

Guideline Leaflet L09B: Equality Law and Recruitment: Using the Organised Religion Exception

This leaflet is designed to help churches to understand the provisions of the Equality Act 2010, particularly in relation to using the organised religion exceptions to confirm and support the Christian ethos of your church. This is the second in a series of five leaflets addressing different aspects of these provisions.

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

The date on which the leaflet was last updated can be found on the download page.

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

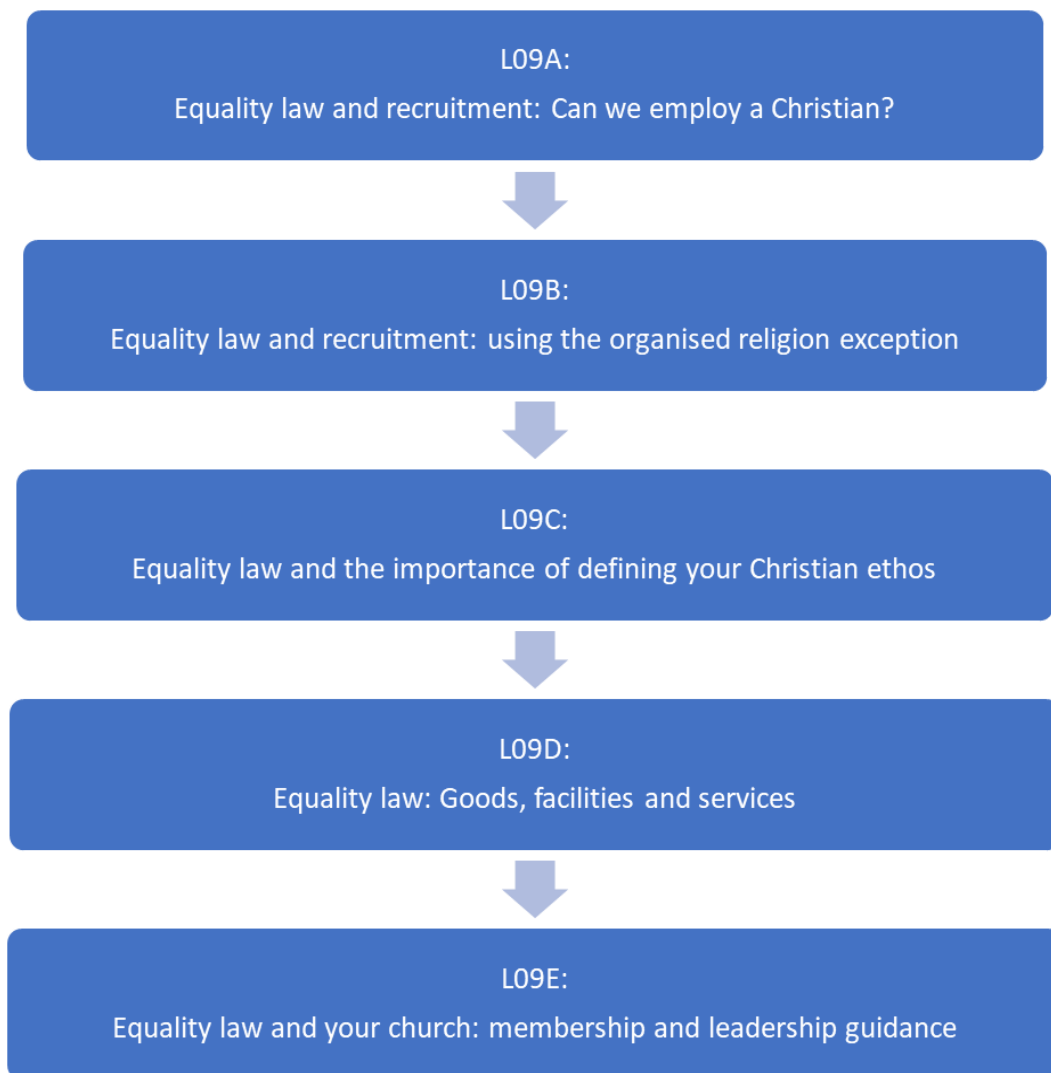
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These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

THE L09 LEAFLET SERIES

This series of leaflets provide guidance to churches on how to consider and make use of the religious exception provisions laid out in the Equality Act 2010. We recognise that there are circumstances where a church will want to specifically employ a Christian, to clearly state the church’s position in relation to some issues of ethics and values, and to make sure that it acts fairly and legally in relation to employment of staff and the provision of services. All of these issues are dealt with in this series of guideline leaflets.

