

## Methodist Independent Schools Trust Legal Structure

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<b>Status of Paper</b>	Final
<b>Resolutions</b>	<p>83/1. The Council receives the report.</p> <p>83/2. The Council authorises the Chair of the Council and the Secretary of the Council to appoint a small group, to include the Conference Officer for Legal and Constitutional Practice, to undertake the scrutiny of the proposals and to report back to the Council in January 2017.</p> <p>83/2. The Council authorises the group to negotiate with the trustees of Methodist Independent Schools Trust on the proposals made to the Council with a view to ensuring the interests of the Conference are protected.</p>

### Summary of Content

<b>Subject and Aims</b>	To set out the reasons behind the proposed change in legal structure for Methodist Independent Schools Trust, to summarise the change required and to confirm the process by which an agreed way forward can be reached between MIST and Council.
<b>Main Points</b>	<p>The main points covered are:</p> <ul style="list-style-type: none"> <li>• why is change required;</li> <li>• what is being proposed;</li> <li>• what are the implications of the change;</li> <li>• how are the interests of Conference protected;</li> <li>• elements of the implementation process.</li> </ul>

## 1. Introduction

1.1 The Methodist Independent Schools Trust (MIST) has for a number of years been considering whether its legal structure is fit for purpose.

1.2 Legal advice has been obtained which has identified a number of areas of concern:

A. The 1903 Trust Deed (referred to in SO 343(1) as the Methodist Independent Education Trust) is an unincorporated trust (as opposed to an incorporated legal entity) that is responsible for the 9 Independent Trust schools. The Conference in 2011 appointed MIST to control and manage the schools. MIST thus became the managing trustee of the school property held on the 1903 Trust Deed. Individuals are named as the holding trustees of the school properties and as such these individuals bear potential personal liability.

B. The 9 schools governed by the 1903 Trust do not have their own constitutions and are not separate legal institutions. It therefore appears that each school's separate registration as a charity with the Charity Commission may have been made in error.

C. The Trust schools' Trustee Companies are not themselves charities and the school undertakings are not vested in them. Their introduction was intended to provide protection from personal liability to School Governors. However, there are concerns that this may not have been wholly effective and the role of these companies (in particular) has contributed to a general misunderstanding of the overall group structure.

1.3 The review of the governance arrangements for MIST and the schools has identified that:

- (As noted above) the 1903 Trust is unincorporated, meaning that its trustees (MIST and the 1903 Trustees) could be liable to meet its debts, if all the trust assets were exhausted. As trustees, MIST and the 1903 Trustees do not have limited liability protection (though, of course, the Trustees of MIST are protected by MIST's own limited liability status);
- Assets of the 1903 Trust (in particular the school properties) are not ring-fenced from commercial liabilities;
- VAT arrangements – based on a 27 year old letter from HMRC – are potentially inconsistent with some aspects of current practice (even if consistent with legal form);
- School Governors may be at risk of personal liability and (as noted above) the Trustee Companies are not, in this structure, guaranteed to provide the protection to School Governors that was originally envisaged.

1.4 An incidental issue is that having individual holding trustees means the process for transacting land sales and purchases can incur avoidable delay. Individuals who are 1903 Trustees have to sign legal documentation in respect of legal titles for the schools.

## 2 What is Being Proposed?

2.1 The proposals represent a simplification of the current structure comprising 36 entities in total which will be reduced by half to 18 under the new structure.

