

Legal and Property Support for Managing Trustees

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Status of Paper	Draft report to the Conference upon which the working party seeks the Council's views.
Resolution	36/1. The Council receives the report. 36/2. The Council commends the report and its recommendations to the Conference.

Summary of Content

Subject and Aims	The Legal and Property Support for Managing Trustees (LPSMT) working party was established following four memorials to the 2016 Conference relating to the work of Trustees for Methodist Church Purposes (TMCP) and the level of support and advice available to managing trustees. This report describes the work undertaken and the recommendations of the working party, which will be brought to the 2018 Conference.
Main Points	<ol style="list-style-type: none"> 1. Introduction 2. History 3. Current structure 4. Recent and ongoing developments 5. Existing resources available to managing trustees 6. Feedback and reflections on TMCP 7. General areas of concern 8. Conclusions and recommendations 9. Executive summary of recommendations <p>Appendix I – Memorials M26 – M29 (2016)</p>
Background Context and Relevant Documents	<p>Memorials M26 – M29 to the 2016 Conference (see Appendix I)</p> <p>MC/16/51 – Property Development Committee</p> <p>MC/16/91 – Property Development Committee: Amendment to Terms of Reference</p> <p>MC/17/59 – Legal and Property Support for Managing Trustees – Progress Report</p> <p>MC/17/88 – Developing a connexional strategy for the use of Methodist Property in Mission and Evangelism</p> <p>MC/18/1 – Reaffirming Our Calling: Strategic Developments</p>
Consultations	<p>District Property Secretaries</p> <p>District Chairs</p> <p>The Chair of the Board of TMCP</p> <p>The TMCP Executive</p> <p>Members of staff from TMCP</p> <p>Facilities and Property Coordinator (Connexional Team) and other relevant members of the Connexional Team based in London and Manchester</p> <p>The Conference Officer for Legal and Constitutional Practice</p> <p>The Secretary of the Conference</p> <p>The Law and Polity Committee</p> <p>Ecumenical partners (in the Baptist Union of Great Britain and the Church of England)</p> <p>A sample of solicitors with experience of working with TMCP</p>

1.0 Introduction

- 1.1 The 2016 Conference received four memorials (M26 – M29) relating to the work of the Trustees for Methodist Church Purposes (TMCP) and the level of support and advice available to managing trustees (see Appendix I). In response, and recognising the need to be faithful in the use of the resources of the whole Connexion, the Conference directed the Methodist Council and invited the Board of TMCP to appoint a joint working party to:
- (a) Clarify the extent of the application of SO 931(3) and the role and responsibility of the custodian trustee under the Methodist Church Act 1939 and charity law.
 - (b) Clarify the need for SO 931(3) in its current form and where appropriate suggest amendments.
 - (c) Assess what steps are necessary to ensure that the Connexional Team has available to it an appropriate level of resource so as to fulfil the terms of SO 931(3).
 - (d) Clarify the requirements placed upon Managing Trustees in respect of disposals and contracts and identify ways to speed up transactions, taking into account the views of the Law and Polity Committee on the role of the custodian.
 - (e) Clarify and define respective areas of responsibility so as to resource the mission and ministry of the whole Connexion most effectively.
 - (f) Establish a full review of the needs of Managing Trustees in terms of property and legal advice and consider the benefit of professional legal services being provided by the Connexional Team.
- 1.2 The working party consists of Mrs Susan R Howdle (Chair, appointed by the Conference), Mr Graham Danbury (appointed by the Board of TMCP), the Revd Jennifer M Dyer (appointed by the Council), the Revd Richard W Oldroyd (appointed by the Council) and Mr G Alan Pimlott (appointed by the Board of TMCP).
- 1.3 The working party has met 11 times, once residentially. It was keenly aware of the need to consult widely in order to build an accurate picture of the support needs of managing trustees in Local Churches and Circuits across the Connexion. The working party met with a sample of District Property Secretaries (DPSs), the Chair of the Board of TMCP, the TMCP Executive, members of TMCP staff, members of the Connexional Team and officers of the Conference and a number of ecumenical partners. It also consulted electronically with all DPSs and District Chairs.
- 1.4 The working party has also sought to take into account the views and issues raised by memorials to the 2016 Conference (see Appendix I) and previous Conferences. With regard specifically to experiences of working with TMCP, the working party undertook a consultation with DPSs and it also approached a number of solicitors who were suggested by Superintendents as having experience of working with TMCP. The working party chose to undertake focused consultation rather than inviting general comment, in order to ensure a balance of views based on recent experience although where, in a few instances, managing trustees chose to make contact with the working party their views were taken into consideration. The results of this consultation exercise are detailed in Section 6.
- 1.5 In addition, the working party contacted a sample of District Chairs to gather information about legal costs currently being incurred by managing trustees (with a view to ensuring that any proposed alternative model offers better value for money). However, for a variety of

reasons (including the range of ways in which such information is held) this consultation did not produce sufficient helpful data.

- 1.6 The working party has approached its task in light of its understanding that the work of managing trustees is a vital element of the mission of the Methodist Church. The triennial statistical returns considered by the 2017 Conference highlight some of the challenges facing the Methodist Church in Britain today and they form part of the context for this report. These challenges include a declining number of members; church properties that are old, underused and in a poor state of repair; and the difficulty of finding suitable volunteers for committees and stewardship roles. In response to these challenges and the promptings of the Spirit, the Methodist Council has chosen to reaffirm *Our Calling* as the primary strategic driver for the whole Church. In seeking to ensure that all areas of the Church's life are aligned with this aim, it is recognised that "the life, witness, service and wellbeing of the Methodist Church is experienced and made a reality at the level of Circuits and Districts" (MC/18/1, A7). The working party hopes that its recommendations will enable managing trustees in Local Churches, Circuits and Districts across the Connexion to live out our common calling to serve the present age through the use of the Church's resources.

2.0 History

- 2.1 Because of the issues raised by some of the memorials to the 2016 Conference and previous Conferences, it is important to offer at the outset an outline of the complex history of the development of TMCP and its legal and operational links to the Church, before exploring the current landscape and the challenges which it offers.

The history of TMCP

- 2.2 From the early days of Methodism, as societies were established and preaching places built, it was necessary to safeguard their use for Methodist purposes. The appropriate legal mechanism was to settle them upon trust, and ever since then – in common with many other charities – the legal structure upon which property is held for Methodist purposes is by means of **trusts**. However, the form in which this has been expressed has evolved gradually over the years.
- 2.3 The chapels themselves (in each of the various branches of Methodism up to 1932) were generally held upon what became known as Model Deeds which regulated such matters as the appointment of trustees and the doctrines to be preached there. However, there were often moneys given for all sorts of other charitable purposes connected with Methodism, at whatever level, which could be lost inadvertently by the death of original trustees, or squandered because there were not people who were capable of giving the appropriate amount of time and care to carrying out those charitable purposes. (That was not a problem unique to the Church.)
- 2.4 In 1863, therefore, the Wesleyan Methodist Conference resolved to create the Board of Trustees for Wesleyan Methodist Church Purposes, who would be a group of trustees to be appointed by and to report to the Conference, so providing the necessary continuity and skills to ensure that the particular trust's purposes were properly and effectively carried out. It was entirely a matter of choice for the creator of the trust whether to use this machinery or not. But there was no provision at that stage that the most important church assets – the title to the local chapel (or circuit property) itself and any associated funds – should be held by the Board. They continued to be held by the trustees locally. In 1911, the Board became registered as a corporation, enabling it to hold property in its own name so providing for its own continuity of title without having to renew the trust periodically, and allowing the use of a common seal for the execution of documents.

- 2.5 Meanwhile, in 1914, following the creation of the United Methodist Church, that church set up a similar body, the Trustees for United Methodist Church Purposes, which was duly incorporated in 1915. There was no equivalent Primitive Methodist body.
- 2.6 The next significant milestone came as a result of Methodist Union in 1932. Further legislation to embody the post-Union position as to the respective Boards was thought necessary, and so the Methodist Church Act 1939 was enacted.
- 2.7 **The Methodist Church Act 1939** is of great significance because its provisions still apply and it is generally only able to be amended by resort to Parliament. (Although it, like other legislation such as the Methodist Church Act 1976, below, is a private Act of Parliament, it would still require the appropriate parliamentary process to be followed.) The Act amalgamated the two (Wesleyan and United Methodist) Boards into the newly created corporate body, the Board of Trustees for Methodist Church Purposes (TMCP), still to be based in Manchester as the Wesleyan Board had been since its inception. Importantly, it also enabled the Board to exercise powers given to **custodian trustees** by the Public Trustee Act 1906, enabling a split between holding the title to trust property and the management of it. (This will be explored further below.)
- 2.8 Although there was still no general requirement for local trustees to avail themselves of the services of the Board, there was a pattern of their doing so in increasing numbers in relation to their funds. However, so far as holding the legal title to the property itself, that still remained with the trustees locally.
- 2.9 The most significant change therefore came with the provision in **the Methodist Church Act 1976** by which the legal title to all Methodist trust property held on the previous Model Deeds (now to be replaced by the Model Trusts) and also the title to certain other specified Methodist properties was automatically vested in TMCP as custodian trustee, to hold on behalf of the relevant managing trustees. The managing trustees are, in relation to local church and circuit property respectively, the Church Council and the Circuit Meeting. (This division of custodian and managing trusteeship applies also to property held for district and wider connexional purposes, but this report focuses principally on the local and circuit situation, as that is where the principal issues of concern have been raised.)
- 2.10 One main impetus behind this change, and the one most relevant to this report, was to simplify the situation as to property holding. First, it provided for ease of dealing with the legal title where property was acquired or sold, as this could be done under the seal of the Board of TMCP rather than requiring the signatures of a long list of local/circuit trustees (and indeed it permitted the ‘transfer’ of property within Methodism eg between Local Church and Circuit without the need for a formal conveyance at all); and secondly, no longer did the local or circuit trust have to be legally renewed as a whole periodically as people died or became unable or unwilling to act, because the managing trustees were simply to be defined by reference to their membership of a meeting. This relates to another main impetus behind the change: the trust system had been criticised for the ‘dual control’ of the Local Church by the trustees’ and the leaders’ meetings and this was now replaced by a unified body (the Church Council) which has authority and oversight over the whole of the church’s life.

