

## 6. Special Resolution

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### **Special Resolution submitted by the Conference of 2017 to the Methodist Council under Standing Order 126(1)(c)**

Under Standing Order 126, special resolutions of the Conference require to be confirmed the following year after appropriate consultation before they can become effective. For the purpose of consultation, they are either referred to the Methodist Council (unless moved on the Council's behalf, in which case they are referred to the Law and Polity Committee) or dealt with as provisional legislation under Standing Order 122 and submitted to the Synods and the Law and Polity Committee.

The bodies consulted may approve or disapprove the resolution but may not amend it.

The 2017 Conference referred one such resolution to the Methodist Council, for the Council to vote on. The background information and proposed amendments to the Standing Orders, Model Trusts or Deed of Union are set out below.

### **ONWARDS FROM THE SUPREME COURT**

The Law and Polity Committee reported the following to the Conference:

#### The background

1. In 2013, in the case of *The President of the Methodist Conference v Preston*, the Supreme Court held that ministers of the Methodist Church stationed in appointments within the Church are not employees. There is no appeal from a decision of the Supreme Court, but as the Committee stated in its report to the 2014 Conference it does not follow that if we wish that position to continue we can safely sit back and do nothing. It might be changed by Parliament or by a fresh challenge in the courts. We cannot, as a Church, do anything to prevent parliamentary legislation or, until it is mooted, to avoid or mitigate it, but we can and should consider what can be done to strengthen our defences against a renewed challenge in the courts.
2. The Committee does not suggest that such a challenge is imminent. If we take care not to dismantle the features of our polity on which the Supreme Court relied we should be safe against any attempt to overturn *Preston*, at least in relation to circuit appointments, for some years. But not for ever. Cases were decided in 1984 and 1986 which in their day seemed equally decisive authorities against ministerial employment, but less than 30 years later, in *Preston*, the Employment Appeal Tribunal and the Court of Appeal were in favour of overruling them and it was far from certain, in prospect, that the Supreme Court would not agree. The pace of change tends to accelerate rather than slow down. And the likelihood is that no preventive action will be taken until it is too late unless the nettle is grasped before the subject slides out of the consciousness of the Connexion.
3. Moreover the need to address the issues raised by the *Preston* case has alerted the Committee to the fact that our constitutional documents nowhere set out the legal status of the Methodist Church. Although there can be no doubt that it is, in law, an unincorporated association, the rights and duties of the members of such bodies are usually defined by contract and if, as the Committee believes, that is not so in our case, we need to make that clearer.

4. That consideration is of particular importance in the light of the ground on which the Supreme Court decided *Preston*. Whether a person who does work for another is an employee is usually argued and decided on the footing that there is a contract between them and that the issue is whether it is one of employment or is of another kind, for example one for services supplied by a self-employed person. In the case of *Preston*, however, the Church argued, and the court accepted, more radically, that there is no contract at all.

#### A recommendation

5. How should the points made in paragraphs 3 and 4 inform our approach to the issue raised in paragraphs 1 and 2? The Committee believes that there are two pointers to an answer in the leading judgment handed down in *Preston*. In the first place, we read at one point that “[t]he question whether an arrangement is a legally binding contract depends upon the intentions of the parties.” Secondly, it is stated elsewhere that “the disciplinary scheme [of the Methodist Church] is the same for ministers and lay members” and that “the ministry is not a distinct order or class.”

6. Taking up the first of these points, all law students in England and Wales learn that the requirements for a contract are offer, acceptance, consideration (or seal) and intention to create legal relations. We cannot prevent a court or tribunal from finding offer, acceptance and what lawyers count as consideration (in this instance ministerial service on the one hand and stipend and accommodation on the other), but intention to create legal relations remains necessary and is entirely in our own hands.

7. Turning to the second point, the fact that the ordained ministry is not a distinct order or class reminds us that in law the basic relationship in the Methodist Church, as in any unincorporated association, is that of membership.

8. If the subject is approached from first principles, therefore, it can be seen that the issue whether there is a contract with ministers involves two successive questions: (i) when persons become members of the Methodist Church do they and the Church intend thereby to enter into a legally binding contract and (ii), if not, does that situation change when a member becomes a minister? If the answer to both questions is unassailably negative, as we should be able to ensure, then we should be able to hold the line for as long as the Church itself wishes, unless Parliament intervenes.

