

Sales under Paragraph 20 of the Model Trusts

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Status of Paper	Final
Action Required	Decision
Resolutions	40/1. The Council receives the report. 40/2. The Council directs the Connexional Team to present a report to the Council clarifying the purposes of the Methodist Church under section 4 of the Methodist Church Act 1976. 40/3. The Council directs the Connexional Team to present a report to the Council setting out proposals for a policy on the minimum terms for a disposal under paragraph 20 of the Model Trusts. 40/4. The Council adopts the Model Trust 20 policy as set out in the paper.

Summary of Content

Subject and Aims	Present an amended policy on authorisations of sales at an undervalue or for nil consideration under paragraph 20 of the Model Trusts. To enable more flexibility in the provisions that are included within the terms of such sales whilst always seeking to protect the interest of the Methodist Church.
Main Points	<ul style="list-style-type: none"> - The policy proposes that there is no longer a requirement for a sale at undervalue or for nil consideration under paragraph 20 to include a provision for the property or net proceeds of sale to revert to the Methodist Church upon a sale. - There will however need to be some protection within the terms of any sale for nil consideration or at significantly less than the market value to ensure any future sale or change of use. - Three members of the Council continue to be authorised to approve such sales but there will be more focus on the need for professional advice on the appropriate terms for a sale under paragraph 20.
Background Context	MC/11/7 Model Trust 20 Policy Review MC/13/5 Model Trust 20
Consultations	Trustees for Methodist Church Purposes

Summary of Impact

Standing Orders	None
Financial	It is not anticipated that the amendment to the policy will increase the number of sales at less than market value.
External (eg ecumenical)	Other denominations should be able to take on redundant Methodist church buildings upon terms more acceptable to them if the amended policy is accepted.
Risk	Allowing more flexibility as to the terms of sales under paragraph 20, might lead to more applications. This risk can be mitigated with a more defined policy on the acceptable terms of such sales being presented to the Council in October 2018.

1. Sales under Paragraph 20 of the Model Trusts

1. During the past year the Council has approved in principle the sale of two church buildings for nil consideration to other Christian denominations. One of these sales is of Sidwell Street Methodist Church to Exeter Network Church (ENC) who will use the building for worship and allow the continuing local Methodist Church to use the building. It was highlighted to the Methodist Council in October 2017 that an historic Counsel's opinion meant that the sale could not proceed unless a trust for sale or reverter provision could be agreed with the Exeter Network Church. A reverter would mean that if the ENC's use of the building were to cease, the net proceeds of sale would revert to the Methodist Church. The ENC has not felt able to take on the building with a reverter given the money that needs to be spent on bringing the building up to an acceptable condition.
2. The terms of the sale of Swaythling Methodist Church were agreed by the Methodist Council but it has not been possible to find an acceptable form of wording for the requirements for a trust of sale and therefore this sale also awaits an amendment to the Model Trust 20 policy.
3. In light of the historic Counsel's opinion preventing the two sales under paragraph 20 of the Model Trusts progressing, a new Counsel's opinion has been sought. The new Counsel's opinion has clarified that a trust for sale reverter clause on a sale made under paragraph 20(1) of the Model Trusts is not a necessity as the previous Counsel's opinion had indicated. The fundamental principle is that the sale must be advancing the purposes of the Methodist Church as set out in section 4 of the Methodist Church Act 1976.
4. Following the written opinion, a meeting was held with Counsel on 28 March 2018 and this has raised a number of points that require further consideration. One point is the need to clarify what are the purposes of the Methodist Church as defined in section 4 of the Methodist Church Act 1976.
5. This paper is presented to the Council with a view to amending the Model Trust 20 policy to remove the requirement for a trust for sale (or reverter provision). It is proposed that the Council adopts a policy that requires that some protection is put in place in favour of the Methodist Church should there be a future sale or change of use of the property being sold at an undervalue. This protection would either be by way of a reverter clause, overage provisions, legal charge, positive or restrictive covenant on use or an option to purchase back for nil consideration (or sum being paid). There would no longer be an absolute requirement for a trust for sale or reverter where a disposal is at less than market value.

