

Response to M5 Amendment of Standing Order 931(5)(i)

Contact name and details	Mr Richard Hood, Interim General Counsel / Company Secretary hoodr@methodistchurch.org.uk
Action required	To note the explanation and analysis of the current position, which provides for issuing notices etc but should go through usual procedures of obtaining Connexional Team consent for litigation.
Resolutions	Shown at the end of the report.

1. The 2019 Conference received memorial M5 in relation to amendment of Standing Order 931(5)(i) to exclude specifically enforcement of Parking Charge Notices.

2. The Memorial read:

The Exeter Coast and Country (24/3) Circuit Meeting (Present: 67; Voting: 55 for, 3 against) requests that Standing Order 931(5)(i) should be amended to specifically exclude enforcement of Parking Charge Notices.

A number of local trustees with responsibility for church car parks are facing increasing problems relating to car park management including long-term, unauthorised parking, abuse and threats. The Trustees for Methodist Church Purposes (TMCP) interprets this Standing Order as requiring local trustees to seek the permission of the Methodist Council for each enforcement of a disputed Parking Charge Notice; thereby, in practice, making local agreement with registered parking enforcement companies impossible. Following clamping scandals, parking enforcement on private land has become highly regulated and without its earlier stigma. A number of companies will offer contracts where only vehicles reported to them by local trustees, and supported by photographic evidence, will incur penalty charges and will manage enforcement on behalf of the trustees.

Amendment of Standing Order 931(5)(i) as proposed will allow local trustees to make suitable arrangements with appropriate companies in order to preserve limited car parking availability for intended purposes.

Reply

The Conference thanks the Exeter Coast and Country Circuit for its memorial and for the consideration they have placed on the best use of Methodist property, both physical and monetary.

Given the current uncertainty as to aspects of the legal position, it would be premature to formulate the guidance which has been requested, but the Conference notes the significant practical difficulties facing churches in such circumstances and refers the memorial to the Methodist Council for further consideration of the issues raised.

3. This paper considers:

- a. SO 931(5)
- b. Protection afforded to Managing Trustees generally by requiring them to obtain approval under 931(5) before issuing proceedings or having proceedings issued by a third party in the name of the Managing Trustees.
- c. What Managing Trustees are able to do without the need for consent under SO 931(5).

- d. Whether SO 931(5) requires amendment to remove the need for Connexional Team consent before proceedings are issued by third party parking enforcement companies (PECs) to recover unpaid parking charge notices (PCNs)
- e. Whether the requirement for consent automatically excludes use of PECs.
- f. Implications of enabling PECs to issue proceedings in the name of Managing Trustees and TMCP as owner of the car park without any checks.
- g. Practical consequences of Managing Trustees entering into agreements with PECs and areas on which MTs would require guidance.
- h. Implications of association with unpopular third party car parking enforcement companies.

4 Analysis and Implications

These are considered below:

a. SO 931(5)

SO 931(5) states that:

“Except by direction of the Conference trustees shall not, without the written consent of the Team:

- (i) bring any action or refer or join in a reference to arbitration in respect of any Methodist property, or any matter relating thereto;
- (ii) ...
- (iii) make any application to a statutory tribunal or similar body”

SO 931(5) has been historically interpreted by the Conference Office as requiring Managing Trustees to obtain Connexional Team consent before issuing or defending any claim in a Court or other tribunal or entering into any form of arbitration or alternative dispute resolution. The advantages of this interpretation are referred to in point b. below.

This is not an interpretation of Standing Orders by TMCP as suggested in the Memorial. TMCP merely informs Managing Trustees of the long held interpretation by the Conference Office that SO 931(5) requires Connexional Team consent.

The Conference Officer for Legal and Constitutional Practice has routinely confirmed consent under SO 931(5) on production of a resolution passed locally to authorise the Managing Trustees to issue (or defend) proceedings, and on sight of solicitor’s advice confirming that the merits of court action outweigh the risks and costs.

What is at stake is perhaps not the consent itself and the ability to refuse, but the process that Managing Trustees are required to follow to ensure they are acting as prudent charity trustees, a process that can only be enforced and monitored if consent is required.

