

Centenary Hall Trust and Corporate Structure for Methodist Church House (MCH) Redevelopment

Contact Name and Details	Mrs Louise C Wilkins, Conference Officer for Legal and Constitutional Practice wilkinsl@methodistchurch.org.uk
Resolutions	<p>80/1. The Council receives the report.</p> <p>80/2. The Council agrees to seek consent from the Charity Commission to amend the purpose of the Centenary Hall Trust to the purposes of the Methodist Church as set out in section 4 of the Methodist Church Act 1976.</p> <p>80/3. The Council approves the widening of the Centenary Hall Trust to permit commercial leases of Methodist Church House and for income to be used for the general purposes of the Methodist Church and for consent to be sought from the Charity Commission.</p> <p>80/4. The Council delegates authority to the Chair of the Council and Secretary of the Council to seek further amendments to the terms of the Centenary Hall Trust as advised by the Conference Officer for Legal and Constitutional Practice following receipt of Counsel's opinion.</p> <p>80/5. The Council agrees to the establishment of the charitable company limited by guarantee to be the sole managing trustee of the Centenary Hall Trust and delegates authority to the Strategy and Resources Committee to approve the terms of the governing document for the charitable company.</p>
Background Context	MC/18/35 – The Future of Methodist Church House

Centenary Hall Trust and Corporate Structure for Methodist Church House (MCH) Redevelopment

1. Anthony Collins Solicitors recently provided a report on title for the Methodist Church House (MCH) redevelopment. This report looked at the legal title and the trust arrangements for the building, and a potential governance structure for the redevelopment.

Centenary Hall Trust

2. The property is held on the Centenary Hall Trust with the Methodist Council being the managing trustees and having delegated this responsibility to the Methodist Church House Management Committee. The terms of this Trust are set out in the Charity Commission Scheme dated 4 March 1998 ("the Scheme"). This states that Methodist Church House:

'shall continue to be used as a Mission House for the furtherance and purposes of the Methodist Church (as defined in Section 4 of the Methodist Church Act 1976) outside the United Kingdom and the Republic of Ireland and subject thereto for the said purposes of the Methodist Church'.

3. The view of the solicitors is that the consent of the Charity Commission will need to be sought to amend the purposes of the Trust given that the Connexional Team exists to serve the purposes of the Methodist Church within both the United Kingdom and outside it. It is surprising that the purposes of the Trust do not reflect the extent of the whole Connexional Team given that the Scheme will have been adopted after the Divisions were dissolved and a single Connexional Team was located in MCH. The solicitors do not envisage the Charity Commission objecting to the amendment of the Trust to "the purposes of the Methodist Church" without any geographical restrictions.
4. The Scheme currently allows the managing trustees to lease surplus space within the building and clearly the intention of the Council in approving the plans for Methodist Church House is to lease surplus space. The advice from the solicitors is that the scheme provides for short term leases either for Methodist purposes or on a commercial basis but that the Council might not be able to grant a long term lease eg 99 year of surplus space, under the current Scheme. It is envisaged that the majority of leases will be for purposes of the Methodist Church eg All We Can but it suggested that it might be prudent to seek Counsel's opinion with a view to seeking an amended Charity Commission scheme that allows for as much flexibility as possible in respect of the building use. Counsel's opinion would also be helpful in clarifying how income from the property on the basis of the current Scheme (or an amended Scheme) can be utilised.
5. The reason that the terms of the Trust must be carefully considered is that the property is a permanent endowment. This means that the building can only ever be used for the purposes set out in the Trust, it cannot be leased on a long term basis as an investment. If the Council wanted to sell, it could only do so if the funds from the building were to be utilised for purchasing another property to replace Methodist Church House.

Income from Lettings – Tax Advice

6. One helpful point to note is that where a charity leases its surplus property, the income received in rent should not be taxable. This is upon the basis that the charity is not providing services to its tenants such as, for example, catering. It is however proposed that tax advice is taken in relation to the proposed use of Methodist Church House, bearing in mind; the extent to which the redeveloped property will be let for purposes outside of those in the permanent endowment trusts; the length of those leases; and the services that might be offered. This tax advice may also assist in identifying the appropriate corporate vehicle which is discussed below.