3.0 Current structure

TMCP’s legal status today

- 3.1 TMCP is therefore the custodian trustee by virtue of the 1976 Act of almost all Methodist land, and also of model trust moneys as required by Standing Orders (eg proceeds of sale, money

raised for the development of property and legacies of a general nature). It should be remembered that this applies to property other than that in the Isle of Man and the Channel Islands, where there is indeed custodian trusteeship but it is exercised by boards which are separately created under the relevant jurisdictions of those territories, not by TMCP.

- 3.2 There are other properties and funds over which TMCP also exercises custodian trustee functions not because this was required by the 1976 Act but because those creating the particular trust have so determined (eg Westminster College Oxford Trust Ltd).
- 3.3 Besides having the custodian trusteeship function, TMCP continues, as from its origins, to be the trustee of a number of other more specific trusts, by the choice of those who created the trust. In these instances this property is generally held by the Board not simply as a custodian trustee, but as a 'full' trustee with all the powers and discretions accorded to trustees in the exercise of their duties under the general rules of trust law (eg the Osborne Trusts for the maintenance and building of chapels in the historic county of Essex).
- 3.4 Finally, because TMCP has 'corporate' status, it has been found useful as a vehicle beyond trusteeship as such, where certain legal functions need to be vested in a corporate person, rather than a group of individuals. One example of this can be seen generally on Methodist connexional publications (such as the back cover of the Conference Agenda), where the copyright is stated to be held by TMCP, although in practice actual permission to reproduce from such publications has been delegated to the Methodist Council. TMCP is also currently the data controller for most data held in the Connexion for the purposes of data protection legislation (with the exception of that held by the Connexional Team).
- 3.5 The scale of TMCP's activity today can be seen from its annual reports to the Conference. Thus, for the year ended 31 August 2016, it reported in 2017 that its custodian trusteeship extended to upwards of 5,000 properties held on the Model Trusts, and to funds held in 6,696 separate trusts (to the value of over £340 million). In addition it held approximately £5.5 million of funds of which it was 'full' trustee. More recent information can be found in the latest TMCP report elsewhere in the Conference Agenda.
- 3.6 The **funding model** for TMCP has several main income streams. Working on the figures for the year ended August 2017: first, some funding comes from TMCP's own investment income (£52,670). Then, in recognition of the work that is done on behalf of the Connexional Team under SO 931(3) as explained below (3.31), a contribution is made from the Methodist Church Fund which reflects 35% of the salary costs of the legal team at TMCP (£163,845). The largest source of income (£682,559) is the management charge which is levied upon all the funds which are held by TMCP as custodian trustee on behalf of managing trustees – this is a charge of 0.2%.
- 3.7 After taking into account recognised gains on investments the result was a net deficit of £117,243. There has been a net deficit in most of the recent years, and the Board's policy has been to cover this by the transfer of up to £130,000 per annum from reserves.

What is the relationship of TMCP to the Conference?

- 3.8 TMCP as a corporate body is a separate entity, distinct from the Methodist Church, and is responsible for its own actions. The Board, although reporting annually to the Conference, is not directly answerable to it. However, all members of the Board must be members of the Methodist Church, and the Conference has various powers under the 1939 Act (eg to change the body's name), and in particular it appoints the members of the Board.

3.9 Normally these vacancies are filled on the nomination of the remaining Board members, but there are powers for the Conference to appoint additional members. However the basic requirement is that there shall be equal numbers of ministers and lay people, and the minimum number of Board members is six. The Conference has currently set the total number of members at 16.

3.10 Once appointed a person continues to be a member of the Board unless any of the conditions set out in section 5 of the 1939 Act occurs. These are if a member shall:

- die
- become bankrupt
- make an assignment for the benefit of his or her creditors
- refuse or be unfit to act or be incapable of acting as a member of the Board
- reside for twelve months outside of the United Kingdom
- cease to be a member of the Methodist Church
- by notice in writing sent or delivered to the Secretary of the Conference state his or her desire to resign from the Board

Although appointments are therefore theoretically for life, a policy of voluntary phased retirements from the Board has been in effect for a number of years and is readily and consistently adhered to.

What does it mean to be a custodian trustee?

3.11 As explained above, TMCP has power under the 1939 Act to act as custodian trustee, and by virtue of the 1976 Act is actually the custodian trustee of almost all Methodist land and of model trust moneys (see 3.1).

3.12 Custodian trusteeship is not a concept invented by the Church, but is a means of dealing with property which originates in **the Public Trustee Act 1906**. Section 10 of the Methodist Church Act 1939 enabled the Board of TMCP to hold property as a custodian trustee, and enacted that section 4(2) of the Public Trustee Act 1906, which provides for the respective rôles of the managing trustees and the custodian where property is held by a custodian trustee, should apply here. The relevant provisions of s. 4(2) may be summarised as follows:

- i. Management, and the exercise of all powers and discretions under the trust, are matters for the managing trustees (s.4(2)(b));
- ii. The custodian trustee must concur in and perform all acts necessary to enable the managing trustees to carry out their rôle under (i) above unless that would involve the custodian in a breach of trust or personal liability (s.4(2)(d));
- iii. All receipts or payments of trust money are to be made to or by the custodian trustee, except that the custodian may allow the managing trustees to receive and spend income (s.4(2)(e)). [At the date when model trust property vested in TMCP under the 1976 Act, TMCP exercised this power so as to permit and direct that future income should be received by the managing trustees.]

Section 4(2)(b) and (d) are therefore the key provisions for the purposes of this report.

3.13 Local and circuit property and the connexional context

Having explored the development of TMCP, this report now turns to the other strand of development. From the very beginnings, local and circuit property activity has been seen an

aspect of being ‘in connexion’ with the wider life of the Connexion – hence the reference to the ‘Model’ provisions upon which trusts for chapels were to be established, in 2.3 above.

- 3.14 Books can be (and have been!) written about the various ways in which this connexional principle has been expressed in the area of property holding and use, so this account merely draws brief attention to the earlier period, before focusing more particularly on recent developments which can be seen as having a direct bearing on the issues addressed in this report.
- 3.15 It was during the nineteenth century that each of the various strands of Methodism identified the need for some form of connexional ‘Chapel Committee’ and ‘General Chapel Fund’ to deal with ‘Chapel Affairs.’ It would seem that a main driving force behind this was the increasing incidence of debts incurred by local trustees in becoming involved in ambitious building schemes, often beyond their means. The requirements for local trustees to comply with a wide range of Conference resolutions and to seek approval for many property schemes (eg structural alterations, property developments, acquisitions and sales) meant that the functions of the respective connexional committees and their officers became of increasing significance.
- 3.16 In 1932, these various activities relating to Chapel Affairs came together under the aegis of the now united Chapel Committee, based in Manchester, and that connexional function continued under various names (eg the Department for Chapel Affairs, the **Property Division**). Besides the required oversight of various transactions, there was increasingly also a focus on offering support and guidance on a wide range of property matters to people having local and circuit responsibilities.
- 3.17 The general connexional re-structuring of the 1990s resulted in the staff then working in the Property Division (either employed by the board of that division or, in the case of ministers, stationed by the Conference as Secretaries) becoming part of the now unified Connexional Team under the aegis of the Methodist Council and its Property Committee, with effect from 1996. They continued to be located in Manchester, and soon that part of the Connexional Team’s functions became known as the **Resourcing Mission Office (RMO)**. This was to express the understanding that property oversight (whilst still vital) was one aspect of a broader concern for enabling the Methodist Church to use its resources for mission – people, money and buildings – in a co-ordinated way. So, for example, there was the bringing together of the handling of applications for grants for property and personnel, and the offering of resources to encourage Local Churches to review and develop their church life and engagement in mission activity.
- 3.18 Finally, in the ‘**Team Focus**’ process more radical steps were taken. The Conference in 2011 (having the previous year referred the matter back for further consideration) agreed to the proposal that the RMO based in Manchester should come to an end. It was said that to delineate one particular area of the Team’s activity as resourcing the mission of the Church did not reflect the centrality of mission in all aspects of the Team’s work.
- 3.19 More pragmatically, it was also prompted by another significant development. This report refers above to the wide range of activity by local and circuit trustee bodies which required approval of their schemes by those exercising connexional property responsibilities. In 2009, the responsibility for giving final consent for projects to proceed was largely devolved to the **Districts**, thus reducing the level of connexional involvement. The objective was to enable these decisions to be taken by those nearer to the area concerned, with better local knowledge and a sense of how any such project fitted in to the mission strategy of the District. This led to a far greater workload and responsibility upon the District Property Secretary (DPS), in signifying consent on behalf of the District. It was accompanied by the introduction of

the inter-active **consents website**, so that the processes for applying for and receiving district consent were all required to be carried out online.

