

46. Committee on Methodist Law and Polity (2)

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SECTION G CONFLICTS OF LOYALTY

1. The Conference in 2019 adopted and in 2020 confirmed amendments to the Model Trusts and Deed of Union needed in order to authorise certain kinds of appointments and transactions which may in suitable circumstances be desirable but which without such authorisation would under the general law confer impermissible benefits on members of church courts as trustees or require Charity Commission consent in each instance.
2. The committee was asked to consider what amendments to Standing Orders or other consequential legislation might be required and to deal at the same time with the closely associated issue of conflicts of interest and duty, where in any event the current Standing Orders need re-examination.
3. The committee does not believe that any directly consequential amendments to Standing Orders are required for England and Wales but it is necessary to consider the position in other jurisdictions. Consultations with those responsible for such matters in those jurisdictions are ongoing.
4. The main reason for the need to revise the Standing Orders dealing with conflicts (SO 919 for Model Trust business and 019A for all other trustee business) is that they cover only conflicts of *financial* interest. Just extending the present provisions to include *all* forms of conflict of interest or duty would be straightforward in terms of drafting, but would raise the problem that virtually all members of Synods, most members of Circuit Meetings and many members of Church Councils are also members of one or more other of those bodies, and thus potentially involved in a conflict of duty or loyalty for a significant proportion of the business of each, so that going through the whole procedure of Standing Orders 919(1) or 019A(1) on each occasion when the point arose would be onerous and potentially stultifying.
5. This is not a problem peculiar to Methodism. It arises whenever one person is a trustee in more than one of a group of what the Charity Commission calls 'closely linked organisations'. There is guidance from the Charity Commission on such a situation as follows:

Appointments to closely linked organisations

Where a trustee is appointed by:

- *a local branch to the charity's national trustee body*
- *by a religious foundation to one of its schools*

it is usually acceptable for the trustee to simply declare a conflict of loyalty and then participate in decisions.

Although there may be a decision at the charity that also affects the appointing body, the similarity of charitable purpose between the two organisations means that conflicts of loyalty which do crop up often present only low risks to the charity. However, the trustees should decide in each case how the conflict of loyalty should be handled and should ensure they can demonstrate that that any decision was taken only in the best interests of the charity.

6. The two bullet points are clearly just examples, and although the relationships between Church Councils, Circuit Meetings and Synods are not identical with those between the bodies mentioned the same considerations must in the committee's view apply.
7. The amendments to Standing Orders proposed below are intended to meet the situation discussed in paragraphs 4 and 5 above. The committee sees no need to deal with managing trusteeship separately, so the opportunity has been taken to simplify matters by including managing trustee business in Standing Order 019A and revoking Standing Order 919.
8. The problem of cross-membership between different bodies discussed in paragraph 4 above is addressed by including a process for dealing with it at the beginning of every meeting. It should be noted that although that discussion, and the provisions for dealing with the problem, relate only to Church Councils, Circuit Meetings and Synods, the definition of 'church courts' in clause 1(iv) of the Deed of Union, and therefore the ambit of Standing Order 019A, is wider, and in particular includes the Conference, which will continue to make its own arrangements.
9. Like the earlier amendments to the Model Trusts and Deed of Union, these amendments, if adopted, will need to be considered by those responsible for such matters in jurisdictions outside England and Wales. The committee has, meanwhile, included a 'holding' clause (9) in amended Standing Order 019A.

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***RESOLUTION

46/1. The Conference receives the Report.

46/2. The Conference amends Standing Orders as set out below:

Standing Order 919 is revoked.

019A Conflicts of Interest and Duty. (1) This Standing Order applies to *all* situations, not covered by Standing Order 919, in which a trustee *or managing trustee* of Methodist property or member of a church court has *an* financial interest in any question falling to be considered by the relevant trustees or church court *or some duty or loyalty to another person or body in relation to any such question.*

(2) This Standing Order has effect so far as any applicable trust instrument permits.

(3) In the remainder of this Standing Order provisions ~~applicable~~ **expressed by reference** to a church court or its members shall, subject to clause (2) above, apply equally to **other** trustees *and managing trustees* within the scope of this Standing Order.

