

CHURCHES AND TRUST LAW

Introduction

Many churches carry on their normal activities without giving a second thought to this matter. There are, however, a number of “Trusts” in law that govern the life of the church, which church officers should be aware of. We often make the theological distinction between “the church” (being the people) and the “chapel” (being the building). This distinction is also recognised in law as there are different trusts that operate in each case. There could also be a separate trust governing the manse.

The Legal Foundation

Under the Charitable Uses Act of 1601, the advancement of religion was established as a charitable purpose in law and since then any laws affecting charities, in general, have also applied to churches.

The Status of the Church

Historically, churches have had the benefit of charitable status by virtue of “Excepting Regulations” which meant that although churches came under the jurisdiction of the Charity Commission and were entitled to all the benefits of charitable status, they did not need to obtain a charity registration number from the Charity Commission. However, the Charities Act 2006 brought the “Excepting Regulations” to an end, albeit gradually. Today, churches with an annual income above £100,000 are legally compelled to register as charities and by 2021 all churches with an annual income above £5,000 will have to do so.

The Church Constitution

In order to keep the Charity Commission out of the spiritual affairs of church life, the Grace Baptist Trust Corporation, in fellowship with the Area Associations, devised a legal constitution for churches to use and this was approved by the Charity Commission; a copy of which can be obtained [here](#) or on request from the office. This is a minimalist document that covers the minimum that the law requires and it governs the working funds of the church. The constitution will state who the “trustees” of the church’s working funds are and these will normally be the people who “manage” the church – usually the elders and deacons.

The Church Rules and Regulations

This document sits alongside, but outside of, the Constitution, and deals with the spiritual aspects of church life. This has the effect of putting the spiritual life of the church outside the control of the Charity Commission. It governs the internal workings of the church and is probably the document that, for generations, the church called its “constitution”. Churches that may not have a comprehensive set of “Rules & Regulations” may obtain a model set [here](#) or on request from the office.

The Chapel Trust Deed

When a chapel is first established, the founders who provided the funds for it to be built (or purchased) will have set up a Trust Deed that governs the use of the chapel. The Trust Deed will include a “primary trust” (which is the fundamental reason the chapel was built) and this is often referred to as the doctrinal standard and it may also include an ultimate trust which states what the founders would like to happen to the funds if the chapel has to be sold. As the founders were the people who originally provided the funds for the chapel to be built, they had every right, in law, to establish both the primary and the ultimate trusts. There may also be some lesser trusts contained within the Trust Deed. These are equally as binding as, but of lesser importance than, the primary trust.

The Church and the Chapel

If a church wishes to use a chapel, it is a legal requirement that the church upholds the requirements of the Trust Deed. That is a fundamental aspect of English Trust Law. It is therefore essential that church officers are familiar with the requirements of their chapel's Trust Deed. If a church cannot operate within those requirements, say because the current membership no longer adhere to the chapel's doctrinal standard, the church members must vacate the chapel and establish their presence elsewhere (perhaps in a rented property), together with their church constitution, church rules and regulations, and church working funds. The Chapel Trustees are then obliged to try to establish another church membership that is able to comply with the requirements of the Trust Deed but if that is not possible they must then comply with the requirements of the ultimate trust. Sometimes, the chapel trustees may be willing to sell the chapel to the vacating church members who are then entitled to establish their own Trust Deed with primary and ultimate trusts that suit their purposes. However, the law compels the Trustees to sell the chapel at its current market value.

The Church and the Manse

The principles outlined in the preceding paragraph also apply in the case of manses and so are not repeated here. However, sometimes a separate Manse Trust Deed may not have been established, in which case the manse is held under the same trusts as the chapel.

Who Owns the Premises?

Whilst this is a legitimate and obvious question, it is not the most helpful question to ask as the premises are held under trusts and trusts are not "owned", as such. Trusts are managed by Trustees and they exist for the benefit of the beneficiaries. The premises are therefore not owned by the church membership, nor by the Premises Trustees in their own right, although the Land Registry will recognise the Premises Trustees as being the registered proprietor. Ultimately, it could be said that the premises are owned by the "Anytown Baptist Chapel (or Manse) Trust" that is held in trust by the Premises Trustees for the benefit of the occupying church (ie the church membership that is currently using the premises). Since the properties are held under different trusts from the church's working funds, it is inappropriate to include the properties as assets in the church accounts.

What are the Obligations Upon the Premises Trustees?

The Trustees must ensure that the Trusts under their charge are preserved for future generations. This means that they must ensure that the Primary (and any lesser) Trusts as stated in the Trust Deed are upheld and that the values of the assets held within the Trust (ie the chapel or the manse) are preserved. Subject to the foregoing, the Trustees are required to allow the occupying church the full enjoyment of the premises.

What are the Obligations Upon the Occupying Church?

If the church members wish to have the enjoyment of the chapel (or manse) it is a legal requirement that they observe all the requirements of the Trust Deeds governing the premises. They do not have to pay rent for the privilege of using the buildings but they are required to ensure that the premises are preserved for future generations – which means, in effect, that they must keep the premises in sound structural condition and insure the premises at rebuilding value. In a sense, this is the "rent" that the church members pay to the Chapel or Manse Trust for the use of the buildings.

What About the Independence of the Local Church?

The question may arise, "What right do the Premises Trustees have to dictate to the church membership what the church believes and what it practises?" and the answer is "None at all". Ultimately, the church membership is accountable to Christ as Head of the Church. When attending to the matters that are the subject of this leaflet, the Premises Trustees are not interfering in the life of the church in any way. Their duty is to ensure that the requirements of the Trust Deed governing the Premises of which they are Trustees are upheld. The church membership may adopt any doctrinal position and follow any practices that they consider meet the requirements of Scripture, but – from a legal standpoint – they may only have the use of the Premises if those positions are compatible with the requirements of the Premises Trust Deeds.

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