- 3.20 The intention, so far as staffing was concerned, was to retain in Manchester the continuing property-related Connexional Team work said to be most closely related to that of TMCP (principally, the functions related to Conservation and Listed Buildings, and administration of the files and records retained in Manchester), whilst other property functions would be carried out by Connexional Team staff in London, within the Support Services Cluster. It was anticipated that a new post of Connexional Property Coordinator would facilitate the exchange of information and best practice, and offer some support to DPSs in their now very significant responsibility, as well as playing a part in the oversight of the various connexional properties. Other aspects of what was previously dealt with in Manchester would be integrated into the staffing structures at Methodist Church House, such as dealing with the whole area of grant-making.
- 3.21 As events have turned out, the level of property-related staffing which has been provided at Methodist Church House has been very low, and in terms of employees is limited currently to the Facilities and Property Co-ordinator. Attempts to make any further appointments having been largely unsuccessful, use has been made of some part-time consultancy.

The relationship between connexional staff and TMCP

- 3.22 Although the above account deals with the developments of TMCP and the connexional property functions separately, it is important to stress that from the outset there was a close relationship between the two. For many years, those who were appointed by the Conference to hold connexional office as Secretaries were always members of the Board of TMCP.
- 3.23 Furthermore, for many years, Standing Orders provided that the relevant connexional property body, eg the board of the Property Division, was required to provide any administrative services required by TMCP. In effect that meant that the staff of TMCP were employed by (or in the case of ministers, their stipends were the responsibility of) the Property Division, to perform the functions of TMCP. In the re-structuring of the 1990s, as mentioned above, the responsibility for their employment (along with that for all the other divisions) transferred to the Methodist Council.
- 3.24 However, renewed emphasis on the legal responsibility of trustee boards generally to ensure proper oversight of the activities of the organisation and its staffing led to an agreement with the Methodist Council for a transfer of undertaking in 1999, so that the staff employed on TMCP work, for which the TMCP Board was ultimately legally responsible, were to be employed henceforth by TMCP itself, and that is the current position.
- 3.25 Besides the directly property-related functions of connexional staff, however, it is important to stress the major, and still developing, significance of all the governance and compliance requirements laid upon the Church at all levels. Over recent years the rôle of the Conference Officer for Legal and Constitutional Practice (first created in 2003 and located now in the Conference Office) has therefore greatly increased in scale and responsibility, both in ensuring that actions and decisions by or on behalf of the Conference are properly arrived at and acted upon and in offering advice, support and guidance to those seeking it across a wide range of subjects.
- 3.26 This obviously means that there will be areas of considerable overlap between that officer's work and the work of TMCP. There are two particular aspects of this which will be dealt with further below: decisions about property transactions which involve questions of connexional

'policy' (see 7.8) and the operation of SO 930(3) and 931(3) (as referred to in the working party's terms of reference) to which this report now turns.

The operation of SO 930(3) and 931(3)

3.27 As described above, managing trustees have for many years been required to seek authorisation for a wide variety of property transactions and projects (eg structural alterations) – at an earlier date, from the connexional property authority, but in most cases now from the District. The consent-giving body is concerned with the 'substance' of what is proposed, looking at it, for example, from the perspective of its relationship to the mission of the Local Church and Circuit and the district development plan, and from the point of view of financial feasibility. That is something different from what the custodian trustee is concerned with, if it is a transaction which involves that body, such as a sale which will require the custodian trustee to execute the necessary documents as the legal title-holder.

SO 930(3) spells this out: "Consent under this Standing Order is consent to the substance of the transaction. It does not exempt managing trustees from complying with any proper requirements as to form or procedure imposed by the law or the custodian trustees, or arising under other Standing Orders or the Model Trusts, whether those requirements arise before or after consent is given under this Standing Order."

3.28 This is the provision which reflects TMCP's rôle as a custodian trustee under the Public Trustee Act as explained above. The custodian trustee is not concerned with the substance of the transaction but with ensuring that the transaction is not going to be in breach of the law (either the general law, such as the charity law requirement to obtain the best price on sale, or Methodist rules as expressed in the Model Trusts and Standing Orders which are binding on the trustees) and that it will not incur liability for the Board of TMCP.

3.29 A quite separate provision is SO 931(1): "All contracts relating to property, conveyances, leasehold agreements, sharing agreements, deeds and declarations of every kind shall be forwarded in draft to the Connexional Team for inspection and approval before being signed."

3.30 The origin of this provision dates back at least 70 years and is another example of the connexional supervision of local trustees. It can be seen to be very broad, and indeed its ambit is not entirely clear, particularly in the phrase "contracts relating to property." For instance, it is thought that whilst major building contracts would be included, demolition contracts would not.

3.31 At first sight this provision does not appear to be connected to TMCP at all, as the scrutiny is to be carried out by the Connexional Team. However, over the years, in many cases the document in question was being inspected in any case by the legal officer of TMCP as part of the process leading up to the custodian trustee being a party to the final form of transaction. An agreement was therefore reached around the time of the cessation of the RMO in Manchester that the function under SO 931(3) would in effect be delegated to TMCP to exercise, not as custodian trustee but on behalf of the Connexional Team. Although the question of formalising this agreement by way of, say, a service level agreement was raised, this was not taken forward, but arrangements were put in place for a financial contribution from the Methodist Council.

3.32 Finally, it should be mentioned that, as explained above, although the custodian trusteeship of Methodist property in the Channel Islands and the Isle of Man does not lie with TMCP, but with their own custodian trustee bodies, they are still subject to SO 931(3) and therefore in many transactions find themselves dealing with two separate bodies.

4.0 Recent and ongoing developments

- 4.1 Before outlining the resources currently available to managing trustees and some areas of concern, it is helpful first to note a number of significant developments that have taken place since the working party was appointed.
- 4.2 The **Property Development Committee (PDC)** was established by the Council in April 2016 (MC/16/51 and MC/16/91). Broadly speaking, the PDC is concerned primarily with the development of connexional strategy relating to property, while this working party was asked to address the support needs of managing trustees, which cover a wide range of matters, including the development of their property in line with any such strategy. Careful work has been undertaken to ensure work is not duplicated, but nevertheless, there has inevitably been some significant overlap. In particular, when considering the needs of managing trustees, the working party has borne in mind that the PDC, according to its terms of reference, will “be available to provide advice to any Methodist body of trustees on the development of property under their management.” However, the focus of the PDC so far has been on particularly high-profile developments and/or those that may generate a significant income stream (in part due to a lack of resource to deal with more ‘ordinary’ queries).
- 4.3 The Methodist Council in October 2017 directed the PDC to draft Articles of Association for establishing a wholly owned **trading subsidiary company** for undertaking property development on behalf of the PDC and the Council (Resolution 89/2). Work has since been underway to scope the remit of this company.
- 4.4 Work is under way to formulate a **connexional property strategy**, the key principles of which were agreed by the Methodist Council in October 2017 (MC/17/88).
- 4.5 Over recent months, TMCP, the Conference Officer for Legal and Constitutional Practice and members of the Connexional Team have invested significant energy in appointing a **panel of firms of solicitors** with prior experience of working with Methodist Local Churches, Circuits and Districts and/or with relevant experience of working with charities on a wide range of legal issues. Managing trustees will be encouraged (but not required) to use these firms when they require the services of solicitors. Through appropriate training and the building up of significant experience of Methodist practice, it is hoped that the panel will minimise some of the issues noted in this report caused by gaps in understanding. Good communication is needed to ensure that managing trustees are aware of the panel, and the working party notes that it has not been possible to appoint firms in Scotland or the Channel Islands.
- 4.6 These developments are still relatively new and the extent of their impact on the support needs of managing trustees is not yet fully apparent. The conclusions and recommendations in Section 8 must be read in light of this.
- 4.7 The working party also noted that certain changes to the Connexional Team are in the process of taking place, but it is understood that any changes in relation to property functions have awaited the production of this report and the adoption of a connexional property strategy.
- 4.8 Since the working party was appointed in 2016, there have been developments in **TMCP’s practices**. Further information and guidance on a wide range of areas have been added to the **website** (which was relaunched in 2016), including guidance recently issued around data protection. A **‘Matter Management System’** is in the process of development, which will allow TMCP to collate and search all documents relating to a specific case. This will make it easier for TMCP staff to answer queries relating to one another’s cases, to set parameters and to monitor the length of time it takes to complete a particular transaction. TMCP believes that this will result, for managing trustees, in a reduction in delays. The working party notes that,

at present, the Matter Management System is intended to be internal to TMCP. It has suggested that it would be helpful if managing trustees and their solicitors could be given access to view their case online, in order to monitor progress.

