

The Baptist Pension Scheme (BPS)

Guidance Note on the Defined Benefit pension implications, in the event of a change to the legal status of an unincorporated church to a Charitable Incorporated Organisation (CIO).

Introduction

These notes apply to churches and other employers in England, Wales and Scotland and all references to Charitable Incorporated Organisations are equally applicable to Scottish Charitable Incorporated Organisations (SCIO).

One of the many issues which needs to be considered when a church becomes a CIO is how to deal with any existing funding obligations to the Baptist Pension Scheme ("BPS") Defined Benefit ("DB") Plan.

Under current pension regulations, when the restructure to a CIO occurs, the old, unincorporated church ceases to be an employer for Defined Benefit pension purposes. The change of legal structure therefore creates a cessation event and, unless certain action is taken, there is a requirement for the church immediately to pay any employer debt that arises.

If the church does not wish to trigger a cessation event and pay its employer debt at the time of the conversion, then it must take appropriate steps to prevent it.

A process is available under the Occupational Pension Scheme (Employer Debt and Miscellaneous Amendments) Regulations 2005, whereby the liabilities which would give rise to the employer debt can be accepted by the new church and accepted by the Pension Trustee without the need for the employer debt to be paid.

In essence, the pension liabilities are "rolled over" from the old church to the new CIO and become the responsibility of the new church (in its form as a CIO).

Important points to note

1. The statutory process is cumbersome, although every effort has been made by the Pension Trustee to simplify it for use in a church situation. It needs to be followed fully by the church in order to avoid the need to pay the employer debt in full that would otherwise apply on conversion to a CIO.
2. The process requires the Pension Trustee with its professional advisers to consider each such situation on its merits and it is under no obligation to agree to a transfer of the pension liabilities from the old church to the new one. Therefore, it should not be assumed that going through the process will automatically resolve the potential pension issues arising from converting to a CIO.
3. It is essential that churches considering incorporation contact the Pension Trustee, at an early stage in the process and follow these guidance notes, with regard to both process and timetable. The Trustee's contact details are:

Baptist Pension Trust Limited
Baptist House
129 Broadway
Didcot
Oxfordshire
OX11 8RT

Email : skaney@baptist.org.uk

(Note that for all other Scheme related matters or queries, the Scheme Administrators (Broadstone Consultants & Actuaries Ltd) should be your first point of contact).

4. The church(es) involved in converting to a CIO will be required to meet any costs falling upon the BPS as a result of the need for the Pension Trustee to consider and implement the church's application to convert, such as the costs of covenant, legal or actuarial advice.
5. The church will need to engage a solicitor to facilitate any restructure and must ensure that the solicitor is fully aware of any potential pension liability the church has to the BPS.
6. The Baptist Union of Great Britain (BUGB) has published detailed guideline notes on converting to a CIO. In general terms, on incorporation as a CIO the more closely the new church's structure and constitution is to the recommended standard BUGB model, the more straightforward will be the Pension Trustee's review of the pension aspects.
7. Should a church with existing funding obligations to the BPS Defined Benefit Plan, change its legal status through a restructure to a CIO without informing the Pension Trustee, there may be serious legal and financial consequences. The regulatory framework states that a decision to cease running its business in the UK by an employer is a notifiable event which must be advised to the Pensions Regulator. Failure to notify the Regulator may be punishable by a fine (currently) of up to £50,000. In addition, once the Pension Trustee has learnt of such a restructuring and the dissolution of a scheme employer, the Pension Trustee could ask the Regulator to exercise its powers to issue a contribution notice or financial support direction against the employer/its former trustees in respect of the employer debt, which will be payable in full and immediately.

