

31. Committee on Methodist Law and Polity (2)

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SECTION E BENEFITS TO TRUSTEES

1. The Law and Polity Committee has noted, following communication from the Charity Commission, that there were examples across the Connexion of managing trustees being appointed to paid roles and/or as lay employees without the consent of the Charity Commission having been obtained. At the moment should any managing trustee body wish to appoint one of its trustees to a paid role it would be necessary, in the Charity Commission's view, to obtain its consent (or potentially the consent of another relevant authority if outside England and Wales) before being able to make such an appointment. It should be noted that reference to a 'paid role' within this section does not include a minister who is being appointed to an appointment within the control of the Church. This section is mainly concerned with managing trustees or persons connected with them being appointed as lay employees within a Local Church, Circuit or District.
2. A charity may, however, at least in England and Wales, include within its governing documents a power to appoint charity trustees or a connected person to a paid role for the charity without the need to obtain Charity Commission consent so long as conflicts (particularly when voting) are appropriately managed. The amendments below propose the inclusion of such a power in the Model Trusts. The opportunity has also been taken to make clear that an existing employee who becomes a managing trustee is entitled to retain the benefit of any improvements in his or her terms and conditions of employment made subsequently, and to clarify the position in relation to ministers.
3. Finally, the opportunity has been taken to propose the inclusion of an express power for managing trustees to engage in transactions with one of their number or a connected person, while recognising expressly that such transactions require the authority of the Charity Commission in England and Wales and may require the authority of a regulator in other jurisdictions.
4. It is proposed to amend the Deed of Union so that the same provisions apply when the business under consideration is not Model Trust business.
5. There is clearly the potential for many members of the Conference to have a conflict of interest when exercising their vote in respect of the proposed amendments to the Model Trust and Deed of Union. Details on how any conflicts will be managed when voting at the Conference will be contained within a report of the Conference Law and Polity Sub-Committee.
6. The proposed amendments to paragraphs 2 and 16 of the Model Trusts and insertion of a new Trusteeship section and new clause 42A to the Deed of Union are special resolutions and will therefore need to be submitted to the Methodist Council for approval or disapproval in accordance with SO 126(1)(c).

Model Trusts

2 Managing trustees. (1) Subject to the provisions of this Part of this Schedule, so long as any model trust property or any part thereof shall be held, used or applied so as to fall within any category mentioned below, the managing trustees of such property or such part thereof shall be the body of persons or the person or persons (or such of those persons as shall have attained full age) specified immediately after such category as follows:

(a) – (e) *[unchanged]*

(2) *Employees of managing trustees may become members of the body constituting those trustees ex officio or by election or appointment on the same basis as if they were not employees and may retain any increased benefits resulting from a subsequent change or changes to their terms of employment as if they were not trustees.*

(3) *For the avoidance of doubt, a person may be a trustee and exercise trustee functions under sub-paragraph (1) above notwithstanding the fact that he or she is a minister, exercises those functions as part of his or her ministerial responsibilities and is also in receipt of a stipend and other benefits as a minister.*

16 General powers of managing trustees. (1) Subject to any statutory restriction and to the provisions of this Schedule, the managing trustees may –

(a) – (o) *[unchanged]*

(p) *subject to compliance with Standing Orders as to conflicts of interest:*

(i) *employ or engage the services of any managing trustee or connected person at remuneration and on terms not more preferential than would be accorded to a member of the public with the same qualifications and experience;*

(ii) *subject to any obligation to obtain a necessary consent, buy or sell land or goods from or to any managing trustee or connected person on terms not more preferential than would be accorded to a member of the public for the same transaction.*

(2) *In sub-paragraph (p) the expression “connected person” has the meaning given by section 188 of the Charities Act 2011 and the expression “necessary consent” means:*

(i) *in England and Wales, the consent of the Charity Commission if required by statute;*

(ii) *in other jurisdictions, the consent of any person or body whose consent is required under the law of the relevant jurisdiction.*

Deed of Union

Section 10A Trusteeship

42A *Benefits to trustees. The provisions of paragraphs 2(2) and (3) and 16(1)(p) and (2) of the Model Trusts shall apply, with any necessary changes, to all Church Courts and their members when acting as charity trustees, notwithstanding that they may not be transacting Model Trust business.*

*****RESOLUTIONS**

31/1. The Conference received the Report.

