**WHO ARE THE CHURCH’S TRUSTEES?**

Matthew 16:13-14 records that when Jesus asked his disciples, “*Who do people say that I am?*”, there was a variety of responses and a selection of random individuals was suggested.

If someone arrived at a Scottish Baptist church today and asked “*Who are your trustees?*”, the response might well be equally confused. Assuming that the answer is not John the Baptist, Elijah or Jeremiah, what other possibilities are there?

* **Are the church’s trustees those who think that they are trustees?** Generally, this is expressed in the negative. Certain people are convinced that they are not trustees. This subjective approach is not to be relied on!
* **Are the church’s trustees those whom the church leaders or members think are trustees?** Uninformed and unchecked opinions on such matters are often asserted with a degree of finality. These may or may not be close to the mark, but are still not a satisfactory basis for a proper answer.
* **Are the church’s trustees those whom the church’s Constitution states to be trustees?** Now we are getting nearer to the truth. The Constitution will often specify that some or all of the following are trustees, sometimes including or excluding the Minister/Pastor:
	+ Secretary and/or Treasurer
	+ Some or all of the Deacons
	+ Some or all of the Elders

However, even the Constitution is not conclusive.

* **Are the trustees those whom the law states to be trustees?** Here lies the answer, at least for a registered charity, which applies to all current members of the Baptist Union of Scotland (“BUS”). Section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (“the Act”) defines “*charity trustees*” as “***the persons having the general control and management of the administration of a charity***”. This will generally equate to the Leadership Team or Deacons’ Court or whatever else your church calls it-that group of people who take practical and financial decisions and run the general administration of the church in all of its worship, witness, mission and other activities.

**What are some implications flowing from this?**

* **The law trumps all other opinions and statements**. It does not matter what you think, what people in the church say or even what the Constitution states. In answering this particular question as to who are the church’s trustees, to paraphrase the Clash, you may fight the law, but the law wins every time. If you meet the statutory definition of a charity trustee, then you are a trustee of the church. End of.
* **Is the Minister/Pastor a trustee?** There is sometimes a misconception, perhaps even perpetuated in the Constitution, that the Minister or Pastor of the church is not or cannot be a trustee. If the Minister/Pastor is an active participant in the church’s leadership group, then s/he is a trustee. It is perhaps conceivable that a Minister/Pastor could be locked in an ivory tower, from which s/he materialises occasionally to deliver sermons and conduct Bible studies, while carefully avoiding contact with matters of practical and financial administration. That would not appear to be a model of ministry practised among BUS member churches!
* **Can a trustee be remunerated by the church?** This is often linked to the above misconception regarding Ministers/Pastors. The detail (into which this brief article will not delve) is in Section 67 of the Act, but the answer is “Yes”, provided:
	+ the remuneration is reasonable and properly documented
	+ the majority of the church’s trustees are not remunerated by the church
	+ the church’s Constitution does not prohibit such remuneration
* **Where does this fit with the authority of the church members meeting?** This is not intended to be a theological treatise. However, some might question the definition of “control”, as Baptist ecclesiology would regard the church meeting (acting of course under the Headship of Christ, and seeking and submitting to his perceived will in all matters) as being the primary decision-makers. Nevertheless, while the church meeting may set the policy and take the major decisions, the practical and financial implementation of these will require numerous further decisions and actions, and this is where the control and management of the administration by the church trustees will come into play.
* **What does this mean for the drafting of church Constitutions?** Generally it is best to draft (or amend) the church Constitution so that the trustees as specified in the Constitution are the same as the law would regard as trustees. That was the approach taken in the Model Scottish Charitable Incorporated Organisation (“SCIO”) Constitution for a BUS member church which appears elsewhere on the BUS website. The individual “Charity Trustees” together make up the collective “Leadership Team”.
* **What about those whom the title deeds state to be the trustees of the church?** This will not apply to an incorporated church charity (either a SCIO or a charitable company limited by guarantee), as this will hold title in its own name. However, an unincorporated church must hold title through trustees, and the title deeds of the church premises may specify certain individuals or the holders of certain offices and their successors in these offices, possibly a mix of some or all of the following:
	+ Pastor/Minister of the church
	+ Treasurer and/or Secretary of the church
	+ Deacons and/or Elders of the church
	+ President and/or Treasurer and/or Secretary of the BUS (their current successors respectively being the General Director, Finance Director and Convenor)

to be the trustees of the church for this specific purpose. There is no clear or logical pattern, and the title deeds of different properties (or even different parts of the same property!) of the same church may mention different sets of trustees. This is a complex area, and specific legal advice should be sought where necessary in individual cases, but in general terms:

* + The trustees specified in the title deeds (the “***Title Trustees***”) of the particular church property (perhaps different trustees for different properties) will require to sign any formal deeds in relation to the property, in particular deeds transferring title to the property or granting a security or lease, or access or other right over the property.
	+ For all other purposes relating to the control and management of the administration of the church, including controlling, managing and administering the properties of the church, it is the trustees of the church as defined by law (the “***General Purpose Trustees***”), who will be responsible.
	+ Accordingly, in relation to church properties, it is the General Purpose Trustees who will be taking the decisions (in accordance with any policy set or decided by the church members meeting), and the role of the Title Trustees will be restricted to signing the deeds or documents necessary to put into effect the decisions of the General Purpose Trustees.
	+ This distinction between Title Trustees and General Purpose Trustees is particularly important when considering the guidance on the new Register of Controlled Interests (“ROCI”) which appears elsewhere on the BUS website. In summary:
		- “**Recorded Persons**” for the purposes of ROCI will be the **Title Trustees**
		- “**Associates**” for the purposes of ROCI will be the **General Purpose Trustees**

Apologies that this explanation is less succinct than Peter’s response to Jesus’ question. However, Matthew 16:15-17 does tell us that Peter had the benefit of divine revelation! Nevertheless, next time someone asks “*Who are the church’s trustees?*”, you may be at least a little closer to being able to give a sensible answer.

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