The diagram below shows the full set of leaflets in this series. This leaflet is **L09B: Equality Law and Recruitment: Using the Organised Religion Exception**.



INTRODUCTION – PURPOSE OF THIS GUIDANCE

This leaflet follows on from the guidance in *LO9A Equality Law and Recruitment: Can we justify employing a Christian?* which was created to help your church understand and apply the provisions of the Equality Act 2010 relating to discrimination because of religion or belief when recruiting. If you haven't yet read that, we suggest you start with that first. For the purpose of this guidance, references to 'your church' shall include Christian missional projects and pioneering ministries and initiatives.

When recruiting to a role, there may be occasions when your church requires the role to be carried out by a Christian who also has a particular characteristic. For example, your church may require a potential job holder to be of a particular sex or sexual orientation, remain celibate if not married, not be a transexual person, not have a civil partner or not have remarried following divorce by way of examples. Your church could potentially be discriminating on the grounds sex, sexual orientation or gender reassignment unless it can rely on an occupational requirement (OR). This guidance looks at when your church might successfully use the OR relevant to religion and belief called the 'organised religion exception'.

This leaflet will help you to:

- understand what the law actually says about the organised religion exception and the narrow conditions in which it applies;
- justify why a post holder needs to have a particular characteristic;
- operate equal opportunities as a Christian employer;
- understand the importance of identifying and describing the distinctive ethos of your church;
- apply your Christian ethos to operational processes like advertising and selecting for the role; and
- work through the practical steps you need to take so that you can operate correctly within the law and put your organisation in the best place to withstand legal challenge.

1. ORGANISED RELIGION EXCEPTION – WHAT, HOW AND WHEN CAN WE USE IT?

1.1 *What is the organised religion exception occupational requirement (OR)?*

The law permits employers who meet certain narrow conditions to discriminate in respect of sex, sexual orientation, gender reassignment, marriage and civil partnership. This is referred to as the **organised religion exception**.¹ This means that there are certain circumstances where an employer can rely on an occupational requirement (OR) to have a particular characteristic when appointing someone to a role. These include requirements:

- that the employee is of a particular sex;
- that the employee is not a transsexual person;
- that the employee is not married or a civil partner;
- relating to circumstances in which a marriage or civil partnership ended (for example that the employee is not married to or the civil partner of a person who has a living former spouse or civil partner); or
- related to sexual orientation.²

1.2 *When can we use the organised religion exception OR?*

This can only be applied in the following narrow circumstances:

- a) the employment is for the purposes of an organised religion;
- b) it is necessary to apply the organised religion OR because it is either:
 - a proportionate way of complying with the doctrines of the religion (this is known as the 'compliance principle'); or
 - a proportionate way of avoiding conflict with a significant number of the religion's followers' strongly held religious convictions (this is known as the 'non-conflict principle'); and
- c) you would need to be satisfied that the individual to whom you are applying the organised religion exception does not meet the requirement relating to sex or sexual orientation etc. (or you have reasonable grounds for not being satisfied that the person meets it).

The requirement must be crucial to the post, and not just one of several important factors. It also must not be a sham or pretext. Applying the requirement must be a proportionate way of meeting either the compliance or non-conflict principles.

If an employee or prospective employee were to challenge the existence of an occupational requirement, the burden would be on the employer to prove that there was a proportionate

¹ Paragraph 2 of Schedule 9 Equality Act 2010.

² Paragraph 2, Schedule 9 Equality Act 2010

requirement to be a Christian in that post or to apply a requirement under the organised religion exception to that post.

1.3 *Can the organised religion exception be applied to all church staff?*

The organised religion exception relates to posts whose primary purpose is for organised religion. A Baptist church that adheres to the Baptist Union's Declaration of Principle contained in its constitution or other similar appropriate document such as a statement of faith or other doctrinal statement that defines the beliefs that you expect someone to hold; and that has discerned where it stands on some of these issues could have roles which are for the purposes of "organised religion".