Corporate Structure

7. In providing the report on title, the solicitors have raised concerns about who is entering into the necessary legal documentation for a build of such a significant size. Within the Methodist Church managing trustee bodies are unincorporated membership associations and therefore have no legal personality. This means that bodies of managing trustees enter into contract in their own name. There is the potential for managing trustees to find themselves personally liable for debts that arise from such contracts. The concerns about personal liability can be diminished through prudence and due diligence but it is also the case that for most local churches, circuit and districts any liability that did arise could be covered from the sale of those assets. Clearly in the case of the Methodist Council, the assets held mean that any liability that arises from the redevelopment of Methodist Church House could be covered from those assets unless the members of the Council were found to have been negligent in entering into the contract. It is also important to note in any discussion about potential personal liability that all charity trustees (no matter the legal structure) hold unlimited liability if they are found to have breached their duties as charity trustees.
8. It is possible for concerns about personal liability to be allayed but the solicitors also raised concerns about the ability of the Council to enforce a contract or rely on a warranty. The reason being that members of the Council at the time of signing the contract will remain a party to a contract unless the contract or warranties are assigned or novated to new Council members.
9. The proposal has been made that a new corporate charity is established to manage the redevelopment of Methodist Church House and, in the longer term, manage the running of that building. As the new corporate vehicle will be a charity, it will need to be established either as a charitable company limited by guarantee ("CLG") or a charitable incorporation ("CIO").

Benefits of Incorporation

10. Benefits of operating through a corporate entity are as follows:
 - It has a separate legal entity and, therefore, can operate in its own name, for example, enter into contracts, own property, employ people etc. In contrast an unincorporated charity has to operate in the name of its trustees. In the case of the development of a property, having the benefit of warranties and contracts vested in the name of the charity is preferable to them being held by the individual trustees of the charity at the time. In the latter case, should a trustee cease to hold office, they would need to assign the benefit of any warranties to the new trustees. If they did not do so, there could be problems enforcing those warranties, should that become necessary.
 - A corporate structure limits the potential liability of the trustees. This is particularly important where a development is taking place and there may be a potential liability under high-worth contracts or for a high level of borrowing. In an unincorporated charity this liability sits with the trustees – it is joint and several – and if it cannot be met from the charity's funds the trustees would be personally liable.
 - In contrast a corporate charity can borrow and enter into contracts in its own name. This means that if any action is taken against the charity for breach of contract, failure to make repayments on borrowing etc., the action is usually taken against the charity itself and not the trustees.
11. The SRC recommends to the Council that the corporate charity is established as a company limited by guarantee given that the contracting parties will better understand this corporate vehicle over a CIO.

Continuation of Centenary Hall Trust with Corporate Charity

12. The Centenary Hall Trust means that Methodist Church House is held on permanent endowment trusts so the property cannot simply be transferred to the new corporate charity. The Centenary Hall Trust has to continue to exist and set out the purposes for which the property is held and how the property can be used. There is no intention or ability to wind the Trust up, although it is anticipated that the terms of the Trust can be amended with Charity Commission approval. The Centenary Hall Trust will remain as a separate permanent property endowment trust. However, it is possible to link it to the new corporate charity by, for example, having the corporate charity as the sole charity trustee under the permanent endowment trusts in place of the current charity trustees who are the members of the Methodist Council. The Scheme can be altered to allow for this and any other administrative changes using the power in section 280 of the Charities Act 2011.

Wider Connexion and Corporate status – for information

13. One point to note is that for Methodist Church House it is possible to have a corporate trustee as the managing trustee for the Trust due to the property being held on a Charity Commission Scheme that can be amended. For property held on the Model Trust, the Trust specifies at paragraph 2 who the managing trustees for different types of Methodist property are and it is not currently evident that it is possible to allow for a corporate body to be the managing trustees, without amending the Model Trust.

*****RESOLUTIONS**

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