(4) **Subject to clauses (7) and (8) below a** member of a church court with such an interest, **duty or loyalty** shall, if present, disclose it to the other members present before the discussion of the relevant question opens, if it is on the agenda, or, if it is not, as soon as it is raised, and shall not preside over any discussion or vote on any resolution relating to that question. Such a member shall withdraw from the meeting while the question is discussed and any resolutions voted upon unless, after **such disclosure of interest:**

(i) a majority of the other members present approves that member's remaining and contributing to the discussion; or

(ii) a majority of the other members present approves that member's remaining on terms that he or she shall not contribute to the discussion unless asked by the person presiding over the discussion to comment on a particular point or points, in which event his or her contribution shall be limited accordingly.

(5) **Without prejudice to the generality of clause (1) above, for** the purposes of this Standing Order:

(a) a member has *an* financial interest in a question if, **for example,** it involves or may involve a decision whether or not the church court shall:

(i) enter into any contract with that member; or

(ii) do anything which will or may lead to the receipt of any remuneration or other benefit in money or money's worth or the incurring of any liability by that member or to the loss of or release from or a change in any such remuneration, benefit or liability; or

(iii) sell property to or buy property from that member

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whether, in any of those cases, the member in question acts alone or jointly with one or more other persons, **and**

(b) a member has a duty or loyalty to another person or body in relation to a question if, for example, that other person or body is interested (whether directly or indirectly) in that question and he or she has been elected or appointed as a trustee or managing trustee by that other person or body or is also a member, trustee or managing trustee of that other body.

(6) A member of a church court shall not be liable to account to that court or to any fund administered by it for any benefit received (whether directly or indirectly) from such an financial interest if the liability would have arisen solely from the existence of that interest and he or she:

(i) is not present at the meeting at which the relevant decision is made and has not sought to influence that decision; or

(ii) is present at the relevant meeting and has complied with clause (4) above.

(7) Where a member of a church court has a duty or loyalty within clause (1) above to another church court then that member shall, if present, disclose it at the outset of any meeting and may thereafter participate fully in any business of the meeting affected by that duty or loyalty unless, in relation to any particular item of such business, a majority of the other members present require him or her to comply with the provisions of clause (4) above.

(8) For the purposes of clause (7) above, disclosure through the process specified in Standing Order 411(1A), (1B), 514(2A) or 613(2A), where applicable, is sufficient disclosure.

(9) In the application in jurisdictions outside England and Wales of this Standing Order and the provisions specified in clause (8) above:

(i) they shall take effect only so far as consistent with and applicable under the law of the local jurisdiction; and

(ii) they may by resolution of the Conference be revoked or amended in their application in any specified jurisdiction.

411 Meetings. [Clauses (1) and (4) to (7) unchanged]

(1A) Subject to clause (1B) below, before the first meeting of each connexional year the Chair and Synod secretary shall make out and distribute to all members of the Synod a list, by name, of those members of the Synod who, to the best of their knowledge, have duties or loyalties within Standing Order 019A(7), identifying the other bodies involved, provided that every member of the Synod shall be taken to have such duties or loyalties to the Circuit Meeting of the Circuit in which he or she is stationed or a member unless named as an exception. At the opening of each meeting in that year the Chair shall call upon members to disclose any additions or other corrections, and those members on the corrected list who are present shall be called upon to confirm the disclosure of their relevant duties or loyalties. This clause does not derogate in any way from the obligations

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of members in respect of interests, duties or loyalties under Standing Order 019A but not within clause (7) thereof.

(1B) The Synod may resolve not to follow the process set out in clause (1A) above but instead to adopt an alternative process for ensuring that the duties or loyalties within Standing Order 019A(7) of Synod members are disclosed in such a manner and at such a point in any meeting of the Synod that the Synod is able satisfactorily to manage conflicts of interest and duty. Such a resolution may include a resolution retrospectively dispensing with the requirements of clause (1A) above so far as otherwise applicable to the meeting at which the resolution is passed and shall remain in force for such period as the Synod may determine.