2.2 In detail, the proposals involve:

- Deregistration of the unincorporated school charities;
- Dissolution of the School Trustee Companies;

- Transfer of the school business and assets from the 1903 Trust to MIST;
  - Dissolution of the 1903 Trust;
  - Creation of a Trust Company (PropCo) to hold the properties - MIST to be the sole corporate member of PropCo;
  - Amendments to the Articles of MIST to reflect the above changes and to ensure that the Methodist Conference's existing rights in relation to the Schools and the school properties are protected.
- 2.3 The four schools acquired by MIST since 2012 ("Acquired Schools" – Moorlands School, Lorenden School, St Petroc's School and Truro High School for Girls) will remain separate charities<sup>1</sup> until they are individually financially sustainable at which point it is intended that they are brought within MIST in line with the original 9 Trust Schools.
- 2.4 The legal analysis carried out by Farrer & Co makes it clear that the fact that the 1903 Trust is the legal entity for the 9 Trust Schools with MIST as the Managing Trustee, means that all contracts should be entered into now by MIST whereas at present the stated contracting party will generally be the School charities. In practice, those contracts would be deemed to be in the name of MIST but action will be taken to communicate the changes where needed to third parties and all future contracts following the change in structure will be entered into in the name of MIST.
- 2.5 A full review of the governance framework is being undertaken in conjunction with the schools (Governors and Executive) to ensure that governance is fully effective within the new structure. Farrer & Co are assisting MIST with the design of the framework to support the principle of as full a delegation of authority to schools as can be legally implemented, but reflecting the fact that MIST Trustees are legally liable for actions taken within the Trust. The governance framework includes the mechanism for Trustees exercising oversight of the schools through a detailed system of monitoring and reporting.
- 2.6 The underlying framework will include a revised Instrument of Government for the Trust Schools, a detailed Delegation Planner Checklist (setting out where decisions are taken) and a revised Governance Manual defining how Governance is effected throughout the group. The Acquired Schools operate to the same standards set out in these documents albeit they are separate charities.
- 2.7 The change proposed is essentially the same as the original structure but in an incorporated format and with the addition of trading companies to manage non-charitable trading activity (which exist at present in any event).
- 2.8 Appendix A shows the technical legal structure.

### **3. What are the Implications of the Change?**

- 3.1 The Schools will no longer be registered charities and will be recognised by the Charity Commission as part of MIST. Therefore the liability for the actions and decisions undertaken rests with the Trustees of MIST. The School Governing Body effectively therefore is confirmed as a delegated sub-committee of MIST and School Governors will not have liability for the exercise of

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<sup>1</sup> Moorlands School, Lorenden School and St Petroc's School are constituted as charitable companies limited by guarantee; Truro High School for Girls is constituted by Charity Commission Scheme, of which Truro High School for Girls Trustees (a company limited by guarantee) is the corporate trustee. MIST is sole member of all four of the companies limited by guarantee.

their decisions and actions as long as their decisions and actions are undertaken within the delegation framework.

- 3.2 MIST Trustees take on the legal liability for the decisions taken, as they do now, for any sub-committee of the Group, and must exercise effective oversight of the decision-making activity of the school governing bodies and the outcomes arising. The monitoring and reporting systems are being reviewed to ensure that the appropriate information is available to Trustees in a timely fashion to enable them to carry out their responsibilities.
- 3.3 In a structural sense, the group effectively reverts back to the original structure for the group of Trust Schools but in an incorporated form and with more robust governance arrangements in place.
- 3.4 As there is only one entity (plus PropCo) under the new structure for the 9 Trust Schools, the VAT risk from the current model is removed (as an organisation can't have VATable transactions with itself), as is the anomaly between the way in which HMRC looks at the schools from a VAT perspective (as one entity under the 27 year old letter) and the direct tax perspective (as nine separate entities), with the consequent risk arising from that.
- 3.5 Associated Schools (Ashville College, Kingswood School and Rydal Penrhos) are only affected by the changes proposed to the extent that MIST (or PropCo) will take on from the 1903 Trust the responsibilities of Holding Trustee for these schools, and will exercise those powers in exactly the same way as the 1903 Trustees do now. The schools themselves each have a Trustee Company which acts as the Managing Trustee and therefore the role for MIST is purely an administrative one, where the actions required to be undertaken by MIST should be more efficient than the 1903 Trust as a result of having an existing administrative infrastructure. The Charity Commission Schemes for the Associated Schools will need to be amended for the change but that is a straightforward process.