It will apply to ministers of religion and a small number of lay posts whose jobs exist to promote and represent religion in a clearly stated way e.g. a youth worker teaching Bible classes etc. In Baptist churches, Baptist ministers are not appointed as employees but rather as office holders. However, discrimination law protects those, amongst others, who are in or applying for a contract personally to do work. The same organised religion exception would apply to ministers of religion who are office holders³. In some Baptist churches, ministers are appointed from within the membership but since they would be appointed as an office holder, the organised religion exception in this guidance could still be applied. The same may apply for leadership positions such as deacons and elders if they are also charity trustees of your church, provided the narrow set of circumstances apply. The guidance in *LO9E Equality law and your church: membership and leadership* explains the religion and belief exception applicable in that area, which relies also on the compliance and non-conflict principles.

For example, the organised religion exception may be used where a church requires its ministers to be married or heterosexual if this enables the church to comply with the doctrines of the Christian faith or to avoid a conflict with the strongly held religious convictions of a significant number of its members. Where the exception applies, a church can also require, for example, that the individual be celibate if they are gay.

However, this exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting or social activities is celibate if he or she is gay, but it may apply if the youth worker mainly teaches Bible classes, is involved in discipling young people; or carries out Christian outreach activities such as visiting schools and doing assemblies. This exception is likely to apply to an evangelist but would not apply to a requirement that a church caretaker or cleaner be celibate if he or she is gay.

1.4 *Can the organised religion exception be used by Christian missional projects and pioneering ministries and initiatives?*

This exception can be used where the primary purpose of the employment is for organised religion. The purpose of the employment is what matters rather than the nature of the organisation. The primary purpose of a pioneering ministry or initiative may not be to represent or lead organised religion which is why it is not the **nature** of the organisation where the individual is employed that necessarily matters but rather the **purpose** of the employment. Consequently, if a Christian missional project or pioneering ministry employs a

³ Paragraph 2(7) of Schedule 9 Equality Act 2010.

post, the primary purpose of which is to advance, represent or teach the Christian faith in some way, it could potentially be used but it must be proportionate.

1.5 *What if neither of these exceptions apply to our situation?*

Beyond the exceptions described above, the law is clear – it is unlawful to discriminate on the grounds of sex or sexual orientation. The issue of whether an occupational requirement exists for a role is not always clear and, if handled wrongly, could cause upset and controversy for your missional project, pioneering ministry and even your church. This is especially true when applying the narrower organised religious exemption, noted above, regards sexual orientation. We would advise seeking more specific legal advice where any questions arise as to the relevance and suitability of an occupational requirement for a role.

1.6 *What do we need to do in relation to our organisational values?*

If your church is committed to upholding the sanctity of sex as being part of marriage and define marriage as being exclusively between a man and a woman as per paragraph 4.3 at Appendix 3 of the Ministerial Recognition Rules, this guidance would advise you to take the following steps:

- make this commitment clear in your organisation's Christian ethos statement or statement of faith;
- ensure that this value is included in your organisation's value statements and in standards that determine expected behaviours of staff;
- make sure that your staff know the standards expected of them; and
- make sure that any action taken against staff in relation to this standard is applied consistently to all staff.

The law does not allow any employer to discriminate on the grounds of sexual orientation unless there is an occupational requirement (OR) to do so.

Clarity about your organisational values simply ensures that existing staff and potential recruits know where your organisation stands in relation to this issue so that a process of self-selection can take place if appropriate.

1.7 *What do we need to consider if we wish to engage either the compliance or the non-conflict principles?*

To rely on the compliance principle, your church needs to have a clear doctrine relating to sexual orientation, sex and marriage in order to rely on this requirement. It is, therefore, important that as a church, members discern some of these issues and come to a clearly stated doctrinal position to show why you consider it necessary to discriminate on the grounds of either sex, sexual orientation or relating to circumstances in which a marriage or civil partnership came to an end by way of examples.