514 Meetings. *[Clauses (1) and (3) unchanged]*

(2) Before each meeting the Superintendent and the secretary of the meeting shall make out a list, by name, of the persons who are in their opinion members of the meeting under Standing Order 510, 511 or 512 as the case may be distinguishing those, if any, who are not of full age. At the meeting, before any other business is transacted, that list shall be laid before the meeting which shall, after making any correction which seems to the meeting necessary, adopt it, and the list as thus adopted shall be final and conclusive as to the persons of whom the meeting then consists.

(2A) Before each meeting the Superintendent and the secretary of the meeting shall also make out a list, by name, of those members of the meeting who, to the best of their knowledge, have duties or loyalties within Standing Order 019A(7), identifying the other bodies involved, provided that every lay member of the meeting shall be taken to have such duties or loyalties to the Church Council of the church in which he or she is a member unless named as an exception. Immediately after the membership of the meeting has been adopted under clause (2) above that list shall be laid before the meeting, the chair shall call upon members to disclose any additions or other corrections, and those members on the corrected list who are present shall be called upon to confirm the disclosure of their relevant duties or loyalties. This clause does not derogate in any way from the obligations of members in respect of interests, duties or loyalties under Standing Order 019A but not within clause (7) thereof.

613 Meetings. *[Clauses (1), (3) and (4) unchanged]*

(2) Before each meeting the presbyter in pastoral charge or, if none, the Superintendent shall, ~~with~~ **and** the secretary of the Church Council, **shall** make out a list, by name, of the persons who are in their opinion members of the council under Standing Order 511, 610, 611 or 612, as the case may be, distinguishing those, if any, who are not of full age. At the meeting, before any other business is transacted, that list shall be laid before the council which shall, after making any correction which seems to the council necessary, adopt it, and the list as thus adopted shall be final and conclusive as to the persons of whom the council then consists.

(2A) Before each meeting the presbyter in pastoral charge or Superintendent and the

secretary of the council shall also make out a list, by name, of those members of the meeting who, to the best of their knowledge, have duties or loyalties within Standing Order 019A(7), identifying the other bodies involved. Immediately after the membership of the council has been adopted under clause (2) above that list shall be laid before the council, the chair shall call upon members to disclose any additions or other corrections, and those members on the corrected list who are present shall be called upon to confirm the disclosure of their relevant duties or loyalties. This clause does not derogate in any way from the obligations of members in respect of interests, duties or loyalties under Standing Order 019A but not within clause (7) thereof.

SECTION H FUNDS UPON CLOSURE

There is at present no provision in Section 65 of Standing Orders for the disposal of the funds of Local Churches on cessation, and guidance is frequently sought. The committee believes that there should be a Standing Order dealing with that situation, and offers one below.

There are two stages to be considered. The first is when cessation is imminent, and indeed the church may to outward appearance have ceased to function as such, but it has not formally ceased to exist. In that situation no special provision is strictly necessary, but since ministers and officers often seek advice the position is spelt out 'for the avoidance of doubt' in the proposed clause (1) of Standing Order 654.

Some additional explanation may be helpful, so the committee suggests that there be editorial notes to clause (1) as follows (but as always that suggestion is not the subject of the resolutions below):

Any Local Church which has not ceased to exist can if necessary, however small its membership, have a Church Council by the procedure of Standing Order 612(1).

When acting under head (ii) above, it is important that the Church Council understands and complies with the provisions of Standing Orders 650(4) and 917(1) before exercising any discretionary powers under Standing Order 650(5) or 917(2), and that when seeking to exercise the latter powers it obtains any required consents.

The second stage concerns funds still in existence at the moment of cessation. In principle each separate fund, in particular the general church fund on the one hand and model trust money on the other, remains subject to its separate trusts, but in practice money representing those two funds is, despite Standing Order 652, commonly held in a single bank account, and it is difficult, if not impossible, to distinguish them. While the church continues to exist any resulting problems are avoided by Standing Orders 650(6)(ia) and

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917(2)(viii), under which the general church fund and local model trust income can, in effect, each be used for the purposes of the other, but the prevalence of this situation needs to be taken into account when dealing with cessation.

The simpler position there is that in which the church becomes part of another Local Church, as happens under Standing Order 605(2) and (4), or may be the subject of a scheme under Standing Order 942(1) (and those two possibilities can overlap), or may happen in other ways, for example under a voluntary arrangement by which all the active members transfer to the same church. In that event it seems clear that any remaining funds should go with the membership, each fund or account retaining its own identity. The proposed new Standing Order 654(3) so provides.