What you need to do if you are considering becoming a CIO

1. The existing unincorporated church is regarded as an “exiting employer” from the BPS. It must initiate the process by writing to the Pension Trustee asking it to consider entering into a Flexible Apportionment Arrangement. A draft letter is provided in Appendix 1 of this guidance note for such cases.
2. As a first step the Pension Trustee will ask the existing unincorporated church for a statement that:
 - a) it considers the new church to be as likely as, and as willing as, the old church to meet the old church’s liabilities in relation to the BPS; and
 - b) it is not expected that the restructuring will adversely affect the size of the church membership or regular attendance or continuity of income.
3. To accompany the statement referenced in paragraph 2 above the church must also send the Pension Trustee the following information -
 - a) *A copy of the Constitution of the exiting employer.*
 - b) *A copy of the latest church accounts.*
 - c) *Insured and estimated market values of any manse, church or other buildings owned by, or held in trust on behalf of the church.*
 - d) *Details of the current property/holding/custodian trustee¹ and ultimate beneficiary² of any manse, church or other building and confirmation whether the new incorporated organisation intends to transfer the trusteeship of its property into the new organisation, rather than leave the legal ownership with the current property/holding/custodian trustee.”*
 - e) *Details of any charges over the church assets.*
 - f) *A copy of the constitutional documentation of the proposed new church.*
 - g) *Details of the strength of the vote to proceed with the restructuring.*
 - h) *A copy of the budget for the proposed new church.*
 - i) *Confirmation as to whether the Church is in a period of grace?*
 - j) *The proposed timetable for winding up the unincorporated church*
 - k) *The number of employees of the proposed new church*

The Pension Trustee may also request further information to help it make its decision.

4. The Pension Trustee will review the information provided, with a view to deciding whether the church’s statement in 2 above is supported by the legal and financial information. The Pension Trustee may, but is not bound, to take legal, covenant and actuarial advice on the matter. If any such advice is taken, the church will be required to meet the costs. An indication of the expected costs will be provided to the church in advance, and no costs will be incurred before the church provides authorisation.
5. The Pension Trustee will then notify the church about whether it accepts the statement in 2 or not, and the reasons for its decision. If it accepts, then the procedure can continue and the pension liability will be transferred to the new organisation, provided that the new organisation continues to make monthly deficiency contributions as required under the BPS recovery plan and the relevant documentation is entered into by the Pension Trustee, the church and the CIO.

¹ Property/Holding/Custodian Trustee is usually a Baptist Trust Corporation, which holds the legal title of the property on behalf of the church, ensuring that the terms of the trust deed are followed.

² Ultimate beneficiary identifies who would receive the property or sale proceeds upon the closure of the church, which is usually (but not always) defined within the trust deed under which the property is held.

6. If the Pension Trustee does not accept the statement in 2, then although there is no reason why the church cannot continue with the restructuring if it wishes, doing so will trigger a cessation event and any employer debt due will be calculated and will need to be paid immediately.
7. If the procedure is to continue, the Pension Trustee will need to enter into a Flexible Apportionment Arrangement ("FAA") with the church, the CIO and BUGB. The FAA is a standard document produced in accordance with legislation which confirms that the pension liabilities of the church will pass to the CIO. The FAA document will need to be executed at the same time as the formal transfer of assets to the CIO takes place.
8. The CIO must employ an active member (i.e. a member that is accruing benefits) under the defined benefit section of the BPS. This will ensure that the CIO remains liable for the pension scheme liabilities it was liable for prior to the conversion, that the BPS remains eligible for the Pension Protection Fund, and ensures that the FAA is legally effective (under the FAA legislation, the new employer (i.e. the CIO) must be a 'statutory employer' for the purposes of pension legislation).
9. As the BPS is a 'closed' scheme (there are no active members accruing defined benefits), the Pension Trustee therefore needs to 're-open' the BPS to nominal defined benefit accrual for a short period of time for at least one employee (ideally two employees) of the CIO. This process will be used solely for the purpose of converting to a CIO and it will not re-open the defined benefit section of the BPS to accrual again in general.
10. The process will involve a member being admitted to active membership of the DB Plan in the BPS for a period of 14 days. The member will be entitled to an annual defined benefit pension of £1 pa as at the end of the 14 day period, which would be treated in the Scheme in the same way as pension earned after 5 April 2009. Members will not be required or entitled to make any contributions to the BPS (including AVCs) in respect of this period of active membership. The short period of active membership will terminate after 14 days and members will then become deferred members of the BPS DB Plan in respect of that benefit. In respect of the defined benefit pension that the member will accrue (£1 pa); the intention is that this would then be converted to a top up to that member's defined contribution pension in due course. The employee(s) would be required to consent to this process in writing and we have prepared standard template letters that can be used for this purpose which will need to be sent to the employee(s) identified prior to the formal transfer of assets taking place.
11. Note that this approach is commonly used to manage statutory employers in defined benefit occupational pension schemes.
12. If following the restructuring it turns out that the information supplied by the church was materially incomplete or inaccurate, the Pension Trustee may, contact and inform The Pensions Regulator of the position. It is most unlikely that this step would be taken unless the Pension Trustee considered that incorrect information had been supplied or information withheld deliberately. If this extreme step were taken, the Pension Trustee, potentially with the assistance of The Pensions Regulator could seek to claim the resulting employer debt from either the new church or the old one.