5.0 Existing resources available to managing trustees

5.1 Managing trustees (in particular Church Councils and Circuit Meetings) require support with a wide range of circumstances and transactions. To take just a few examples among many, these might include managing trustees who are:

- exploring the continuing use of a church building whose congregation has ceased to meet for worship but which provides a home for a number of community groups;
- seeking how best to reserve the use of a church car park for those meeting in the church;
- responding to a number of serious concerns raised by a quinquennial inspection.

The following is a list of some of the resources currently available to managing trustees seeking support.

5.2 **District Property Secretaries:** The working party was highly impressed by the dedication and commitment of DPSs. However, it is widely acknowledged that many of them feel severely overworked and under-resourced. Some noted that they would have preferred to have retired some time ago, but that it had not been possible to find a suitable replacement. There is significant variation in provision between Districts (in terms of the rôle the DPS is expected to fulfil and whether the post is paid or voluntary). So, for example, some DPSs have considerable technical property knowledge, whilst others do not; some would appear to be more active in exploring the mission context of what they are being asked to consent to than others. The PDC has already suggested that the rôle of the DPS should be clarified and that the Conference could adopt certain minimum standards for skills and capacity, as has been done for District Safeguarding Officers. This requires careful consideration, especially in light of the existing challenge of recruiting suitable volunteers.

5.3 **TMCP website:** TMCP's website (www.t MCP.org.uk), which was recently relaunched, is generally found to be helpful and contains a significant number of useful guidance notes. The working party's conversations did reveal one or two minor issues. First, many trustees are unaware of their need to have recourse to the site. For instance, many do not realise that if they use a licence agreement for regular bookings that is different from TMCP's Standard Licence, they will need to submit it to TMCP for approval (the Standard Licence has deemed approval). Secondly, one aspect of this is that the Standard Licence can only be used for a year at a time. This is such a familiar fact to TMCP that it is sometimes implied but nowhere clearly stated in the document or on the website. The first point is a matter for education; the second for clarity.

5.4 **Property Handbook:** The Property Handbook is no longer available in hard copy and is only accessible online via the Methodist Church website: www.methodist.org.uk/for-ministers-and-office-holders/property/handbook (so that portions can be updated regularly). However, as the handbook is divided into a number of independent sections, it is very difficult to search for an answer to a particular query – in this sense, it is not really a 'handbook.' A search function (recently added during the redevelopment of the website) only applies to the titles of documents, and not the words they contain. The working party believes that one coherent and systematic handbook of Methodist property policy and guidelines is needed.

5.5 **Property Matters** is a quarterly electronic newsletter from the connexional Facilities and Property Coordinator and is currently received in electronic form by approximately 7000 individuals, but only by those who sign up to receive it. It provides a range of useful current

information and news, from new sources of funding to important building issues and information on legal matters affecting managing trustees.

- 5.6 **Property Development Committee:** Although intended potentially as a resource for all managing trustees (see 4.2 above), currently, the PDC only has capacity to deal with complex and high-profile schemes and not more 'routine' enquiries.
- 5.7 A number of **posts within the Connexional Team** relate to legal and property support for managing trustees, including the Conference Officer for Legal and Constitutional Practice, the Governance Adviser, the Conservation Officer, the Facilities and Property Coordinator and those supporting the functions of the consents website. In addition, in recent months, use has been made of a number of part-time consultants with expertise beyond Methodism. Currently, the capacity to offer support is inevitably very limited.
- 5.8 The working party noted that other independent initiatives have developed in order to fill gaps in the existing support structure. One example is **Transforming Churches and Communities (TCC)**, an independent charity that emerged from the Manchester and Salford Methodist Mission and that is accountable to the Manchester and Stockport District Synod. TCC has assisted churches with project management, grant applications and circuit reviews (alongside district officers), but does not give professional advice. While these initiatives have provided valuable assistance, the working party believes that managing trustees should be able to access the full range of support they need through connexional structures, paid for by the assessment and through connexional levies, rather than having to pay twice.

6.0 Feedback and reflections on TMCP

- 6.1 Before proceeding to more general areas of concern for managing trustees, because of the context in which this working party was established it was thought appropriate to focus at this point more specifically on the work of TMCP. As previously mentioned, the working party sought responses from DPSs and solicitors, and received some responses from managing trustees and circuit officers, regarding working with TMCP. Their responses, particularly regarding operational issues within TMCP, have been carefully considered and are presented in some detail here in response to the tenor of the memorials to the 2016 Conference (see Appendix I) and previous Conferences.

6.2 Feedback from District Property Secretaries

- 6.2.1 The working party wrote to all the DPSs. By and large, DPSs were very positive about and supportive of TMCP. Many DPSs believe that where difficulties arise between TMCP and managing trustees, the fault lies with the managing trustees, or their solicitors.
- 6.2.2 Most of the DPSs had signed a letter to the Secretary of the Conference in May 2016, expressing concern about the memorials that gave rise to the setting up of this working party. In the letter they said:

As individuals we are in touch and dealing with TMCP on an almost daily basis. Being in that position enables us to make comment from a more consistent approach than, for example, someone who only has an isolated experience or two. We all want to express our support for TMCP and the people there who make up the team. They have a difficult job to do and our overall experience is that it is done in a professional, courteous and timely manner....

As we discussed the situation there was one consistent comment that emerged concerning the delay that churches and circuits were claiming to be experiencing "because of TMCP". When we have investigated the delay, in the vast majority of cases it had been caused because no

reply had been received to queries raised by TMCP to solicitors, surveyors, churches, circuits etc. In some cases we know that churches and circuits had employed solicitors and surveyors who were not aware of Methodist procedures or even the requirements of Charity regulations. This has resulted in much time being spent by TMCP in "training" professional people in the correct way of proceeding...

- 6.2.3 One DPS did mention "a degree of pedanticism which can be very frustrating, time wasting and costly," and another passed on the view of one church: "that they found TMCP very difficult, having little interest or knowledge to guide the managing trustees through a project of this nature, and they felt their own legal bill was greater than necessary as a consequence." However, such views were very definitely in a minority among the DPSs.
- 6.2.4 One DPS wrote to the working party at length about a project which he described as a "classic what-not-to-do project," in which managing trustees with little experience of property matters had been badly let down by their solicitors, and TMCP had given support that was "well above the level which should be expected or required." In this example, the managing trustees' solicitors had not sent the documentation to TMCP until it was ready for sealing. Any solicitors with experience of working with TMCP would have known that this would not work. When TMCP examined the documentation, they found that the transaction could result in an unintended business tenancy with security of tenure (contrary to Methodist policy), in rights of way across church property and in other unquantified obligations entered into without due thought for the consequences for the church. In the view of the DPS, the generous and competent support of TMCP had potentially saved the church from serious legal problems. Nevertheless, the outcome cannot be regarded as an unqualified success from the point of view of the managing trustees because their solicitors' fees amounted to £22,000 for a £40,000 transaction.

6.3 Feedback from solicitors

- 6.3.1 The working party spoke to or received emails from five solicitors, who were referred to the working party by Superintendents. It was made clear in asking Superintendents to suggest solicitors that the working party was not looking particularly for solicitors who had bad experiences to relate, but simply solicitors who worked regularly with TMCP. The solicitors' comments were mixed. Indeed, three out of the five used the word 'mixed' to describe their experience of working with TMCP. On the positive side, the solicitors spoke of TMCP staff as professional and competent and with excellent technical ability. One commented that the guidance notes are helpful and clear.
- 6.3.2 On the negative side, the following **general comments** were made: One solicitor said that the experience one has depends on whom at TMCP one is dealing with, and another spoke of dealing with someone at TMCP who was young and inexperienced. One commented that sometimes TMCP staff can be very efficient and proceed with a matter fairly quickly but that on other occasions they can *appear*, without intending it, to be obstructive and unhelpful.
- 6.3.3 Frustration with **response times** to letters and emails featured in four out of the five responses. One solicitor commented that the main problem is that TMCP works to different timescales from the ones she is used to in commercial practice. She said that she would often send an email hoping for a response the same day, or at least within two or three working days. Instead she would get a standard form response the following morning, and then a substantive response perhaps three weeks later. By that point the transaction would have moved on. Another solicitor said that at the beginning of a transaction he will advise the client how long it is likely to take to complete. If he has advised that it will take eight weeks it is frustrating if TMCP takes four weeks to respond and then raise significant requisitions. He

suggested that it would help if TMCP staff said when first contacted how long it will take them to respond and whether they are likely to be raising requisitions.

6.3.4 There were a number of comments on what might be called **proportionality**. Solicitors said that delays can be caused by TMCP going through documents with a fine-toothed comb, “over-egging the pudding and doing a Rolls Royce job when a Ford Mondeo would be fine.” One solicitor commented that TMCP staff raise issues which a solicitor in private practice would not consider pragmatic or cost effective to deal with.

