

Pension Funds Frequently Asked Question: Personal liabilities of Church Trustees

Question

In grappling with the pensions bulletins sent to churches recently and endeavouring to determine our response, our deacons have become concerned about the particular issue of personal liability.

It is clear that if there is a "genuine cessation event" (as described in the bulletin), since the church has employed ministers contributing to the Baptist Ministers' Pension Fund, the church would incur a lump sum liability. The concern of the deacons is who would be responsible for this liability in the event of the church closing or becoming insolvent.

If our understanding is correct, traditionally, the BU has been the trustee of affiliated churches, but with the current Charity Commission changes, churches are becoming separate charities with their own local trustees (often the deacons). As a smaller church, we have not yet gone through this process, but are we correct in assuming that when we have, our deacons (or other leaders) may become trustees of the church and therefore risk becoming liable for a pension fund debt were the church to become insolvent? If so, I fear we may struggle to find people willing to serve as deacons!

Answer

Recent Charities Acts have not changed the status of Baptist Churches and their Trustees, but merely pointed up what has always been the case, that the Minister and deacons (or other leaders, depending on the terminology used) of a Baptist Church are its managing trustees for charity law purposes. The Baptist Union Corporation, where it is involved at all, is only the property trustee of the building, while the church remains the beneficial owner of the building, which is why the value of the building should be included in the church accounts.

You will have seen from the Pension documents that the current policy of the Pension Fund Trustees is not to pursue the employer debts arising from "non-genuine cessation events", but to seek ongoing deficit contributions from 1 January 2012. We hope that it will not become necessary to chase lump sum contributions which we recognise would be much more difficult for churches to pay than increased on-going contributions will be.

Where a "genuine cessation event" arises, it will normally be necessary to calculate an employer debt and to identify how this can best be met on a case by case basis (which may be payment by instalments). If a lump sum were required, then the Church Trustees would normally be entitled to use all of the church's assets, including the value of any church building, to meet the payment before there was any question of personal liability to the Trustees. We recognise that if the building had to be sold, then the normal life of the church would be severely threatened, which is why we hope that this course of action will only have to be followed when a church closes.

If a debt were pursued, and the assets of the church were insufficient to meet the debt, then in theory there would be a personal liability from the Church Trustees to meet the balance of the debt. However, in practice any such liability would depend upon the Pension Fund Trustees choosing to pursue the debt through the courts and being successful in the court case. This would only be a last resort to be followed by the Pension Trustees most reluctantly and they would need to take into account whether court action, with all its associated costs, would be in the interests of the Fund as a whole.

However, the Pension Fund Trustees might well choose to take legal action if there were evidence that the church trustees had deliberately acted inappropriately, for example by giving assets away, even in following their charitable objects, with a view to preventing the Pension Fund from receiving the amount due to it.

Since from both sides this is very unlikely, I hope your prospective deacons can feel reassured.

Please pray for us as we wrestle almost continuously with these difficult matters.