9. In addition to being the most fundamental in terms of legal analysis, that approach has two further advantages. The first is that in addition to dealing with the ministerial employment issue it forestalls any attempted litigation against the Church for breach of contract by members as such, the possibility of which it is, in the present climate of opinion, by no means fanciful to foresee. The second is that the primary denial of intention to create legal relations comes at the stage of entry into membership, which is likely to be uncontroversial.

#### A caveat

10. Although this recommendation seeks to ensure that the absence of any contractual relationship with members or ministers, as such, remains secure the Committee wishes to emphasise that that is very far from excluding the law of the land altogether from the affairs of the Church. On the contrary, there are important areas of church life in which it is of the utmost importance to be aware of and comply with legal requirements. All Methodist property and all Methodist funds are held on charitable trust, and Circuit Meetings, Church Councils, treasurers and others are subject to the law of trusts and to charity law when acting as trustees. The Church and its officers and trustees also have legal obligations to exercise due care for the safety and welfare of others, for example to persons on Methodist premises and to children and vulnerable adults in their care.

## Implementation

11. What the Committee envisages is that our constitutional provisions about entry into membership should make it clear that becoming a member is a covenantal expression of commitment to Christian discipleship within the Methodist Church and of acceptance of its discipline, but is not intended on either side to create legal relations, and that those about reception into Full Connexion should establish that what is involved is entry into wider responsibilities and authority within the Church, in addition to those already exercised by virtue of membership and existing offices, but not the creation of a new legal relationship. Draft amendments to the Deed of Union and Standing Orders to that effect are shown below.

12. It would need to be clear that these provisions were not just adopted by the Conference and published in *The Constitutional Practice and Discipline of the Methodist Church (CPD)* but known to and accepted by candidates for reception into membership or Full Connexion. That, however, is a matter not for legislation but for guidance and direction from those involved in the processes of preparation for membership and candidacy for the ministry, who are giving the subject their attention.

13. In preparing this report the Committee has consulted the Faith and Order Committee and has taken its comments into account.

## Incidental points

14. Some thought needs to be given, if that has not already been done (the Committee is not aware of any), to how we mark the admission into membership of persons received into Full Connexion directly from the ministry of other communions.

15. Making it clear that the basic relationships of membership and ministry are not contractual will sharpen the need to clarify the status of other relationships and, if they are to be contractual, the consequences of that. For example Standing Order 690(2)(c) expressly requires that where a person within that Standing Order worships in a Local Church, or seeks to become involved in its life, he or she must agree to "enter into a written contract" setting out certain terms. If that is to remain its implications need to be explored.

16. The amendments we recommend would apply directly only to persons coming newly into membership or Full Connexion. They are not, however, intended to change what we maintain (and in the case of ministers have established) to be the existing position. Consideration therefore needs to be given to whether, and if so how, that position is to be brought to the attention of existing members.

17. The amendments below are framed by reference to the law of England and Wales. Consultations, similar to those required by Standing Order 919A in the case of amendments to the Model Trusts, will be required to ensure that they have the intended effect elsewhere, and are if necessary modified to that end.

## Amendments to the Deed of Union

**9 Privileges and Duties of Membership. (a)** It is the privilege and duty of members of the Methodist Church to avail themselves of the two sacraments, namely baptism and the Lord's Supper. As membership of the Methodist Church also involves fellowship it is the duty of all members of the Methodist Church to seek to cultivate this in every possible way. The weekly class meeting has from the beginning proved to be the most effective means of maintaining among Methodists true fellowship in Christian experience. All members of the Methodist Church shall have their names entered on a class book, shall be placed under the pastoral care of a class leader or pastoral visitor

and shall receive an annual ticket of membership.

***(b) The privileges and duties of membership, as set out in sub-clause (a) above and appearing from Standing Orders, are commitments by each member to Christian discipleship within the Methodist Church, and to acceptance of its discipline, and by the Church to provision of the means by which that discipleship may be fully expressed, including pastoral care and oversight. Membership is therefore a covenant relationship between the member and the Church, freely entered into by the grace of God, but entry into membership has never been, and is not, intended on the part of either party to create, and does not create, a contract or other legal relations.***

The Methodist Council approved the Resolution.

**\*\*\*RESOLUTION**

**6/1. The Conference confirmed the amendments to the Deed of Union as set out above.**