

9. Committee on Methodist Law and Polity (1)

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SECTION A GENERAL REPORT

The Committee is charged under Standing Orders with the scrutiny of all new legislation which is proposed to the Conference in order to ensure its coherence with existing usage and Methodist polity. Various members of the Committee undertake this task and have commented upon all the proposals submitted to the Committee by the Methodist Council and various other bodies. The Committee also seeks to ensure that Standing Orders comply with any changes in legislation or case law.

The 2016 Conference directed the Committee to undertake various pieces of work and to bring Standing Order amendments to the Conference in 2017. The Committee has worked with the Safeguarding Committee and the Ministries Committee to bring Standing Order amendments to the Conference.

There were no special resolutions referred to the Committee by the 2016 Conference.

The Committee has a number of ongoing pieces of work including clarifying the governance and oversight arrangements for Fresh Expressions and what amendments can be made to paragraph 14(2A) of the Model Trusts in respect of the use of church buildings by other Christian denominations. The Committee will continue to work with the Safeguarding Committee on clarifying Standing Orders to ensure transparency, fairness and compliance with the Rehabilitation of Offenders Act 1974.

The Committee has not been able to reach a conclusion on the correct legal basis for and therefore how Standing Orders can be amended to enable a Circuit Meeting to charge a minister who leaves a manse in an unreasonable condition. The Committee will endeavour to bring Standing Order amendments to the Conference in 2018.

The Committee continues to review Standing Orders and policy proposals to ensure consistency with legislation and new legislation. The Committee is assisted in this task by the Church's membership of the Churches Legislation Advisory Service.

The Committee appointed the Law and Polity Conference Sub-committee under Standing Order 338(6) as follows: the Secretary of the Conference, the Conference Officer for Legal and Constitutional Practice, the Revds Jennifer M Dyer, Colin A Smith, Julian M Pursehouse, Miss Elizabeth H Ovey and Mr David S Walton (Chair).

***RESOLUTION

9/1. The Conference received the General Report.

SECTION B MINOR AMENDMENTS TO CPD

As usual the Committee submits a list of corrections to *Constitutional Practice and Discipline* consequent upon decisions already taken by the Conference, or to remedy minor errors and omissions.

***RESOLUTION

9/2. The Conference, by way of ratification of corrections already printed in *The Constitutional Practice and Discipline of the Methodist Church*, made the following amendments:

232(1A)(iii) '... clause (2) below or in relation to whom a risk assessment has been carried **out** for purposes.'

234(5) 'Members of the appeal panel who wish to raise any matter not referred to in the report given under clause ~~(7)~~**(2)** above ...'

363(8) 'Provision shall be made for grants from the fund [...] **to support Methodist Action on Poverty and Justice in accordance with Standing Order 1004.**'

488 'The entries in the column headed 'Reference' below identify **Deed of Union clauses and Standing Orders [...]** by number...'

545(3D) '...concerned informs the circuit Invitation Committee that he or she is seeking an extension,...'

754(1) (b) 'There shall be a deputy Warden of the Methodist Diaconal Order, being a member of the Order, **stationed to serve as such [...]** in accordance with Standing Order 315~~(...)~~**1**.'

966 (2) 'All district trustees shall, **subject to clause (5) below**, arrange for an inspection,...'

1145(4) (c) 'If the President **or Vice-President** does not uphold the objection,...'

***RESOLUTION

9/3. The Conference, by way of minor and consequential corrections, amended Standing Orders as follows:

1110(1) 'Unless one of ~~sub-~~clauses (3) to (8) below applies, and subject to ~~sub-~~clause **(8A)**,.....'

1157(12) (i) 'the name of the person or persons to whom disclosure ~~is~~ to be made

SECTION C ONWARDS FROM THE SUPREME COURT

Report

The background

1. The Conference will be familiar with the fact that in 2013, in the case of *The President of the Methodist Conference v Preston*, the Supreme Court held that ministers of the Methodist Church stationed in appointments within the Church are not employees. There is no appeal from a decision of the Supreme Court, but as the Committee stated in its report to the 2014 Conference it does not follow that if we wish that position to continue we can safely sit back and do nothing. It might be changed by Parliament or by a fresh challenge in the courts. We cannot, as a Church, do anything to prevent parliamentary legislation or, until it is mooted, to avoid or mitigate it, but we can and should consider what can be done to strengthen our defences against a renewed challenge in the courts.