Not all Baptist churches adhere to the same doctrine on these issues and member churches within the Baptist Union may discern some of these issues differently. This is why it is very important to document your church's position on these matters. You can then apply a requirement in relation to that doctrine. For example, your church may wish to apply a requirement:

- not to engage in sex outside of heterosexual marriage, i.e., be celibate outside of marriage; or
- to teach that sex inside of heterosexual marriage is God's requirement for his people.

You should test the compliance part with the requirement as part of your interview questions. Your church will need to consider these issues when contemplating creating a post and undertaking a recruitment process.

For churches which have a requirement in their governing documents to appoint a minister from the Baptist Union accredited list, they may like to take account of the statement contained in the Ministerial Recognition Rules Appendix 3, point 4.3 which includes behaviours and practices normally deemed as gross misconduct and refers to:

- "Sexual misconduct which brings the church and ministry into disrepute." It specifically refers to "sexual intercourse and other genital sexual activity outside of marriage (as defined exclusively as between a man and a woman)".

Alternatively, if your church chooses to rely on the non-conflict principle, you need to consider how you can evidence that a significant number of members in your church hold such strong religious convictions. This will require a church members' meeting discussion and vote. Your church needs to discern where it stands on such issues in terms of employment and document them.

1.8 *Does the candidate meet the requirement?*

Your church would need to deal with questions relating to this sensitively and be sure to draw a distinction between sexual orientation and sexual practice so that any requirement you impose can clearly be shown to be necessary to comply with your doctrine or avoid conflict with a significant number of the religion's followers' strongly held religious convictions.

For example, your church may consider that there is an OR for an individual to be celibate if they are not married.

2. ORGANISED RELIGION EXCEPTION AND GENDER RE-ASSIGNMENT

2.1 *Who is protected?*

The law provides that a person has the protected characteristic of gender reassignment if the person has undergone, is undergoing or is proposing to undergo a process (or part of a process) to reassign their sex by changing physiological or other attributes traditionally assigned to a particular gender. A person with this protected characteristic is protected against discrimination and is afforded protection from the point when a person is proposing to undergo a process of gender reassignment. There does not have to be a medical process and includes someone telling you that they have now decided to permanently present as a different gender to their birth gender.

2.2 *Does that include persons who identify as non-binary?*

The gender binary is the assumption that all people are one of two genders, female or male, or woman or man. People who identify as a man or a woman identify as a binary gender, since they identify with a gender within the system of the gender binary. A non-binary person

simply identifies with a gender that is not male or female. The term "non-binary" is used to describe someone who does not subscribe to the customary binary approach to gender, and who may regard themselves as neither male nor female, or both male and female, or take another approach to gender entirely.

As we write this in 2023, the law is rapidly evolving in this area. Currently, someone who identifies as gender fluid/non-binary is likely to be protected against discrimination under the law. Expect further developments in the area of gender reassignment, which your church will need to keep under review.

2.3 *When can we apply the organised religion exception OR in relation to a decision not to recruit a transsexual person?*

Please see paragraph 1.2 for a full explanation of the narrow circumstances that your church could use the Organised Religion exception to justify discriminating against a job applicant or employee with the protected characteristic of gender re-assignment.

2.4 *What do we need to consider if we wish to rely on either the compliance or the non-conflict principles?*

- Your church would need to consider its doctrinal position on this as it is not a straightforward issue and there may be many different views amongst Christians and Baptist churches. Your doctrine would need to evidence that it is necessary for the employee not to be a transsexual person to comply with the doctrine of the religion or to avoid conflicting with the deeply held beliefs of a significant number of the religion's followers' strongly held religious convictions.
- BUGB have developed a listening page on their website designed to help us listen well to each other. It contains some useful resources and perspectives on areas of our shared life that may assist your church membership with discerning these issues not just in terms of recruitment but also managing this in the life of the church. The website page can be found at <https://www.baptist.org.uk/Groups/353808/Listening.aspx>.

3. RECRUITMENT: WHAT PRACTICAL STEPS DO WE NEED TO TAKE?

Once you have determined your OR for a post, your church will need to take the steps set out below in relation to recruitment. For a model recruitment process flow chart which summarises the steps below, please go to our Guide to Safer Recruitment.