#### **4. How are the Current Conference Protections Being Carried Over?**

- 4.1 The current Conference protections are replicated in the revised articles of MIST and PropCo see Appendix B for "destination table". The protections relate to:
  - The ability to appoint Trustees of MIST;
  - The ability to re-designate the use of any of the school property; and
  - The ability to wind up MIST.
- 4.2 Under the proposed structure, the Conference remains the body which approves the appointment of Trustees for MIST and the Associated Schools.
- 4.3 Amendments have been proposed to MIST's Articles to establish that any re-designation of the use of the school property should first consider educational purposes - not least because the schools have benefited from considerable donations over the years, which donations, together with surpluses created, have been used to enhance the assets available.
- 4.4 The objects of MIST remain unchanged from those approved by the Conference on the incorporation of MIST in 2011. The Objects of the Charity are:
  - the advancement of education in accordance with the principles of the Methodist Church; and
  - such other charitable purposes of the Methodist Church as the Conference shall from time to time by resolution direct.

## **5. What is Happening Regarding Implementation?**

- 5.1 A Steering Committee has been established within MIST to oversee the change. This is supported by four Working Parties which have been established to deal with the following areas:
- Governance and policies;
  - Employment and parental contracts;
  - Monitoring and reporting;
  - Legal and documentation.
- 5.2 The Working Party members are drawn from MIST Trustees, School Governors and School Executives and are supported by the MIST Executive.
- 5.3 The Steering Committee is chaired by the Chair of MIST, supported by the Deputy Chair of MIST, the Chairs of the four Working Parties and an independent member (who is both a Chair of Governors at a Trust School and current Chair of the Association of Governing Bodies of Independent Schools – “AGBIS”) to ensure that any unintended consequences of the change are identified and addressed.

## **6. Timeline**

- 6.1 Whilst not important in relation to the approval of the technical legal structure, which revolves around MIST, the Property Company, the 1903 Trust and the relationship with Conference, MIST is working to a timeline for the underlying governance framework which will enable it to make a final proposal to Conference in June 2017.
- 6.2 The Working Parties are aiming to complete their work by the end of October 2016 with a view to consultations on the detailed governance framework and the underlying delegations being held with the schools during December 2016 and January 2017.
- 6.3 The underlying intention is to be in a position to implement the new structure on 1 September 2017 the date of the start of MIST’s and the Schools’ financial reporting years.

## **7. Third Parties to be Consulted**

- 7.1 A number of third parties have been identified and with whom consultations will need to be held. These include, but are not limited to, the Charity Commission, HMRC, various pension schemes and the Independent Schools Inspectorate (“ISI”).
- 7.2 The Charity Commission has been approached on 19 August 2016 about the proposed changes. A holding response has been received (7 September 2016) stating that advice is being sought and that a substantive reply will be available once that advice has been received. The Charity Commission is a key figure in this process and therefore have been approached as a priority.
- 7.3 A meeting has been held with ISI on 21 September 2016 and the expectation from that meeting is that the Inspection regime, as it relates to the relationship between MIST and the Schools, will not be affected by this proposed change of structure.
- 7.4 An initial planning discussion has been held to consider the approach to the other third parties and discussions will be undertaken with those parties at the appropriate point.