- b. Protection afforded to Managing Trustees generally by requiring them to obtain approval under 931(5) before issuing proceedings or having proceedings issued by a third party in the name of the Managing Trustees.

The process followed by TMCP on behalf of the Connexional Team to obtain consent under SO 931(5) is as follows:

- i. Managing Trustees are required to pass a resolution locally stating that they are all in agreement to issue or defend the claim and obtain written legal advice confirming that the merits of the action outweigh the risks and costs. These two pieces of information are then sent to the Conference Office by TMCP who ask for Connexional Team consent under Standing Order 931(5).

- ii. Where TMCP is required to be a party to proceedings, the Managing Trustees also sign a Deed of Indemnity to indemnify TMCP.
- iii. Applications (claim forms, etc.) then need to be checked by TMCP to ensure that the parties and their roles are described correctly. TMCP do not review anything else.

The process followed to obtain consent therefore ensures that Managing Trustees only pursue claims where they have advice that the merits outweigh the risks and costs, that they act as prudent charity trustees and that a local resolution has been passed authorising a claim to be issued or defended in the name of the trustee body (and sometimes TMCP). The whole process can usually be completed in a matter of days without any issues.

The process can reduce the risk of Managing Trustees finding themselves in the midst of costly litigation they are unlikely to win by trying to ensure that they only issue/defend claims if the trustee body decides to do so collectively having considered proper advice. It also allows the Church to monitor the number and nature of claims issued by Managing Trustees; this monitoring informs guidance to prevent similar claims elsewhere in the Connexion where possible.

As an alternative to removing the need for consent, the process for obtaining that consent could be reviewed to streamline the process even further for certain types of claim that are felt to be lower risk e.g. a PEC paying for a claim relating to disputed PCNs. Could a local Managing Trustee body pass an annual resolution to authorise such claims? Could a solicitor provide one letter of advice confirming that all liability for costs and any other liabilities arising from the claim would rest with the PEC?

Could this more streamlined process be applied to other low risk claims eg where the trustees' insurer has assessed the risks and decided to pursue or defend a claim on behalf of the Managing Trustees under their legal expenses cover?

c. What MTs are able to do without the need for consent under SO 931(5).

It is understood that any guidance needs to be clear on what actions do and do not require consent. Consent is not required before PCNs are issued by a PEC or before appeals are dealt with. Note that regulated PECs are required to offer an appeal process to those they issue PCNs against before initiating proceedings.

Consent is only required before a court claim is issued to recover unpaid/disputed PCNs. Consent is therefore only likely to be required in relatively few cases.

Managing Trustees usually state that their intentions are primarily to deter unauthorised users of their car parks through the PEC's signs warning of fines and court action. Where those do not work and PCNs are issued, consent would only be required if those PCNs were not paid and the dispute was not resolved through the appeals process.

As a result of the Parking (Code of Practice) Act 2019, a new compulsory code of practice for PECs is anticipated which is expected to make it more difficult for PECs to reject appeals and enforce PCNs. It remains to be seen what impact this will have on the proportion of claims that will go to Court in the future and for which consent will be required. The Council may feel that the requirement for consent is less of a barrier than MTs may anticipate.

d. Whether SO 931(5) requires amendment to remove the need for Connexional Team consent before proceedings are issued by a third party parking enforcement companies (PECs) to recover unpaid parking charge notices (PCNs).

The need for consent is based upon the interpretation of SO 931(5). Arguably the interpretation of SO 931(5) or any policy could be changed to remove the need for consent to claims issued in the name of TMCP and Managing Trustees by a PEC.

However, the Council may feel that consideration needs to be given to why that particular type of claim would be excluded. If it is based on the level of risk where the costs and risks would be borne by the PEC,

would this also extend to insurance claims where costs and damages are covered by the Managing Trustees' insurer? Does the level of risk need to be verified before allowing claims under a particular contract (agreement between Managing Trustees and a PEC) to proceed without consent? Is encouraging the use of PECs something that the Methodist Church believes is in the best interests of the Church in terms of Mission and reputation (see paragraph g. and h.)?

e. Whether the requirement for consent automatically excludes use of PECs.

Point b. above already highlights the ease with which consent can be obtained and possible streamlining. Provided that the PEC agrees to amend its standard terms and conditions to accommodate the need for consent, ie their client's final say before proceedings are issued, this should not be a problem. A standard term perhaps in a side letter accommodating the requirements under Standing Orders could be produced.