Terms of Sale

6. Overage provisions ensure that the Methodist Church benefits from any subsequent sale of a building sold at an undervalue, particularly if planning permission for change of use is obtained, within a period of time or in perpetuity if agreed. For example overage provisions might provide for 50% of the net proceeds of sale being for the benefit of the Methodist Church if the building is sold within 5 years of the disposal, then 25% of the net proceeds up to 10 years and 10% up to 15 years.
7. It is ultimately for the Council as the body that is authorised to approve sales at an undervalue in accordance with paragraph 20(1) to decide the terms upon which such a sale will be permitted. The Council has to date delegated this approval of the sales under paragraph 20 to a group of three members of the Council and it is proposed that this practice continue with the group therefore approving the terms of the sale. It might assist the group and managing trustees when negotiating the terms of such sales if the Council gives consideration in October 2018 to a policy that sets the minimum terms for disposals at nil or significantly lower than market value sales. It might also be that the Methodist Council wants to

define the restrictive covenants regarding use of the building in any such sales at nil value and/or ensure there is an ability for a Methodist managing trustee body to buy back the building for the original sale price (with consideration being paid for improvement works undertaken by the purchaser). The Methodist Council is asked to direct the Connexional Team to produce a more defined policy on the minimum terms of any sale under paragraph 20(1) to the Council.

Amendments to the Model Trust 20 policy

8. The Council, before considering approving the terms of a sale, will need to be satisfied that the purposes of the Methodist Church as defined by section 4 of the Methodist Church Act 1976 would be advanced by the disposal to the proposed purchaser for the agreed use.
9. If the purposes of the Methodist Church are being advanced, it will be for the Council or group/committee to consider whether the terms of the disposal (not a lease) are acceptable in accordance with any policy adopted by the Council. The attached Model Trust 20 policy has been amended to ensure that managing trustees have to seek professional advice on provisions that protect the interests of the Methodist Church in respect of the property being sold in the future or used for a different purpose. The professional advice will also need to include advice on the condition of the building, the possibilities for selling on the open market, the likelihood of being able to obtain a change of use and recommendations for reverter clauses, overage provisions, legal charges, positive or restrictive covenants on use and option to buy back. Advice must also include the alternative options for a sale at undervalue/nil value which such as a long lease of the property at a market rent.
10. Sales under paragraph 20(1) of the Model Trusts are still intended to be exceptional and managing trustees should always seek to ensure the best terms obtainable are sought even where the sale is advancing the purposes of the Methodist Church. The exact terms will be for the managing trustees to negotiate with their professional advisers and in consideration of any further policy adopted by the Methodist Council. However the final authorisation for the sale will still rest with the Methodist Council or the small group acting under the delegation who will need to decide whether in light of all the advice whether the proposed terms of the sale are acceptable.

An amended Model Trust 20 policy is set put in part 2 of this paper.

*****RESOLUTIONS**

- 40/1. The Council receives the report.**
- 40/2. The Council directs the Connexional Team to present a report to the Council clarifying the purposes of the Methodist Church under section 4 of the Methodist Church Act 1976.**
- 40/3. The Council directs the Connexional Team to present a report to the Council setting out proposals for a policy on the minimum terms for a disposal under paragraph 20 of the Model Trusts.**

2. Amended Model Trust 20 Policy

- a. The Methodist Council will only consider authorising sales under paragraph 20(1) of the Model Trusts where the disposal is for a use as defined below and the body purchasing is a charity (unless consent to the disposal to a non-charitable body has been given by the Charity Commission).