6.3.5 There was also comment on **working practices**, some of which were described by one solicitor as “archaic”. These would include the generic email address (legal@tmcp.org.uk), whereas most solicitors will have individual email addresses; the absence of direct line telephone numbers; the practice of distributing emails the following morning and at that point sending the standard form response; and the preference of some TMCP staff for emailing letters as attachments rather than simply replying to the email.

6.4 Feedback from managing trustees or circuit officers

6.4.1 Some of these made contact with the working party themselves or contacted the working party at the suggestion of their Chair. In general, the working party were cautious about receiving these contributions, especially if the events happened some time ago. The working party also tended to give more weight to contributions from managing trustees or circuit officers who had legal or property qualifications.

6.4.2 One person said that TMCP’s staff are always helpful and courteous, but substantially overworked and that this can lead to delays. He commented particularly that it can be frustrating if lengthy delays result in a Qualified Surveyor’s Report having to be renewed at the Circuit’s expense. He also described one transaction that had fallen through after three and half years, leaving the managing trustees with costs of £7,000.

6.4.3 Another commented that managing trustees can find it difficult to get a surveyor or solicitor who can correctly anticipate what changes TMCP will want to make to the documents. As a result, he said, the surveyors and solicitors stop trying so hard and just leave it to TMCP to do the work.

6.4.4 One commented that it is hard to justify the Local Church paying directly for its own local solicitors and surveyors and contributing to the connexional costs of legal services, including TMCP. This leads to Local Churches feeling that they are paying twice for the same transaction.

6.5 Consultation with TMCP staff

6.5.1 The working party met and consulted by email with TMCP senior staff on a number of occasions and wishes to express its gratitude for the considerable expenditure of time and effort in answering its questions so fully. The following points that arose from those conversations are relevant to the material in this section.

6.5.2 It was clear from the working party’s discussions with TMCP legal staff that they have a lot of difficulty with the fact that standard conveyancing transactions are often dealt with not by a ‘solicitor’ as such but by conveyancing clerks following standard form procedures dictated by a computer-based management system. Such employees do not necessarily have an understanding of custodian trusteeship, charity law, nor of the idiosyncrasies of Methodist processes. It is of course not necessarily the fault of the managing trustees that they have someone acting for them who lacks this specialist knowledge. The Local Church or Circuit may

have gone to the firm that has acted satisfactorily for them in the past, but in any large or medium-sized firm each matter will be delegated to a member of staff who has space in their workload, and the appropriate level of expertise and experience in the eyes of the firm for the matter in question.

6.5.3 Even when the person acting is a qualified solicitor, they may lack TMCP's specialist knowledge or approach the matter with a different mindset. TMCP commented that external solicitors are used to considering a transaction wholly from a commercial viewpoint and often do not take into account that charities have a fiduciary duty when they deal with their assets meaning that while a risk may be acceptable to a commercial company this is not always the case for the Church.

6.5.4 On the specific question of response times, TMCP was proud of the progress that has been made in recent years in improving these. They felt that complaints about delays generally related to historic instances when the staffing problems of a few years ago caused significant difficulties. The latest figures for post (mail and emails) dealt with by the legal staff from February 2017 to January 2018 demonstrate that, in all during that time, 17,956 items of post were received and 17,667 dealt with. Average monthly response times varied from 7 days (presumably working days) in May 2017 to 12 days in December 2017, with an overall average of 9 days. This would presumably include some items dealt with the same day or the next day in cases of urgency and other items processed after several weeks.

6.5.5 On the question of working practices, TMCP appeared to be aware of some of the issues raised and is considering some changes in procedure (for instance, the possible introduction of pseudo-personal email addresses). However, there did not appear to be any plan to deal with other areas which the working party consider require improvement (such as the standard form email response).

6.6 Some reflections on the responses

6.6.1 **Regarding delays:** Managing trustees and their solicitors are apt to accuse TMCP of delays, whereas DPSs are more inclined to attribute delays or the perception of them to incompetence on the part of solicitors and ignorance on the part of managing trustees. TMCP staff, for their part, feel that claims of delays are out-of-date or unfounded. There will be a number of factors at play, including unrealistic expectations and differences of mind-set. Another factor is that when people talk about 'delays' they are not always talking about response times. If managing trustees and their solicitors believe that they are close to completing a matter and a letter then arrives from TMCP requiring amendment of the documents and raising a number of requisitions, this will be experienced by clients and solicitors on both sides as TMCP causing a delay, even if the response time itself was reasonable.

6.6.2 Comments were also made about difficulty or delays resulting from the need for many documents to be sealed and signed by two TMCP Board members. This is a requirement of the 1939 Act and the procedure cannot be changed without amending the Act. TMCP is pursuing the possibility of using electronic signatures if this becomes possible by a change of Land Registry rules. The working party would suggest that availability of Board members to sign documents in Manchester should be one of the factors taken into account in the selection of new Board members.

6.6.3 **Regarding proportionality:** This was another point on which the working party found it difficult to reconcile the contributions from different sources. There were accounts by DPSs of transactions in which the solicitors had failed to spot significant legal dangers, and there were accounts by solicitors of TMCP pursuing minor points which the solicitors considered

disproportionately expensive. The working party was not sure whether it was listening to contrasting stories, in some of which TMCP had saved the day and in some of which their intervention was over-the-top, or whether it was listening to very much the same story told from two different perspectives. Once again, different perspectives and mindsets were at work. Solicitors (and surveyors) will be seeking to work in their clients' interests and will have an eye on costs. TMCP staff are working in the interests of the Church, and will have an eye on charity law and the higher fiduciary duty placed on charity trustees. They are required to ensure that they are not concurring in a breach of trust by managing trustees. The working party did however feel that there was sometimes a question mark over the breadth of TMCP's interpretation of the term 'breach of trust.'

- 6.6.4 **Regarding workload:** It is clear that TMCP staff work hard and process a large quantity of material. Evidently there is a greater degree of legal work being done in the Church than was the case, say, a generation ago, in spite of the fact that the Church now has fewer buildings and fewer people. In part the increase in work will be due to the increase in the complexity of projects, particularly as Circuits try to dispose of buildings in such a way as to enable them to continue to be used by local communities. However, the working party also considered the possibility that the increase in workload is partly due to TMCP's very thorough degree of engagement.

Finance department

- 6.7 So far, the focus has been on the legal work of TMCP. Equally important is the work of the Finance staff, handling large amounts of funds. The working party wished to note the frequent affirmation in consultation responses of the Finance staff at TMCP, whose work is consistently efficient and high-quality.

7.0 General areas of concern

- 7.1 Turning now from operational matters in TMCP, the following general areas of concern were noted from the working party's research and consultations and from memorials to the Conference. Some relate directly to the day-to-day experience of managing trustees (such as the difficulty of knowing where to turn when seeking technical support or exploring possibilities). Others relate to Methodist processes and structures (such as the consents process and the question of where policy is most appropriately developed). Still others relate to the outworking of these processes and the issues that can arise because of overlap and duplication of work. Where an area of concern is already being addressed, this is noted in the text.
- 7.2 **Avenues for trustees seeking support:** There is no doubt that many managing trustees over the years sought the assistance of connexional expertise when they had problems or decisions to make about their property, and they would 'approach Manchester' when seeking to have a **creative, exploratory conversation** about their options (eg regarding the disposal of a church building). They often still do so by making contact with TMCP, but this is not the rôle of TMCP. The PDC will "be available to provide advice to any Methodist body of trustees on the development of property under their management," but does not have the capacity to make itself available to all Local Churches and Circuits for these exploratory conversations. DPSs provide invaluable support, but each necessarily has specific and limited areas of knowledge and expertise.
- 7.3 The working party has identified the need for a single, clear point of contact (a 'one-stop shop') for all initial queries relating to property development. But this also applies to property matters of all kinds. From this point of contact, whether they are seeking an exploratory conversation or more routine **technical support** (which may be about a building itself or about

legal issues), managing trustees should be put in contact with the appropriate body or member of staff.