## **8. Conclusion and Recommendation**

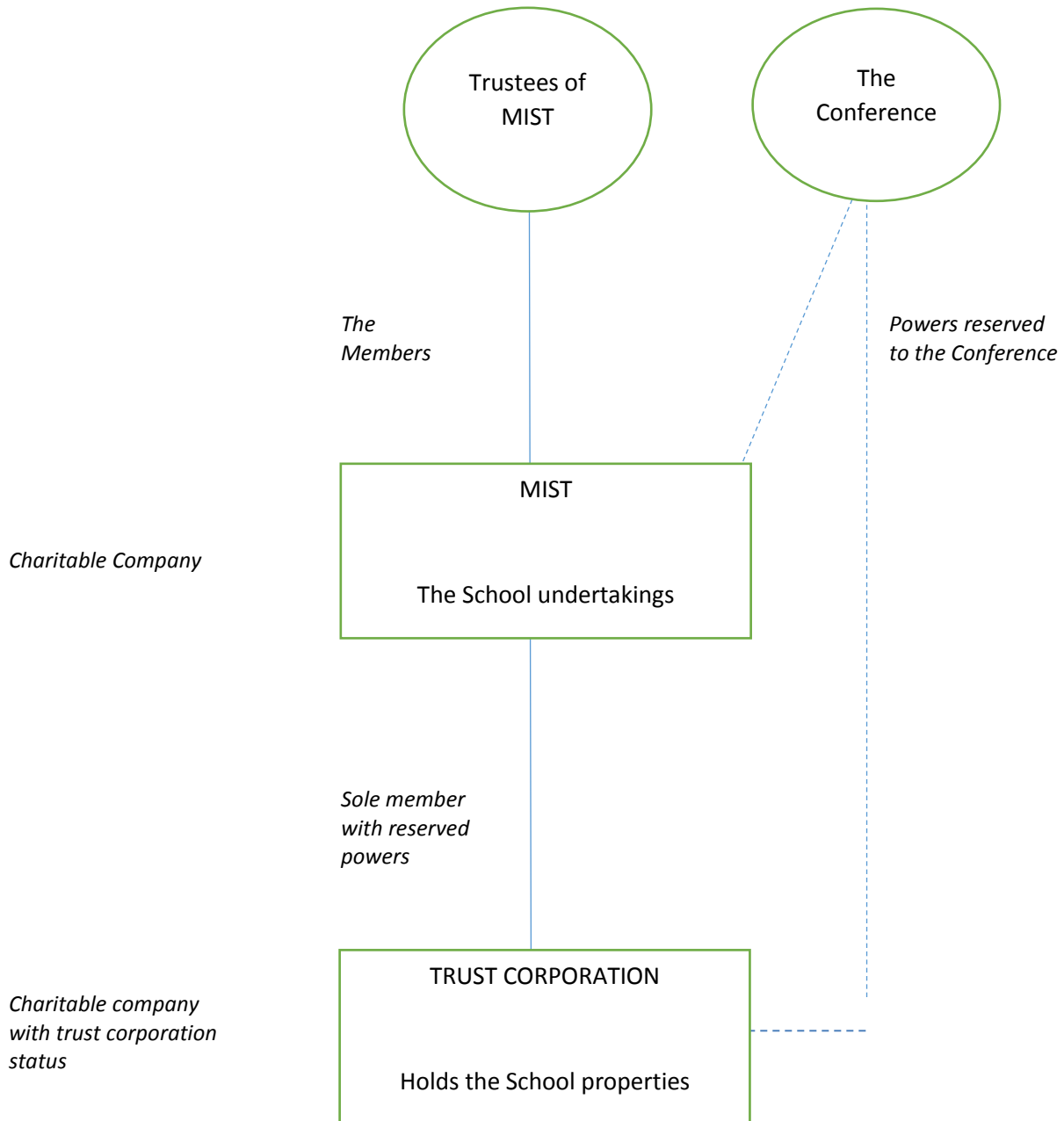
- 8.1 A detailed review of the existing structure has been undertaken by MIST with a view to identifying issues arising with that structure. The MIST trustees are of the view that the legal structure of the 1903 Trust, MIST and school property needs to be updated, and have proposed to implement a Unified Corporate Model to effect the change necessary. Considerable work is underway to ensure that the governance model will support the requirements of both Conference, MIST and the Schools and that work is nearing completion.
- 8.2 The approval of the Council is sought to the following proposals:
- Amend the articles of MIST;
  - Establish PropCo with MIST as the sole corporate member;
  - Transfer the school business and non-property assets to MIST;
  - Transfer the School Property to the PropCo;
  - Dissolve the 1903 Trust;
  - Establish PropCo as the Holding Trustee for the Associated Schools.

