMPANIES: KEY POINTS ABOUT CONFLICTS OF INTEREST AND THE COMPANIES ACT 2006**

**A small number of Baptist churches have incorporated as a company limited by guarantee and the remainder of this leaflet only applies to them.**

The directors of charitable companies have statutory duties and responsibilities regarding conflicts of interest and director benefits which largely reflect those which apply to other types of trustee. The previous guidance applies to company director trustees but the following describes the specific conflict of interest duties that the Companies Act 2006 places on them.

### **DEFINITION OF A CONFLICT OF INTEREST FOR DIRECTORS**

Since 1 October 2008 directors have been under a specific statutory duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

The general duty does not apply where the conflict of interest relates to a transaction which:

- has been authorised by the company's articles;
- has been authorised by the Commission or the court;
- is affected by a conflict of duty/loyalty where the unconflicted directors have authorised this type of conflict of interest using a constitutional power.

### **DECLARING CONFLICTS OF INTEREST**

Directors must declare an interest in any proposed or actual transaction or arrangement with the charitable company. Failure to do so may constitute a criminal offence. The company's articles may require withdrawal from any discussion and decision where there may be a conflict between the director's interests and those of the charity.

Where the conflict arises from a benefit to a director, the other directors must:

- rely on an adequate express power in the charity's governing document or the Charities Act;



- apply for Commission authority and demonstrate that the transaction is expedient in the interests of the charity.

The members of a charitable company cannot adopt powers which will benefit their trustees without Commission authority.

### **COMMISSION AUTHORITY NEEDED WHERE THE EXISTING GOVERNING DOCUMENT PROVISIONS ARE NOT ADEQUATE TO AUTHORISE A CONFLICT OF INTEREST**

Where the provisions of the governing document are inadequate, the Commission can authorise a director or directors to do something which would otherwise breach the duty to avoid a conflict. The directors will need to satisfy the Commission that their proposed action is in the interests of the charity.

Where the conflict involves a benefit to a director which is not covered by the Charities Act power to pay trustees for services provided to the charity, the directors must rely on an adequate power in the charity's governing document, or apply for Commission authority and demonstrate that the transaction is in the interests of the charity.

When a Baptist church incorporates as a company they need to note that the duty to avoid conflicts of interest in the Charities Act 2006 extends to some transfers between an unincorporated charity and a charitable company. These include situations where a substantial asset that isn't cash is transferred from the unincorporated charity to the charitable company. There is likely to be a conflict of interest where one or more of the trustees of the unincorporated charity are also directors of the charitable company. In these cases, the transfer can only take place with the prior written consent of the Commission.

In addition, where the transfer involves the transfer of liabilities (i.e. pension liabilities or a mortgage) the trustees of the unincorporated charity, who are also directors of the charitable company, are likely to need Commission authority to make the decision to transfer the liabilities and the assets.

The Commission has produced information for company charities about [The Companies Act 2006](#). Companies House also provides a wide range of guidance for company directors.

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 480 Chester Road Sutton Coldfield B73 5BP Office Mobile: 0730 505 1770
<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:**

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](mailto:legal.ops@baptist.org.uk)

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