What other factors will the Pension Trustee take into account when considering the church's request?

In addition to considering the information provided by the church, the Pension Trustee may also assess the church's potential employer debt to the scheme.

1. Where, on incorporation, the church's property assets materially exceed any potential pension employer debt that may arise in the future.

Where the church's property assets materially exceed any potential pension employer debt that may arise in the future, then provided the other information provided by the church is also acceptable, the Pension Trustee and BUGB are likely to consent to the restructure and entering into a FAA.

To protect the BPS financial interest, the Pension Trustee may ask for a Land Registry restriction to be placed on some or all of the church's buildings, particularly in cases where the church's exposure to the BPS is significant. The effect of such a restriction is that the buildings cannot be sold or mortgaged without the consent of the Pension Trustee.

The buildings of an unincorporated church have a holding trustee which holds the legal title to the property and the church trustees cannot sell the buildings without the holding trustee's consent. Most churches, on incorporation, retain this property ownership structure and in such circumstances, the Pension Trustee restriction will usually be through completion of the Land Registry RX1 application. The current fee is £40.00 and this must be paid for by the church.

However, an incorporated church can, if it wishes, take over trusteeship of the property previously held by a Baptist trust corporation, so that the legal ownership of the property as well as the beneficial ownership will lie with the new incorporated organisation.

Very few churches have taken this approach to date. Most have chosen not to change the legal arrangements on the property and retain the existing trustee arrangements. However, if the church opts to transfer trusteeship and take over the legal ownership of any or all of its buildings, then the Pension Trustee is likely to request a more formal charge against the property for all pension liabilities, including any potential future employer debt which has not yet been triggered. This is a more complex process than applying for an RX1 restriction and will require the Pension Trustee to incur additional legal costs, which will be payable by the church (cost estimated to be in the range £750-£1,250).

2. Where, on incorporation, the church's assets may be insufficient to settle any potential pension employer debt that may arise in the future.

The trustees of an unincorporated church have a potential personal liability for BPS deficit funding, should the church's assets be insufficient to settle any employer debt due.

The effect of the Pension Trustee agreeing on incorporation as a CIO to enter into the FAA, is to discharge the old unincorporated church from its historical statutory funding liabilities as a former employer for the purposes of section 75 Pensions Act 1995

This means that:

- the old unincorporated church has ceased to be a participating employer under the Rules of the Scheme and as it is no longer classed as a former employer under statute, it has no further liabilities under the Rules.
- the previous trustees of the old unincorporated church no longer have a potential personal liability for any unpaid pension debt

This in turn means that if the Pension Trustee gives its agreement, then unless the financial circumstances of the new incorporated church are expected to improve significantly in the immediate future, the new church will be less likely

than the old church to be able to meet any liabilities to the BPS (because although the assets of the church will still be available to meet any pension liability, the assets of the previous trustees will not).

In such circumstances, it is unlikely that the Pension Trustee's agreement to the restructure will be given, unless additional assurances can be provided by the church as to how future provision will be made to manage the pension deficit issue.

Churches and other organisations in membership of the Baptist Unions of Great Britain, Scotland or Wales, who find themselves in this position should seek discussions with their local Baptist Association as soon as possible.

Appendix 1 – Example letter to be sent to the Pension Trustee where a change of legal status to an incorporated structure

To be sent on Church headed paper

Baptist Pension Trust Limited
Baptist House
129 Broadway
Didcot
Oxfordshire
OX11 8RT

Email : skaney@baptist.org.uk

Example application letter to the Pension Trustee

Dear Sirs

[Church name]

The above church is planning to restructure its operations by transferring all its assets and liabilities and its operations, activities and staff from the present Unincorporated Association to a Charitable Incorporated Organisation. We understand that as an employer within the Baptist Pension Scheme, this transfer could count as a cessation event, and thus trigger an employer debt under the Occupational Pension Schemes (Employer Debt) Regulations 2005.

I therefore apply formally for the Pension Trustee to decide whether given the restructuring described above it will allow the Church to apportion its liabilities to the Charitable Incorporated Organisation by entering into a Flexible Apportionment Arrangement. We can also confirm that we have identified at least one employee who will consent to a period of pensionable service which will result in a nominal DB pension. We will be happy to provide any further information you require.

Yours faithfully,