### **\*\*\*RESOLUTIONS**

- 83/1. The Council receives the report.**
- 83/2. The Council authorises the Chair of the Council and the Secretary of the Council to appoint a small group, to include the Conference Officer for Legal and Constitutional Practice, to undertake the scrutiny of the proposals and to report back to the Council in January 2017.**
- 83/3. The Council authorises the group to negotiate with the trustees of Methodist Independent Schools Trust on the proposals made to the Council with a view to ensuring the interests of the Conference are protected.**

MIST

Proposed corporate structure for holding the school property



MIST	Trust Corporation
<ul style="list-style-type: none"> <li>• The Conference would have enhanced reserved powers over MIST</li> <li>• MIST would hold the school undertakings</li> <li>• No change to the make-up of the MIST Board</li> </ul>	<ul style="list-style-type: none"> <li>• Trust Corporation would be a charity with the same objects as MIST</li> <li>• MIST would be sole member with reserved powers</li> <li>• The Conference would also have certain reserved powers</li> </ul>

	<ul style="list-style-type: none"> <li>• Trust Corporation would hold the school properties</li> <li>• Small board of 4-5 comprising MIST Trustees and Executive Officers plus 2 independents</li> </ul>
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APPENDIX B

**MIST**

**Comparison of Conference's powers under MIST's existing structure  
with its proposed powers under the Unified Corporate Model (UCM)**

**1. The 1903 Trust Deed**

The table below lists the Conference's powers under the 1903 Trust Deed and describes where the equivalent power is located within the UCM structure.

Power in the 1903 Trust Deed	Equivalent power in the UCM structure
<b>Clause 2(a):</b> The Conference has the power to determine by resolution that the School Property (meaning the lands or other property vested in the 1903 Trustees) shall be used for other educational charitable purposes or in connection with the promotion of the charitable objects of the Methodist Church.	<b>Article 14</b> of the MIST Trust Corporation's Articles of Association provides for an equivalent power, with reference also made to this control in <b>Article 14</b> of MIST's Articles of Association, which requires MIST to take any necessary action to ensure the Conference's resolution is acted upon.
<b>Clause 15:</b> The Conference has the power to remove a 1903 Trustee from office.	The 1903 Trustees will no longer hold the property, and property will be held by the MIST Trust Corporation. (The Conference has the power to appoint MIST Trustees under MIST's Articles of Association and MIST is the sole member of MIST Trust Corporation.)
<b>Clause 16:</b> The Conference has the power to appoint the 1903 Trustees	The 1903 Trustees will no longer hold the property, and property will be held by the MIST Trust Corporation. (The Conference has the power to appoint MIST Trustees under MIST's Articles of Association and MIST is the sole member of MIST Trust Corporation.)
<b>Clause 17:</b> The Conference may revoke, alter or add to any of the trusts and may	The Conference has the equivalent power over MIST and the School properties



declare new charitable trusts in lieu of the existing ones (subject to any amendments not authorising the application of the property or any assets for any non-charitable purpose).	through its corporate powers allowing it to:  (a) appoint Trustees of MIST;  (b) to direct that the School properties be used for other educational purposes or other purposes connected with the promotion of the charitable objects of the Methodist Church.
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## 2. MIST's Articles of Association

The table below lists the Conference's powers under MIST's Articles of Association and describes the equivalent power under the UCM structure.

Article in MIST's Articles of Association	Equivalent power in the UCM structure
<b>Article 3.5:</b> MIST's Trustees are appointed by the Conference.	<b>Article 3.4:</b> MIST's Trustees are appointed by the Conference.
<b>Article 13:</b> On dissolution of MIST, any assets remaining after providing for liabilities must be applied for such charitable purposes of the Methodist Church as the Conference resolves.	<b>Article 13:</b> On dissolution of MIST, any assets remaining after providing for liabilities must be applied for such charitable purposes of the Methodist Church as the Conference resolves.
<b>Article 14:</b> Any amendment, deletion or alteration to the Articles of Association requires the consent of Conference.	<b>Article 14:</b> Any amendment, deletion or alteration to the Articles of Association requires the consent of Conference.