The need for consent does not automatically exclude the use of PECs. It requires a PEC to accommodate the requirements of the Methodist Church and show flexibility with Managing Trustees. In many cases Managing Trustees will want to ensure their chosen PEC affords them some flexibility in their relationship e.g. to cancel PCNs issued against members of the Methodist Church or their family members who have not been included on authorised user list.

f. Implications of enabling PECs to issue proceedings in the name of Managing Trustees and TMCP as owner of the car park without any checks.

It would not be appropriate for claims to be issued in the name of TMCP as custodian trustee without TMCP's knowledge.

Without any checks, claims could easily be issued in the wrong names; claims are often issued incorrectly with the name of individuals or church buildings being cited rather than Managing Trustee bodies. Statements of case could also incorrectly describe the roles of the trustees and TMCP.

There could be a risk of reputational damage if a large number of claims were issued in the name of the Methodist Church particularly if third parties publicised such claims as being unfair or targeting vulnerable members of the communities the Church is trying to reach out to.

Whilst there are problems experienced by Managing Trustees in ensuring their car parks are available for authorised users, it would be difficult to prevent mistakes occurring, even in a self-ticketing scheme and Managing Trustees finding themselves held to blame. For example, trustees could easily submit a photograph of an unknown registration plate via the app to a PEC not knowing that the car owner was a member of the Local Church who had recently changed their car or was borrowing a family member's car or even a potential new member visiting the premises for example. A PCN may not come to light until the claim stage if the receiver ignored the notice thinking that it was in error as they have a right to use the church car park.

g. Practical consequences of Managing Trustees entering into agreements with PECs and areas on which trustees would require guidance

Managing Trustees require guidance on any potential pitfalls they need to be aware of whether or not consent is required before claims to enforce PCNs are issued.

It may be that any guidance should encourage Managing Trustees to use PECs as a last resort after exhausting all alternatives eg local church signs, physical barriers, and periodic closure?

There are different types of schemes run by PECs including self-ticketing schemes, number plate recognition and wardens employed by PECs monitoring car parks. The self-ticketing model referred to in the Memorial appears to be the scheme favoured by Managing Trustees at the moment. Compared to other schemes, the self-ticketing method does give the Managing Trustees much more control over whom PCNs are issued against as trustees record (and report) the unauthorised use themselves. It could be helpful to clarify the difference between the types of schemes available to help Managing Trustees balance the advantages of greater control with responsibility and the practicality of verifying which vehicles belong to unauthorised

users. Considerations could include the number of authorised users and need to welcome those attending events for the first time.

A common recommendation seen on forums is for those seeking to oppose a PCN to contact the land owner to try and persuade them to intervene. Managing Trustees would need to consider whether they would be happy to be contacted. Would the trustee body need to compensate the PEC for cancelling each PCN? How would the trust body react to the pressure to cancel fines?

h. Implications of association with unpopular third party car parking enforcement companies

There could be potential reputational damage of deemed endorsement of the actions of PECs.

Attention should be paid to the circumstances surrounding the Parking (Code of Practice) Act 2019, news stories and investigations relating to PECs.

Managing Trustees will be mindful of the public nature of the association with PECs given the need under the current IPC and AOS codes of practice for clear signage to be put up across car parks providing adequate notice of the scheme operating. While the signs bear the logos of PECs and notify the public of fines and court action may be welcome as a public deterrent, consideration needs to be given to the wider impact these signs may have on Mission and reputation.

Different options are available including:

- Amending policy to exclude claims issued by PECs from requiring consent under SO 931(5)
- Amending SO 931(5) to clarify that it does not relate to claims issued by PECs
- Providing guidance to Managing Trustees clarifying that the process does not exclude the use of PECs
- In any case, providing guidance to Managing Trustees setting out points to be aware of and suggesting that they consult with their circuit and district before using PECs

*****RESOLUTIONS**

46/1. The Council receives the report.

46/2. The Council reports to the Conference that it has considered the issues raised and, given that the current position provides for issuing notices but for obtaining Connexional Team consent for litigation, recommends that there be no change to the current position.