31/2. [Special resolution] The Conference amended paragraph 2 and 16 of the Model Trusts and inserted section 10A and clause 42A into the Deed of Union as set out in this Report.

Additional Report from the Law and Polity Sub-committee

1. Members of the Conference will have observed that paragraph 5 of the Committee's report refers to the potential for conflicts of interest in relation to the proposed amendments to the Model Trusts and Deed of Union and explains that the Law and Polity Conference Sub-Committee will bring a report to the Conference on the point.
2. The sub-committee reports that it is an established principle of law that a person in a fiduciary position is not in breach of fiduciary duty if the trust instrument expressly authorises the conflict (as the proposed amendments do) or if it impliedly does so. The Conference has previously acted on the footing that by analogy with that principle, the Deed of Union and the Model Trusts impliedly authorise members of the Conference to vote on Conference business in situations in which a very large number of members of the Conference would face an actual or potential conflict, since otherwise the business of the Conference could not effectively be transacted. Business relating to the Methodist Ministers' Pension Scheme is an obvious example of such business, since ministerial members of the Conference are in general members of the Scheme and the lay members are in general members in circuits which pay contributions to the Scheme.
3. In relation to the present business, the sub-committee has considered whether the potential conflicts could be managed by restricting voting on the amendment to paragraph 2(2) of the Model Trusts to ministerial members of the Conference and voting on the amendment to paragraph 2(3) to the lay members. This solution would, however, be highly artificial and would not assist with the proposed amendment to the Deed of Union. Further, it would not take account of the potential for conflicts arising from the possibility that the amendments would benefit a connected person of a member of the Conference. In those circumstances, the advice of the sub-committee is that members of the Conference in general are impliedly authorised to vote on the business despite the potential for conflicts of interest. Any member who is aware of a particular conflict should declare it privately to the Conference Officer for Legal and Constitutional Practice and should not vote on the business.
4. Members of the Conference will also note that paragraph 6 of the report recommends that the resolutions are submitted to the Methodist Council for approval. This requires a direction of the Conference and the appropriate resolution is set below. It should also be noted that SO 126(1)(a) already provides for submission to the Channel Islands, the Isle of Man and the Scotland and Shetland Synods.

*****RESOLUTION**

31/2A. The Conference, after considering the advice of the Law and Polity Conference Subcommittee, directed that consultation on Resolution 31/2 shall be with the Methodist Council in accordance with Standing Order 126(1)(c).

SECTION F

PART 11 – COMPLAINTS AND DISCIPLINE

The Law and Polity Complaints and Discipline Sub-Committee continues to meet annually to keep under review Part 11 of the Standing Orders and has noted that the following amendments would assist in offering clarity to all parties involved in the Part 11 process.

Standing Order 1121

Standing Order 1121(3) as currently drafted can appear to be overly burdensome when a local complaints officer is required to resolve a complaint by making “every effort.” The Law and Polity Committee has concluded that it would be beneficial to local complaints officers to insert “reasonable” between ‘every effort’ thereby recognising some of the limitations of both process and role.

1121 First Formal Complaint Stage.

(1) – (2) [*unchanged*]

(3) Where clause (2)(iii) above applies, the local complaints officer must make every **reasonable** effort to resolve the complaint formally, subject to clauses (9) and (11) below. For this purpose, the local complaints officer must inform the respondent that the complaint has been made, if the respondent is not aware of that fact and supply him or her with the written statement of complaint if he or she does not have it. Formal resolution means that the complainant and the respondent agree to a form of resolution and sign a written record of what is agreed.

Standing Order 1124

Amendments are proposed below to Standing Order 1124(12) to clarify that notice of a direction, ruling or advice does not always have to be to the general public, it might be to certain people or to a particular body of people.

1124 Full Consideration by Complaints Team.

(1)-(11) [*unchanged*]

(12) Any ruling made, directions given or advice issued by the complaints team must be formulated in consultation with the relevant connexional Team member and the relevant District Chair and Superintendent. The complaints team may also direct that ~~such public~~ notice is given of the direction, ruling or advice **to such persons or bodies and in such terms** as the team considers appropriate and helpful.

*****RESOLUTIONS**

31/3. The Conference received the Report.

31/4. The Conference amended Standing Order 1121(3) as set out in this Report.

31/5. The Conference amended Standing Order 1124(12) as set out in this Report.