2. The Committee does not suggest that such a challenge is imminent. If we take care not to dismantle the features of our polity on which the Supreme Court relied we should be safe against any attempt to overturn *Preston*, at least in relation to circuit appointments, for some years. But not for ever. Cases were decided in 1984 and 1986 which in their day seemed equally decisive authorities against ministerial employment, but less than 30 years later, in *Preston*, the Employment Appeal Tribunal and the Court of Appeal were in favour of overruling them and it was far from certain, in prospect, that the Supreme Court would not agree. The pace of change tends to accelerate rather than slow down. And the likelihood is that no preventive action will be taken until it is too late unless the nettle is grasped before the subject slides out of the consciousness of the Connexion.

3. Moreover the need to address the issues raised by the *Preston* case has alerted the Committee to the fact that our constitutional documents nowhere set out the legal status of the Methodist Church. Although there can be no doubt that it is, in law, an unincorporated association, the rights and duties of the members of such bodies are usually defined by contract and if, as the Committee believes, that is not so in our case, we need to make that clearer.

4. That consideration is of particular importance in the light of the ground on which the Supreme Court decided *Preston*. Whether a person who does work for another is an employee is usually argued and decided on the footing that there is a contract between them and that the issue is whether it is one of employment or is of another kind, for example one for services supplied by a self-employed person. In the case of *Preston*, however, the Church argued, and the court accepted, more radically, that there is no contract at all.

A recommendation

5. How should the points made in paragraphs 3 and 4 inform our approach to the issue raised in paragraphs 1 and 2? The Committee believes that there are two pointers to an answer in the leading judgment handed down in *Preston*. In the first place we read at one point that “[t]he question whether an arrangement is a legally binding contract depends upon the intentions of the parties”. Secondly it is stated elsewhere that “the disciplinary scheme [of the Methodist Church] is the same for ministers and lay members” and that “the ministry is not a distinct order or class”.

6. Taking up the first of these points, all law students in England and Wales learn that the requirements for a contract are offer, acceptance, consideration (or seal) and intention to create

legal relations. We cannot prevent a court or tribunal from finding offer, acceptance and what lawyers count as consideration (in this instance ministerial service on the one hand and stipend and accommodation on the other), but intention to create legal relations remains necessary and is entirely in our own hands.

7. Turning to the second point, the fact that the ordained ministry is not a distinct order or class reminds us that in law the basic relationship in the Methodist Church, as in any unincorporated association, is that of membership.

8. If the subject is approached from first principles, therefore, it can be seen that the issue whether there is a contract with ministers involves two successive questions: (i) when persons become members of the Methodist Church do they and the Church intend thereby to enter into a legally binding contract and (ii), if not, does that situation change when a member becomes a minister? If the answer to both questions is unassailably negative, as we should be able to ensure, then we should be able to hold the line for as long as the Church itself wishes, unless Parliament intervenes.

9. In addition to being the most fundamental in terms of legal analysis, that approach has two further advantages. The first is that in addition to dealing with the ministerial employment issue it forestalls any attempted litigation against the Church for breach of contract by members as such, the possibility of which it is, in the present climate of opinion, by no means fanciful to foresee. The second is that the primary denial of intention to create legal relations comes at the stage of entry into membership, which is likely to be uncontroversial.

A caveat

10. Although this recommendation seeks to ensure that the absence of any contractual relationship with members or ministers, as such, remains secure the Committee wishes to emphasise that that is very far from excluding the law of the land altogether from the affairs of the Church. On the contrary, there are important areas of church life in which it is of the utmost importance to be aware of and comply with legal requirements. All Methodist property and all Methodist funds are held on charitable trust, and Circuit Meetings, Church Councils, treasurers and others are subject to the law of trusts and to charity law when acting as trustees. The Church and its officers and trustees also have legal obligations to exercise due care for the safety and welfare of others, for example to persons on Methodist premises and to children and vulnerable adults in their care.

Implementation

11. What the Committee envisages is that our constitutional provisions about entry into membership should make it clear that becoming a member is a covenantal expression of commitment to Christian discipleship within the Methodist Church and of acceptance of its discipline, but is not intended on either side to create legal relations, and that those about reception into full connexion should establish that what is involved is entry into wider responsibilities and authority within the church, in addition to those already exercised by virtue of membership and existing offices, but not the creation of a new legal relationship. Draft amendments to the Deed of Union and Standing Orders to that effect are shown below.

