

## Indemnity Insurance for Managing Trustees of Model Trust Property

1. From 1 July 2006 paragraph 16(o) of the Model Trusts gives managing trustees the power to apply trust income in paying premiums on insurance “**to indemnify [themselves] against personal liability**” for certain acts and omissions on their part. That is in addition to the obligation which they have always had to apply income to insure the trust property against destruction or damage and themselves against other risks and liabilities (*see Standing Order 917(1)(ii)*).
2. The cover newly authorised by paragraph 16(o) is commonly called “**trustee indemnity insurance**”, and that usage will be followed in these notes, although it will be seen that the cover already required by Standing Order 917(1)(ii), which we shall call “**conventional insurance**”, itself includes indemnity against certain liabilities.
3. These notes are issued by the Methodist Property Office for the guidance of managing trustees of Model Trust property as they consider whether to exercise their powers under paragraph 16(o), but they are not expert advice, which should also be obtained as explained in paragraph 13 below.
4. The nature of trustee indemnity insurance is such that, starting from the position that it provides cover against personal liability, the remainder of any description of its scope consists largely in explaining what it does not include.
5. In the first place no insurance is needed where there is no liability, and trustees are not liable if they have acted honestly and with due care and in accordance with the terms of their trust, although they may need, and are entitled to obtain, cover against costs incurred in defending unsuccessful claims.
6. Secondly, trustee indemnity insurance is not needed against liabilities covered by conventional insurance. The standard forms of the policies which trustees obtain in compliance with their obligations under Standing Order 917(1)(ii) include indemnities against what are commonly called “**public liability**” and “**employers’ liability**”. That includes such matters as negligence claims by persons injured on trust premises and by employees for injuries suffered in the course of doing their jobs.
7. Thirdly, paragraph 16(o) itself prohibits the use of trust income for any insurance against:
  - “(i) fines,
  - (ii) the costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud or dishonesty or wilful or reckless misconduct of any managing trustee,
  - (iii) liabilities which result from conduct which the relevant trustee knew, or must be assumed to have known, was a breach of trust or of duty or as to which that trustee was reckless about whether or not it was such a breach, and (iv) any liability to account where the relevant trustee has received a benefit”.
8. These exclusions are independent of the willingness or otherwise of insurers to offer cover. In practice there must be added, fourthly, any liabilities which they are not prepared to insure. There is likely to be a substantial overlap with the matters dealt with above - for example the terms offered by the Methodist Insurance Company exclude anything already covered elsewhere (*see paragraph 6 above*) and any indemnity where the trustee knows an act is wrongful or ignores that possibility or against criminal, dishonest or fraudulent acts or omissions (*compare paragraph 7 above*) - but they may not by any means be identical. Thus the Methodist Insurance Company’s terms also exclude most employment disputes and contractual liabilities.
9. What is left after all these exclusions is, broadly speaking, liability for lack of due care, skill or diligence, not covered by conventional insurance, but arising without any dishonesty or deliberate or reckless misconduct. Because insurable liabilities to third parties should generally be covered by conventional insurance this residual category will often, perhaps usually, be a liability to the trust estate itself, which the co-trustees of the managing trustee in question will have a duty to enforce.

10. Before considering whether to exercise the power to apply income under paragraph 16(o) managing trustees will need to take into account how far trustee indemnity insurance is available without additional expense. For example the Methodist Insurance Company has included (with effect from 1 July 2006) in its standard Church Shield policy trustee indemnity insurance to a maximum of £25,000 in any period of insurance.

11 In deciding whether to exercise their power to apply income under paragraph 16(o), and if so to what extent, managing trustees should take into account the material set out above and:

(i) identify, so far as they are able, the risks within the scope of trustee indemnity insurance to which they are exposed, taking into account the nature of any liabilities which may arise, the likelihood that they will do so and the maximum amount which any claim may reach;

(ii) consider whether any automatic trustee indemnity insurance afforded by their existing policy or policies is adequate;

(iii) assess whether the cost of any additional trustee indemnity insurance is reasonable in relation to the amount of their available income;

(iv) in the light of all the above, consider what additional trustee indemnity insurance, if any, best serves the purposes of their trust.

12. In considering what best serves the purposes of the trust the trustees should not allow themselves to be influenced in favour of obtaining additional indemnity insurance by any personal advantage to themselves which such insurance would afford, but are entitled (*for example*):

(i) to take into account so far as they judge it to be relevant in the context of their particular trust, any advantage to the trust estate of not being solely dependent for recovery, in the case of a claim by the trust against a particular trustee or trustees, upon the value of their personal assets, or upon the ability or willingness of their co-trustees to enforce liability against them by legal action and execution or insolvency proceedings,

(ii) to consider the question whether in the absence of adequate trustee indemnity insurance, the potential for claims against them may deter otherwise suitable persons from accepting office as managing trustees, for example by appointment to Church Councils or Circuit Meetings.

13. The Methodist Property Committee requires managing trustees of Model Trust property, before exercising their power to apply income under paragraph 16(o), to obtain written expert advice on the question whether it is prudent and appropriate to do so, and there will be a question in the annual Schedule A and C enquiring whether that has been done and the advice followed.

Some insurance companies such as Methodist Insurance are legally able to provide such advice.