- 7.4 An area which the working party has not covered in detail in this report but which is very much part of the picture of the challenges presented to managing trustees is that of dealing with the significant number of Methodist properties which are **listed buildings** or in conservation areas. Matters relating to listed buildings can be immensely complex and cause significant stress for managing trustees, not least because of the inevitable delays. However, the working party's consultations suggested that the guidance and support available from the Conservation Officer and the rôle of the Listed Buildings Advisory Committee work well and are well-received. This is not to minimise the burden of work laid upon managing trustees and DPSs in this situation.
- 7.5 **Gaps in understanding:** There are two recurring issues:
- 7.5.1 There is a lack of understanding among managing trustees themselves as to the nature of managing trusteeship; some members of Church Councils are not even aware that they are managing trustees and others do not make use of helpful resources, eg the guidance available on TMCP's website, because they are unaware of TMCP's existence and rôle.
- 7.5.2 There is also a lack of understanding among solicitors and surveyors with regard to the rôle of the custodian trustee and charity law let alone Methodist policy and practice (see 6.5.2). In conversation with ecumenical partners, it has become clear that this issue is by no means exclusive to Methodism. In relation to legal transactions it is hoped that this will be at least partially addressed by the panel of solicitors – see 4.5. However, a similar problem is often encountered in seeking the necessary Qualified Surveyor's Report from a professional who is not accustomed to charity law requirements on sales and leases as to achieving best price.
- 7.6 **Guidance/advice:** Under current arrangements, TMCP staff are able to offer guidance, but not legal advice, ie they cannot act on behalf of managing trustees as their solicitors. The working party noted that there are ecumenical partners that have made the complex arrangements necessary for advice to be given and some work undertaken in-house, through obtaining the necessary waiver from their professional body. This is thereby saving local managing trustees money that they would otherwise spend on solicitors.
- 7.7 However, although currently TMCP can only offer guidance, that guidance is often interpreted as 'advice' by managing trustees. This is explored further below in 7.14.
- 7.8 **Questions around Methodist 'policy':** In conversations with TMCP and the Conference Office a recurring theme was that, in exercising its functions, TMCP would always defer to those concerned with the making and application of 'policy' (in practice the Conference Officer for Legal and Constitutional Practice) in deciding whether to concur with a transaction, provided that there was no legal obstacle to doing so. This has proved to be quite a difficult concept to define. Where the Conference has declared its mind by enacting a provision in the Model Trusts or Standing Orders, then that is clear and able to be ascertained and is binding upon the managing trustees under para 21 of the Model Trusts (for instance, the parameters for granting permission to another Christian church to use the premises for worship under Model Trust para 14(2A)). But there is a lack of consistency as to which property related matters have been adopted as policy and placed into Standing Orders and which have not, eg Standing Orders make provision about the sale of alcohol on Methodist property but there has not been a policy enacted on Sunday trading.
- 7.9 Since the closure of the RMO, steps have been taken to try to ensure that matters which might have been good practice or recommended by the RMO have at least been adopted as

policy by the Methodist Council. Similar questions have now begun to arise as the PDC has sought to develop an overall connexional strategy about disposal or retention of buildings. But how do managing trustees find out about these decisions, and what is their status?

- 7.10 In practice, most of the individual ‘policy’ questions which are referred by TMCP are about the interpretation of an existing provision (such as whether a property is an investment property for the purposes of SO 908). The working party notes that one area which may have created considerable work in the past, the application of the rules as to ‘replacement projects’ for the purposes of SO 973, has now been addressed by clarifying those rules. But generally policy questions are obviously time-consuming and a potential cause of delay because of the limited resources available. Still less is there the time in the Conference Office to develop and fully disseminate all the relevant information, with clear guidance as to what is binding and what a matter of best practice.
- 7.11 **A lack of resource within the Conference Office relative to the volume of work:** this partly relates to the point just made about policy issues, but arises in many other ways too, for instance the overseeing of training opportunities for managing trustees. The working party noted that some of the training materials currently available on the website date back to the days of the RMO and may be out of date. The working party trusts that this lack of resourcing is being addressed, at least in part, by those reviewing the Team structures.
- 7.12 Issues experienced in the **consents process:** A great deal of work has been put by connexional staff into making the consents website easy to use, and ‘glitches’ are regularly removed. The main problem that remains is that many of those in Local Churches who seek to use it are not used to operating online, and find it a steep learning curve. It was assumed when the consents website was introduced that this would be a passing phase and that managing trustees more adept in working online would in due course take over, but this has not always proved to be the case. Staff in the Connexional Team and TMCP are willing to guide managing trustees through the process the first time, but what they are finding is that in many cases a given church officer will only need to apply for consent once in his or her time, and therefore a high proportion of users are using the site for the first and only time.
- 7.13 **Issues relating to SOs 930(3) and 931(3):** Currently, TMCP exercises both functions, the former as the custodian trustee and the latter on behalf of the Connexional Team (see 3.31 above). However, it is often unclear (to managing trustees and, it seems at times, to TMCP) which rôle they are inhabiting at any given moment. The working party thought that there was a need to re-emphasise here the limits of the scope within which TMCP can and should operate under SO 930(3) as a custodian trustee. The wording of s.4(2)(d) of the 1906 Public Trustee Act (para 3.12 above) is clear: the custodian trustee must concur in and perform all acts necessary to enable the managing trustees to carry out their functions unless that would in itself involve the custodian in a breach of trust or personal liability.
- 7.14 This lack of clarity can lead to difficulties for managing trustees, if guidance given under SO 931(3) in looking at a contract is perceived as being from the custodian trustee. It is found to be helpful when TMCP makes clear the rôle in which guidance is offered and the consequences if it is not followed (ie whether this would lead to the custodian being unable to concur in the transaction). If the delegation is to be retained, it may help to include a footnote in CPD explaining that the work of SO 931(3) is delegated to TMCP.
- 7.15 There is a broader question, as to the **scope of SO 931(3)** itself. This is potentially very wide (see 3.29-3.31) and indeed its precise ambit is not entirely clear or rational (nor always punctiliously observed). For instance it covers the very common situation of the grant of a one-off licence for use of the property, but not a major contract for the demolition of the property.

- 7.16 The wording of SO 931(3) is ambiguous not only as to scope, but also as to what exactly is the meaning of 'approval'. Does this refer only to the legal soundness of a contract, or to whether the transaction itself makes good sense within the mission of the Methodist Church? How much discretion should managing trustees have?
- 7.17 **Duplication of work and delays:** Because of a lack of clarity with regard to the division of responsibilities between TMCP and the Connexional Team, and TMCP's desire to provide help and support, managing trustees sometimes find themselves having the same conversation twice, with TMCP and the Conference Office, sometimes unbeknown to the other body. This situation is exacerbated by the two teams being in two separate physical locations. Besides duplication, there are inevitable delays when the two entities are each required to perform their particular responsibilities (for instance where a policy interpretation is required).
- 7.18 **Funding for TMCP:** As explained above, TMCP does not currently recoup its costs. The Methodist Council contributes 35% of the staff costs of the legal team including pensions, but not overhead, administration or management costs (or one-off costs, such as the installation of the Matter Management System). However, the Council is not directly involved in determining the level of legal staffing required; those involved in formulating the budget for the Conference Office simply receive notice of the amount thought to be required. This raises issues regarding transparency and accountability.

8.0 Conclusions and recommendations

- 8.1 The working party was not asked to prepare further replies to individual memorials to the Conference; however, it has sought to address the concerns they raised. The working party also decided not to structure its conclusions and recommendations according to its terms of reference, but has ensured that all the points raised have been considered.

Support needs of managing trustees

- 8.2 The working party believes that the RMO provided a good and helpful service and that its loss has been keenly felt since its closure. Arrangements that were intended to replicate the functions of the RMO following its closure were not fully implemented. The working party does not wish to re-establish the RMO in its previous form, but has identified the need for a 'one-stop shop' suited to the current requirements of the Church. What this might entail is spelt out further in the following paragraphs.
- 8.3 Managing trustees are in urgent need of support and training, because of a number of converging factors, including: churches in which a diminishing number of already overburdened volunteers are required to take on rôles for which they do not feel fully equipped; a lack of awareness of the nature of managing trusteeship; increasingly complex property issues and a lack of understanding of Methodist policy and practice among solicitors and surveyors. The closure of the RMO without a like-for-like replacement has exacerbated these needs.
- 8.4 The working party wishes strongly to affirm TMCP for 'stepping into the breach' following the closure of the RMO and the willingness of TMCP staff to offer help and support to managing trustees. This has resulted in some very helpful developments, such as the TMCP website. However, at times, it has inevitably had the potential for confusion and the duplication of work.
- 8.5 The working party wishes to commend the care and dedication of DPSs across the Connexion. Staff within the Conference Office and other members of the Connexional Team in London and Manchester have also done all they can to support managing trustees. However, in both

cases, resources have been severely limited, and managing trustees are therefore not receiving all the support they need.

- 8.6 The working party believes that there is a recognition that a greater level of staffing is required within the Connexional Team (and particularly in the Conference Office) to reflect more fully the scope of its responsibilities in relation to the property functions of the Church. The following recommendations are offered to assist current thinking regarding the configuration of the Connexional Team. They do not remove the need for managing trustees to obtain proper professional advice on technical property matters where appropriate (in the same way as they are expected to do for legal matters).
- 8.7 **Recommendation 1: Within any revised Team structure, there should be one clear point of contact for initial enquiries regarding property support; this would include enquiries as to legal aspects. This should be clearly signposted on the Methodist Church website. This postholder should have responsibility for directing queries to the appropriate place (whether TMCP or the Connexional Team) and for keeping track of conversations and developments.**
- 8.8 **Recommendation 2: Within any revised Team structure, there should be at least one postholder with the necessary experience and expertise to hold initial and open-ended conversations with managing trustees regarding their options. This postholder could also produce a series of publications giving examples of innovative solutions and good practice to inspire managing trustees. This work would need to be undertaken, where appropriate, in conjunction with the PDC.**
- 8.9 **Recommendation 3: The initial point of contact within the Connexional Team should also be able to direct managing trustees to sources of technical property and legal support, which may include a combination of**
- members of connexionally-employed staff;
 - connexionally-funded consultants;
 - where professional services are required, panels of connexionally approved solicitors and surveyors with the necessary expertise (see below).
- 8.10 **Recommendation 4: Within the connexional central services budget, funds should therefore be made available to provide increased support for technical property and legal functions, particularly within the Conference Office.**
- 8.11 **Recommendation 5: In addition to the developing panel of solicitors, work should be undertaken to seek to establish a similar panel of surveyors with knowledge of Methodist practice.** (This would certainly assist with the problem mentioned above in relation to Qualified Surveyors' Reports, and has the potential to be of much wider benefit in providing the technical support where this could not appropriately be provided via the Connexional Team. There may be some useful cooperation to be developed here with Methodist-related bodies already involved in using such professionals, such as the Methodist Ministers' Housing Society.)
- 8.12 **Recommendation 6: Greater provision of information should be made more clearly available for managing trustees through the Methodist Church's website. Some material might appropriately be moved, by agreement, from TMCP's website to the Methodist Church's website (for the avoidance of confusion), with clear links in appropriate areas to the TMCP website. Besides this general information, all Methodist property policy should in due course be gathered together in a single, coherent handbook (which can be readily searched) clearly indicating what is guidance or good practice and what is policy that must be adhered to.**