- b. Any such disposal shall be upon terms that protect the interests of the Methodist Church as far as possible in all the circumstances. The managing trustees shall give consideration to and seek professional advice on the appropriate terms of the sale. Where the sale is for nil consideration or at significantly less than the market value (as determined by the Methodist Council or body to which it delegates its authorisation under paragraph 20(1)) there will need to be provisions that protect the use of the property and the future interests of the Methodist Church. These provisions shall ensure that the property can only be used for the purposes for which it is being sold at an undervalue and the Methodist Church obtains a financial benefit should the property or land be sold or the use changed. Professional advice shall be obtained on the appropriate provisions, these might include or be a combination of:
- reverter clause
 - overage provisions for a limited period or in perpetuity
 - positive or restrictive covenant on use
 - legal charge
 - an option for a managing trustee body as defined by paragraph 2 of the Model Trusts to purchase the building for the sale price.
- c. The managing trustees seeking to sell at an undervalue must also seek professional advice on the market value of the building, the possibility of a sale on the open market, the likelihood of change of use being obtained and alternatives to a sale at undervalue e.g. a long lease with annual rent.
- d. The final decision on whether or not the proposed terms of the sale are acceptable rests with the , Council or body to whom it has delegated the responsibility for authorising sales under paragraph 20(1) of the Model Trusts.
- e. Prior to making a decision on authorisation, the Council or body to whom it has delegated shall be provided with the professional advice as detailed above along with a reasoned statements for making the disposal at an undervalue from the managing trustees, the Circuit Meeting and District Policy Committee (unless they are the managing trustee body). Details must be provided as to how the proposed use will be advancing the purposes of the Methodist Church as set out in section 4 of the Methodist Church Act 1976.

Approved Uses

(i) Use by another Denomination for Christian Worship

Any sale of Model Trust premises at undervalue or for nil consideration to another denomination for Christian worship must prohibit the preaching or expounding of God's Holy Word or perform any act as to deny or repudiate the doctrinal standards of the Methodist Church, see clause 4 of the Deed of Union. The sale is most likely to arise where there is a need to ensure a continued Christian presence in the particular location.

(ii) Use for a youth centre or to permit activities for children and young people

Model Trust 13(c) makes these activities a Methodist purpose, and at a time when the number of children and young people attending church, junior church, youth groups etc. has declined very significantly, it does seem appropriate to encourage and support such activities if the Methodist building is to be sold and another organisation plans to support such work. The Methodist Council in January 2011 agreed this use and that such sales would be most likely to involve some measure of Christian involvement.

(iii) Use as a School or other educational establishment

Model Trust 13(e) allows such activities, which are a Methodist purpose.

Education has been a pillar of Methodist policy and provision for generations, and the Methodist Council in January 2011 agreed that sales for such purposes should be considered possible if on the right terms. Again, it was felt there should be some Christian involvement or oversight.

(iv) Housing Associations

SO 935 permits a disposition of model trust property to a Housing Association under MT20(1).

The Methodist Council must satisfy itself that the purposes of the Housing Association are wholly charitable and that the Association is subsidiary or ancillary to the Church.

In recent years, since the Council's review of its policy in 2005, there have been no applications for a sale at an undervalue to a Housing Association, though the possibility still exists of such a sale under Standing Orders and MT20(1).

Should any application be received, the Council, through its officers, should pay particular attention to the 1994 Counsel's Opinion, paragraphs 1-37, and to SO 935.

(Please see in particular SO 935(1) which refers to the furtherance of ecumenical work or activity.)

LEASES

- f. The Council in January 2011 considered the possibility of a lease or license at an undervalue but considered that this would result in a high volume of such applications. Counsel's opinion as sought in March 2018 also raised concerns about leasing at an undervalue and this policy preventing a lease or license at an undervalue remains.
- g. There can be no lease of premises for Christian worship due to the requirements of Model Trust 14(2A) and (3).

*****RESOLUTION**

40/4. The Council adopts the Model Trust 20 policy as set out above.