3.1 Job description/person specification

The job description should make clear why it is necessary to employ a Christian in the particular post by reference to the particular duties that require this.

Where the job in question does not appear to have obvious spiritual content, your church should ensure that it can explain why the context of the employment is such that the job must be held by a Christian.

Some example job description templates that may be helpful can be found in our [Guide to Safer Recruitment](#).

3.2 *Review your supporting documentation*

In order to support the OR assessment process, your church should review its supporting documentation, namely, its Ethos Statement and Justification Statement (which are explained further below) to check they currently provide a clear and definitive explanation of your Christian ethos, and why and how this ethos therefore impacts on its recruitment and selection process. For more information on how to draft a Christian Ethos Statement please see *L09C: Equality law and the importance of defining your Christian ethos*.

In addition, any Baptist church that adheres to the Baptist Union's (BUGB) Declaration of Principle contained in its constitution and wishing to claim an OR based on religion or belief should ensure that applicants are required to sign up to and continue to accept the BUGB Declaration of Principle or other similar appropriate document such as a statement of faith or other doctrinal statement and/or a similar document that defines the beliefs you expect someone working under an occupational requirement to hold.

It would also be prudent for each church to adopt their own code of conduct dealing with any sex, sexual orientation or gender re-assignment issues in order to demonstrate to its employees the behaviour expected in roles where you claim an organised religion OR. An example of this can be found at www.baptist.org.uk/resources/L08, which could be adapted if required. For accredited Baptist ministers, the Ministerial Recognition Rules are also relevant.

3.3 *Christian Ethos statement*

Does your Christian Ethos statement or statement of faith identify sufficiently what your church believes, as discerned in a church members' meeting, and, in turn what difference that belief makes both internally within the organisation and externally? On the basis that beliefs drive behaviours, these statements should focus on what behaviours your church requires and, therefore, how this justifies that requirement for staff to hold comparable beliefs. More information on how to draft a Christian Ethos statement can be found in *L09C Equality law and the importance of defining your Christian ethos*, together with a sample Christian ethos statement.

3.4 *Justification Statement*

Consider placing references to roles requiring an OR in a justification statement. Make it clear which roles, having regard to the nature of the role and the context in which it is being carried out, will carry an OR for the job holder to be a Christian. This guidance recommends that it is made clear that ORs will be kept under regular review, in particular whenever a role becomes vacant or is newly created.

It is also recommended that the Justification Statement summarises how your church will assess whether it is satisfied that an applicant meets the OR.

If your church has some non-OR posts, this guidance recommends that the Ethos Statement makes clear the values that all employees and volunteers are expected to demonstrate in keeping with its ethos. A sample justification statement that could be inserted into a recruitment policy can be found in our [Guide to Safer Recruitment](#).

3.5 *Equal opportunities policy*

Ensure that your church has one in place. As Christian employers, while we subscribe to equal opportunities, we cannot say in our equal opportunities policy that we do not discriminate on any grounds. That's because we do discriminate lawfully on the grounds of religion but rely on an exception in the legislation to be able to do this. We therefore need to make statement in our Equal Opportunities policy that, in the light of our Christian purpose and ethos, we reserve the right to recruit Christians where there is an occupational requirement (OR) to do so. It would then be helpful to indicate which posts this applies to, either by attaching a list or referring to one held elsewhere, for example in a Justification Statement mentioned above although it will be essential that this is kept under review.

An example Equal Opportunities Statement that could be adapted for your church can be found in our L08 Employment guidance leaflet (www.baptist.org.uk/resources/L08).

3.6 *Advertising*

Where you are claiming an OR that a post should be filled by a Christian, that should be stated in your advertising.

Advertisements for OR roles should make clear that the role is subject to the requirement for the post-holder to be a Christian who shares your church's ethos and basis of faith. Whilst it is unlikely to be practical for the advertisement itself to set out the basis for that requirement, it is recommended that any summary of key responsibilities focus as far as possible on those elements of the role that justify it carrying an OR.

A link to access the Ethos Statement and any document setting out the basis of your faith such as the Declaration of Principle, or a copy of those documents, should be included in the application pack.