If there is no such successor church, as for example when the membership is dispersed, current advice is apparently that all the money should go to the Circuit, and the committee is in agreement with that plan, but there is no express provision for it, and any such provision needs to take account of the fact that different funds may be held on different trusts. That is what the proposed new Standing Order 654(4) accordingly sets out to do. In view of the likelihood that the general church fund and local model trust income will be indistinguishable they need to be dealt with together. It seems clear that in the light of Standing Orders 650(6)(ii) and 917(2)(vi) either (a) the general circuit fund, or (b) circuit model trust money as income, is available as a destination, but on balance the committee believes that the latter is the preferable choice. Model trust capital money also needs to be allocated, and that obviously becomes circuit model trust money as capital, but since it should already be with the Trustees for Methodist Church Purposes that should not affect the disposal of any money held locally.

There is further work to be done, in particular because of the important distinction between the cessation of a Local Church and the closure of its chapel for worship, and the relationship between those events, but legislation in that area is likely to be significantly affected by the outcome of the current consideration of oversight and trusteeship generally, which the committee therefore proposes to await.

*****RESOLUTIONS**

46/3. The Conference receives the Report.

46/4. The Conference amends Standing Orders as set out below:

654. Cessation. (1) *If a Local Church is about to cease to exist, then pending actual cessation by the loss (by transfer or otherwise) of all its members, and for the avoidance of doubt:*

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- (i) *any proceeds of sale within Standing Order 944 or 945 must be applied in accordance with those Standing Orders, and*
- (ii) *the Church Council continues to have authority to expend or apply all or any part of any other church fund for any of the purposes for which it is held, in accordance with the applicable trusts and Standing Orders.*

(2) Clauses (3) and (4) below apply to regulate the position upon cessation.

(3) If the church becomes part of another Local Church (whether existing or new, and whether by virtue of Standing Order 605A(1)), or under a scheme within Standing Order 605A(2) or 942(1), or because in any other way all its remaining members have been transferred to one other Local Church), any balances remaining shall become part of, or form, the corresponding fund of that other church.

(4) In any other case any balances remaining:

- (i) *if in a benevolence fund, shall become part of or form the circuit benevolence fund, or*
- (ii) *if held on any other specific trust, other than the Model Trusts, shall be held and applied by the circuit treasurers upon that trust, or*
- (iii) *if model trust capital money shall become circuit model trust money of the relevant Circuit as capital, and*
- (iv) *as to all other funds, whether or not identifiable in whole or in part as model trust money, shall become circuit model trust money of that Circuit as income.*

SECTION I

AMENDMENTS REQUIRED TO PART 11 OF STANDING ORDERS

The committee's Complaints and Discipline Sub-Committee recommends that the final sentence of Standing Order 1121(7)(c)(iii) be amended to clarify the length of time for which a Local Complaints Officer should retain a record required under Standing Order 1121(7)(a).

*****RESOLUTION**

46/5. The Conference amends Standing Orders as set out below:

1121 First Formal Complaint Stage.

(7)(a) – (b) [Unchanged]

(c) If the local complaints officer decides to refer the complaint to the panel then within 90 days of the date of referral under Standing Order 1121(5)(i):

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- (i) the record must be sent to the relevant connexional Team member for transmission to the relevant complaints team;
- (ii) a copy of the record must be deposited with the Secretary of the Conference, to be retained in accordance with Standing Order 1104(1); and
- (iii) the local complaints officer must then **within 90 days of the date of referral under Standing Order 1121(5)(i)** destroy any record or documentation retained.

SECTION J

SUSPENSION OF STANDING ORDERS RELATING TO CANDIDATES' MEDICAL REPORTS

In March 2021, the Committee advised the Methodist Council on the need to suspend various Standing Orders so as not to be in breach of the Equality Act 2010 when considering a prospective candidate's medical information during the ministerial candidate selection process. Details of the suspension are reported elsewhere in the Conference Agenda.

The Law and Polity Conference Sub-committee may bring recommendations to the Conference in the Order Paper for further suspension during the forthcoming connexional year.

*****RESOLUTION**

46/6. The Conference receives the Report.