- 8.13 **Recommendation 7: Up-to-date training for managing trustees should be developed within the Connexional Team. Some resources and initiatives have already been developed by Local Churches, Circuits and Districts; there is a need to avoid duplication and ensure consistency.**
- 8.14 The working party notes the PDC has already suggested that the rôle of the DPS should be clarified and that the Conference could adopt certain minimum standards for skills and capacity, as has been done for District Safeguarding Officers (see MC/17/88). In this, careful consideration would need to be given to the difficulty currently experienced in recruiting suitable volunteers. **Recommendation 8: Further thought should be given as a matter of urgency by the Methodist Council to the support and funding available for DPSs.**

Recommendations concerning TMCP

Underlying legal structure

- 8.15 The working party is not proposing that the Church seek to amend the relevant Methodist Church Acts. It wishes to affirm the concept of custodian trusteeship within the life of the Church embodied in the 1976 Act, as the rationale behind its adoption as the norm for model trust property remains compelling.
- 8.16 The working party acknowledges that under the 1939 Act, TMCP is an autonomous body whose Board members, once appointed, hold office for life (subject to certain conditions). The working party has no doubt, however, that its mission “to support and strengthen the Methodist Church” lies at the heart of what it does, and is evidenced by its annual reports to the Conference. The working party is also assured that the present, very readily embraced, policy of voluntary phased retirements from the Board mitigates effectively the theoretical life tenure of Board members.

Funding model

- 8.17 The working party believes that the aspect of TMCP’s current funding model which is based on a levy of funds (rather than a charge per transaction) is a positive expression of connexionalism and should be affirmed. Alternative models have been considered; however, the working party believes that under the current system, bodies with fewer financial resources are supported by those with more, in keeping with the mutual interdependence of a connexional Church.
- 8.18 However, the working party believes that the aspect of funding via the Methodist Council’s financial contribution to TMCP’s costs and the way in which this is calculated should be far more transparent. **Recommendation 9: The Methodist Council’s financial contribution should be based on the work required by the service level agreement (introduced below) and revisited on a regular basis. If TMCP feels that it requires more (or less) legal staffing in order to complete the work required, negotiations must be held between the Council and the TMCP Board.** The working party recognises that this might lead to a risk that TMCP might feel the need to increase the management charge to replace any reduction in the contribution, with an impact on local managing trustees; however, this would no doubt be taken into account during the negotiation process.

Service level agreement

- 8.19 There is a lack of clarity with regard to the division of responsibilities between the Connexional Team and TMCP, leading to some confusion and delay for managing trustees.

Among the possible ways forward, the working party considered the complete withdrawal of the delegation of responsibilities under SO 931(3) from TMCP, so that all legal and property support would be held within the Connexional Team, with TMCP fulfilling only the responsibilities of the custodian trustee. However, the working party felt that this would be unwise, due to the level of upheaval this would cause (and resulting loss of expertise); current developments within TMCP (such as the Matter Management System) that should improve operational practice; the potential difficulty of recruiting suitable staff within the necessary budget in London (if a single team was to be based at Methodist Church House); and duplication of work (as TMCP would still need to check upon the matters on which the custodian trustee requires to be satisfied). Instead, the working party recommends increased clarity as to the breadth of this delegation (see Recommendations 13 and 14) and accountability through a service level agreement (SLA). It believes that this is both urgent and significant.

- 8.20 **Recommendation 10: Urgent work should be undertaken to establish, within the first six months of the forthcoming connexional year, a service level agreement and (if appropriate) an accompanying operational level agreement between the Methodist Council and TMCP, increasing accountability and clarifying the boundaries of TMCP's work. This should include Key Performance Indicators (KPIs) and a process for regular review. If the terms of the agreements are not met by TMCP, the Council may choose to withdraw the delegation of all responsibilities under SO 931(3).**

Working practices

- 8.21 The working party believe that it would be of benefit to all for TMCP legal staff to adopt a slightly lighter touch in reviewing transactions and documentation, having an eye when requiring amendments or raising requisitions to the degree to which costs will be increased or delays lengthened and the balance against benefit achieved or risk avoided. It is hoped that the introduction of the panel of solicitors will go a long way to achieving this, if it enables TMCP to take more of a back seat in transactions, reducing duplication of work. However, the working party anticipates that it may take a while to get to that point, as individual panel solicitors learn TMCP's approach and TMCP come to trust their judgement over a period of time.
- 8.22 **Recommendation 11: The service level agreement should clarify the 'light-touch' approach required: under SO 930(3), as custodian trustee, TMCP is required to check whether entering into the transaction would involve an actual breach of trust and whether an appropriate indemnity clause is included. Under SO 931(3), on behalf of the Connexional Team, TMCP should be required to check the legal soundness of contracts, but conversations regarding detailed choices and the 'missional sense' of the transaction should be held elsewhere. The service level agreement should ensure that the level of scrutiny involved is not disproportionate to the cost and risk involved.**
- 8.23 The working party believes that some modification of TMCP's practical arrangements would be of benefit. In particular, individual email addresses and direct line telephone numbers are standard in private legal practice, and would aid communication. In some respects, the working party believes that improvements could be made to TMCP's processes, which it felt are overly dependent on particular individuals, generate too much paper and can be inefficient.
- 8.24 **Recommendation 12: The working party recommends that TMCP be requested to address these specific points relating to working practices as soon as possible.**

The scope of SO 931(3)

- 8.25 The working party believes that a number of the problems giving rise to this report stem from the scope of SO 931(3) and a lack of clarity in current arrangements, and that steps need to be taken to address these problems. Currently, its scope is very wide (“All contracts relating to property, conveyances, leasehold agreements, sharing agreements, deeds and declarations of every kind...”) and does not necessarily ensure that the right documents receive the right level of scrutiny. Some documents are preparatory to a transaction to which TMCP will need to be a party as custodian trustee; others are not.
- 8.26 **Recommendation 13: It is proposed that the requirement as to which documents need detailed connexional scrutiny should be reviewed by the Methodist Council in conjunction with the Law and Polity Committee with a view to producing a full list of such documents. It is recommended that an amendment to the wording of SO 931(3) then be brought to the Conference of 2019, preferably in a form that refers to items which appear on a list approved from time to time by the Council and made clearly available on the Methodist Church’s website, rather than spelling out the list explicitly in the Standing Order, so as to enable it to be amended more easily when necessary.**
- 8.27 Consideration will be needed as to the most appropriate way for this connexional scrutiny to be given. However, where the relevant documentation forms or may form part of a transaction to which TMCP would be a party as custodian trustee, it seems sensible for the exercise of scrutiny under SO 931(3) to continue to be delegated to TMCP for the reasons outlined in 8.19.
- 8.28 The working party gave consideration to whether the practice under the current form of SO 931(3) whereby TMCP has sight of licences to occupy land should continue. Strictly, as TMCP is not a party to a licence (as it does not create a legal interest in land), if the proposed delegation was limited to where TMCP will be involved as custodian trustee, this scrutiny would not continue. However, because of the risk of managing trustees inadvertently creating legally-binding leases, it is suggested that licences should still continue to be seen by TMCP.
- 8.29 **Recommendation 14: Delegation of the exercise of SO 931(3) to TMCP should apply only to those contracts that TMCP is required to see as custodian trustee, together with licences as referred to in 8.28. Approval of other contracts from within the list described in Recommendation 13 should be undertaken by the Connexional Team (with the option to delegate approval of individual contracts to TMCP if desired). This arrangement should be made clear in the service level agreement.**

*****RESOLUTION(S) FOR THE CONFERENCE**

##/1. *These resolutions will be drafted for the report to the Conference in due course, after the Methodist Council’s discussion of the draft. They will include appropriate thanks to various bodies who are involved in this area of the Church’s life, including TMCP, and then seek to give effect to the various recommendations.*

Appendix I – Memorials M26 – M29 (2016)

M26 TMCP

The Nottingham and Derby District Synod, Representative Session (Present: 127; Voting: unanimous) is aware that following memorial M22 (2015) conversations have been taking place between TMCP and the Connexional Team, which it trusts will lead to a positive outcome. Nevertheless, the Synod wishes to record the continuing difficulties reported by most of its Circuits in matters involving TMCP. The concerns are as follows:

1. Delays: The Synod is aware that TMCP's personnel have high workloads and cannot always respond swiftly. Nevertheless, slow response times are a concern because they can lead to the loss of transactions, or to churches or Circuits failing to respond in a timely fashion to legal claims. The Synod believes that TMCP needs either:

(a) more staff; or

(b) to reduce its workload by having less active involvement in matters on which the church or Circuit's own solicitors are acting.