Consider summarising in advertisements for non-OR (as well as OR) roles for your Church, not just that it is a Christian charity (if relevant) or church, but also that it has a Christian ethos so that applicants are clear at the outset about the environment within which the post holder will work. A link to, or copy of, the Ethos Statement should be included within the application pack.

3.7 *Assessing whether the applicant meets the requirement that they are a Christian – application process and interview questions*

Those leaders involved in recruitment to OR positions for your church will need to decide what they will look for to determine whether each applicant meets the requirement that they are a Christian.

It will be very important for your church to accurately and carefully record the basis upon which it is concluded that it is or isn't satisfied that the requirement to be a Christian is met.

Your church is entitled, as an employer, to require certain actions, church attendance, expressed attitudes, demonstrated commitments and/or references from for example, church leaders, in order to be reasonably satisfied that the recruit satisfies the OR to be a Christian. Provided your church can demonstrate that it has 'reasonable grounds for not being satisfied that the person' is a Christian, this would be sufficient to refuse an applicant an OR role provided it can justify the OR in the first place. You do not have to come to a positive

judgement that someone is not a Christian. This guidance recommends that a list of agreed relevant grounds that would ordinarily satisfy your church that the applicant is a Christian should be developed and agreed. Examples include:

- Reference from a church leader that they believe the applicant is a Christian. It should be made explicit on the application form that any offer of employment for an OR role is subject to an acceptable reference from a church leader;
- A willingness to sign an agreed statement to adhere to the Declaration of Principle, and your church's own statement of faith. You could consider including this within the OR application form;
- A willingness and ability to articulate their Christian experience;
- A commitment to seek to live their life in a way that would help your church to achieve its purpose.

If your church is not satisfied that an applicant meets the requirement to be a Christian and therefore wishes to reject their application, it is recommended that the rejection letter refers to your church not being "satisfied that [the applicant] meets the requirement".

3.8 *Assessing whether the applicant meets the organised religion exception*

The organised religion exception is a requirement that the applicant is of a specific sex, sexual orientation, not married or a civil partner, not be married to or the civil partner of a person who has a living former spouse or civil partner or not be transsexual.

Where your church has discerned that it is necessary to discriminate, for example, on the grounds of sexual orientation or gender identity, you do not necessarily need to be setting that out in your advert or job description. However, through your interview process you would need to be satisfied that a candidate complied with your requirements. This could potentially be done by exploring the applicant's theology and how they would teach others in relation to questions regarding sexual orientation and/or gender reassignment.

3.9 *Interview questions for non-OR roles*

It is recommended that the interview questions concerning your church's Christian ethos for non-OR roles are focused on whether the applicant recognises that your church subscribes to an Ethos Statement and understands it; whether they are willing to carry out their role within an environment that seeks to promote that ethos and also whether the individual is able to commit to promoting the organisation (if relevant), within that context.

3.10 *Employment policies and practices*

Churches need to be aware that the occupational requirement, even if properly justified, does not give an employer the right to treat employees differently once appointed in relation to:

- Application of church policies and procedures
- Eligibility for pension scheme membership or contribution levels
- Eligibility for any other staff benefits
- The application of the church's capability, disciplinary or grievance procedures

How we can help

The Baptist Union of Great Britain is available to help churches in membership of the Union with issues raised in these guidelines through the relevant departments at Baptist House on 01235 517700. Legal and financial questions should be directed to the Legal & Operations Team either by referring to the website, www.baptist.org.uk, where a comprehensive range of leaflets is available or contact the offices on 01235 517700, fax 01235 517715 or email L09@baptist.org.uk. For formal legal advice the Union's solicitors are ready to offer their professional services. Please contact Anthony Collins Solicitors, 134 Edmund Street, Birmingham, B3 2ES on katherine.sinclair@anthonycollins.com.

This is one of a series of Guideline Leaflets that are offered as a resource for Baptist ministers and churches. They have been prepared by Anthony Collins Solicitors in conjunction with the Legal and Operations Team and HR Team at the Baptist Union 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 will be very pleased to answer your queries and help in any way possible. HR advice is also available for churches. It helps us to respond as efficiently as possible to the many churches in membership with us if you write to us and set out your enquiry as simply as possible.

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

Website: www.baptist.org.uk Registered CIO with Charity Number: 1181392

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