2. Amendments: TMCP frequently say that they cannot give advice, only guidance, and therefore that churches and Circuits need to instruct their own solicitors. However, it is the experience of churches, Circuits and their solicitors that the guidance often takes the form of making a great many amendments to documents drafted by the solicitors. This is so even when the solicitors have many years of experience of working with TMCP. Clearly, if the documentation does not comply with Methodist polity or charity law, then it does need to be corrected. However, churches, Circuits and their solicitors report that some of the amendments are minor, or cosmetic, or make no substantive change, or contradict amendments made by other TMCP staff. The approach contributes to delays, and the duplication of work adds to the expense. The Synod believes that TMCP needs either:

(a) to be constituted so as to undertake the legal work themselves; or

(b) to supply their required clauses at the outset and then have less active involvement in the details of the transaction.

3. Accountability: The Synod notes that, when acting as the custodian trustee, the Board and staff of TMCP have no direct accountability to the Conference. The Synod believes that this is unhelpful. In other cases where Methodist-related organisations have no accountability to the Conference (such as Methodist Insurance plc), churches and Circuits can choose to take their business elsewhere if dissatisfied. This is not true of TMCP. The Synod does however note that, in most of the instances that cause difficulties, TMCP is not acting purely as custodian trustee but is fulfilling the role of the Connexional Team under Standing Order 931(3), which provides that: "All contracts relating to property, conveyances, leasehold agreements, sharing agreements, deeds and declarations of every kind shall be forwarded in draft to the Connexional Team for inspection and approval before being signed." The Synod therefore asks that both:

(a) the Law and Polity Committee look at whether the Board of TMCP can be made accountable to the Conference; and

(b) the Connexional Team make workable arrangements, through TMCP or otherwise, for the inspection and approval of documentation under SO 931(3).

Reply

The Conference thanks the Nottingham and Derby District Synod for its memorial which raises important points about the level of support and advice available to Managing Trustees. The memorial further touches on a more fundamental question of the use of the resources of the whole

Connexion in respect of the use of property for mission as well as focusing the attention of the Conference on the role and function of the custodian trustee.

Some of the points raised in the memorial have been the subject of conversations which were initiated as a result of memorial M22 to the 2015 Conference which directed the Methodist Council to enter into discussions with the Board and Chief Executive of TMCP in order to find ways to continue to improve the service provided to the Connexion. (The Chair of the Board and the Chief Executive have been part of these conversations with the Secretary of the Conference and the Conference Officer for Legal and Constitutional Practice.) Careful monitoring of case work undertaken by direction of the Board shows that overall response times by TMCP staff have improved and this is due in no small part to the commitment of TMCP staff for which the Conference wishes to express its gratitude. Other generic issues of how the whole Connexion can better realise the missional opportunities offered by a large and diverse range of properties have been considered by the Methodist Council when it established a new Property Development Committee.

As this work has progressed it has become clear that some of the changes brought about by the Team Focus process have resulted in a much more limited provision of property advice from the Connexional Team to Managing Trustees. This has resulted in a lack of clarity for Managing Trustees when they are seeking advice on a range of property-related matters. Early, clear and coherent advice on planning, legal and technical matters is essential if Trustees are to be supported. Whilst there is an effective and dedicated group of District Property Secretaries willing to share experiences, this is reliant on volunteer posts and does not enable the provision of a strategic approach to the significant missional assets of the whole Connexion. The absence of a comprehensive property support function has resulted in a lack of clarity on which body is responsible for the formation of policy. This, when coupled with the functions undertaken by TMCP on behalf of the Connexional Team in order to fulfil the provisions of SO 931(3) can all too easily and all too often result in staff of TMCP needing to seek a ruling on policy from officers of the Conference and the Council. In some cases, and in seeking to support particular schemes, staff in both the Team and TMCP find themselves being called upon to offer advice on areas of work that would benefit from clearer policy decisions. Such a combination of tasks contributes to confusion for Managing Trustees and a lack of clarity for both staff at TMCP and within the Connexional Team.

The Conference reminds the Synod that the TMCP Board is accountable to the Conference via the annual report which the Board submits to the Conference. Furthermore, it is the Conference which appoints members of the Board, each of whom is required to be either a member of the Methodist Church or a minister in Full Connexion with the Conference.

In recognition of the need to be faithful in the use of the resources of the whole Connexion, the Conference accepts the need to review the role of TMCP, directing the Methodist Council and inviting the Board of TMCP to consider the points raised in the memorial by appointing a joint working party to:

- (a) Clarify the extent of the application of SO 931(3) and the role and responsibility of the custodian trustee under the Methodist Church Act 1939 and charity law.
- (b) Clarify the need for SO 931(3) in its current form and where appropriate suggest amendments.
- (c) Assess what steps are necessary to ensure that the Connexional Team has available to it an appropriate level of resource so as to fulfil the terms of SO 931(3).
- (d) Clarify the requirements placed upon Managing Trustees in respect of disposals and contracts and identify ways to speed up transactions, taking into account the views of the Law and Polity Committee on the role of the custodian.
- (e) Clarify and define respective areas of responsibility so as to resource the mission and ministry of the whole Connexion most effectively.

(f) Establish a full review of the needs of Managing Trustees in terms of property and legal advice and consider the benefit of professional legal services being provided by the Connexional Team.

The Conference further directs the Methodist Council to bring a report on the progress of this work to the 2017 Conference and delegates to the Council responsibility for appointing two members of the working party. The Conference invites the Board of TMCP to appoint two members of the working party.

The Conference appoints Mrs Susan R Howdle to chair the proposed working group.

Reasoned Statement Susan Howdle is a past Vice-President of the Conference, and a former member of the TMCP board.

M27 TMCP

The Ceredigion (2/10) Circuit Meeting (Present: 16; Voting: unanimous) notes the length of time that is taken for responses to queries and enquiries made to the Trustees for Methodist Church Purposes (TMCP) regarding property.

The Circuit therefore – acknowledging the independence of TMCP – requests that the Conference uses its influence and resources to encourage TMCP to make its processes and response times quicker, so as to allow Local Churches and Circuits to more fully be discipleship movements shaped for mission.

Reply

The Conference thanks the Ceredigion Circuit Meeting for its memorial.

The Conference is aware that in recent years the Board of TMCP has overseen a number of reviews to ensure that its processes and response times provide the highest and most timely level of support to Managing Trustees. There are occasions when staff are required to deal with a high volume of work on time scales beyond their control.

The point raised in the memorial has been the subject of conversations which were initiated as a result of Memorial M22 of the 2015 Conference which directed the Methodist Council to enter into discussions with the Board and Chief Executive of TMCP in order to find ways to continue to improve the service provided to the Connexion.

Whilst this work is ongoing, the Conference is of the opinion that a more fundamental review of the way that Managing Trustees are supported in respect of the care and development of property is now required. As such, the Conference accepts the memorial and directs the Methodist Council to consider it as part of the work directed in the response to M26.

M28 TMCP

The Nottingham (Trent Valley) (22/4) Circuit Meeting (Present: 42; Voting: unanimous) is concerned to hear from its officers of continued delays in property matters caused by apparent excessive delays in communication within TMCP and between TMCP and the Circuit. However, it understands from the reply to Memorial M22 (2015), that “The Conference has no power to direct either the Board or staff of the Trustees for Methodist Church Purposes (TMCP) either in terms of budget provision or operational matters.” It therefore sees little point in drawing to the attention of the Conference the fact that Circuits continue to be hampered in their mission by the failure of the Board of TMCP to address such systemic problems which, from conversations across the Connexion, it believes to be far from isolated incidents.

The Circuit Meeting further understands that the members of the Trust board are appointed for life by the Trust itself, reflecting the model of trusteeship for Local Churches which was rejected as unfit for purpose around 40 years ago, and that the Trust Deed of TMCP dates from 1939.

It therefore requests the Conference to direct the Law and Polity Committee to make a preliminary assessment of the feasibility of a radical reformation of the relationship between the Conference and the custodian trustees of Model Trust property so that those Trustees are accountable to the Conference for the performance of their duties.

Reply

The Conference adopts the same reply as to M27.

M29 TMCP

The Southend and Leigh (34/10) Circuit Meeting (Present: 43; Voting: 39 for, 0 against) wishes to raise the problem of the delays in dealing with TMCP, and require and request additional resources for TMCP and to bring control of TMCP into the Connexional Team.

Further, we would request that TMCP look at its working practices, to speed up dealing with cases, maybe by having individual email addresses and contact numbers for case workers, and embedding their replies into emails rather than emailing a written letter. A phone conference with a case worker could prevent the elongated toing and froing of emailed letters, with long delays between the replies, and speed the whole process up.

Reply

The Conference adopts the same reply as to M27.