12. It would need to be clear that these provisions were not just adopted by the Conference and published in CPD but known to and accepted by candidates for reception into membership or full connexion. That, however, is a matter not for legislation but for guidance and direction from those involved in the processes of preparation for membership and candidacy for the ministry, who are giving the subject their attention.

13. In preparing this report the Committee has consulted the Faith and Order Committee and has taken its comments into account.

Incidental points

14. Some thought needs to be given, if that has not already been done (the Committee is not aware of any), to how we mark the admission into membership of persons received into Full Connexion directly from the ministry of other communions.

15. Making it clear that the basic relationships of membership and ministry are not contractual will sharpen the need to clarify the status of other relationships and, if they are to be contractual, the consequences of that. For example Standing Order 690(2)(c) expressly requires that where a person within that Standing Order worships in a Local Church, or seeks to become involved in its life, he or she must agree to "enter into a written contract" setting out certain terms. If that is to remain its implications need to be explored.

16. The amendments we recommend would apply directly only to persons coming newly into membership or Full Connexion. They are not, however, intended to change what we maintain (and in the case of ministers have established) to be the existing position. Consideration therefore needs to be given to whether, and if so how, that position is to be brought to the attention of existing members.

17. The amendments below are framed by reference to the law of England and Wales. Consultations, similar to those required by Standing Order 919A in the case of amendments to the Model Trusts, will be required to ensure that they have the intended effect elsewhere, and are if necessary modified to that end.

Amendments to the Deed of Union

9 Privileges and Duties of Membership. (a) It is the privilege and duty of members of the Methodist Church to avail themselves of the two sacraments, namely baptism and the Lord's Supper. As membership of the Methodist Church also involves fellowship it is the duty of all members of the Methodist Church to seek to cultivate this in every possible way. The weekly class meeting has from the beginning proved to be the most effective means of maintaining among Methodists true fellowship in Christian experience. All members of the Methodist Church shall have their names entered on a class book, shall be placed under the pastoral care of a class leader or pastoral visitor and shall receive an annual ticket of membership.

(b) The privileges and duties of membership, as set out in sub-clause (a) above and appearing from Standing Orders, are commitments by each member to Christian discipleship within the Methodist Church, and to acceptance of its discipline, and by the Church to provision of the means by which that discipleship may be fully expressed, including pastoral care and oversight. Membership is therefore a covenant relationship between the member and the Church, freely entered into by the grace of God, but entry into membership has never been, and is not, intended on the part of either party to create, and does not create, a contract or other legal relations.

Amendments to Standing Orders

700 (2) By receiving persons into Full Connexion as Methodist presbyters the Conference enters into a covenant relationship with them in which they are held accountable by the Church in respect of their ministry and Christian discipleship, and are accounted for by the Church in respect of their deployment and the support they require for their ministry. ***That covenant relationship arises within their existing relationship with the Church as members, which continues, and neither entry into it nor service within it is intended to create, or does create, a contract or other legal relations.***

701 (2) By receiving persons into Full Connexion as Methodist deacons the Conference enters into a covenant relationship with them in which they are held accountable by the Church in respect of their diaconal ministry and Christian discipleship, and are accounted for by the Church in respect of their deployment and the support they require for their ministry. ***That covenant relationship arises within their existing relationship with the Church as members, which continues, and neither entry into it nor service within it is intended to create, or does create, a contract or other legal relations.***

*****RESOLUTIONS**

9/4. The Conference adopted the Report.

9/5. The Conference amended the Deed of Union as set out above.

9/6. The Conference amended Standing Orders 700 and 701 as set out above and directed that those amendments shall take effect upon confirmation of the amendment of the Deed of Union under resolution 9/5 above.

9/7. The Conference authorised and directed the Secretary of the Conference to ensure that the process described in paragraph 12 of the report is implemented and that due consideration is given to the matters referred to in paragraphs 14, 15 and 16.

SECTION D

ESTABLISHMENT OF A SUB-COMMITTEE

Report

A small group consisting of the Conference Officer for Legal and Constitutional Practice, the Complaints Worker in the Connexional Team, two discipline committee chairs, a lead member of connexional complaints teams and a convener of discipline committees, supported by a supernumerary minister, has been meeting annually since the standing orders in Part 11 (Complaints and Discipline) were introduced in 2008. The group was established on an informal basis with the aim of considering issues that had arisen within Part 11 during the course of the year and to continually keep it under review.

The Law and Polity Committee has recognised the need to formalise this group to assure members of the Church that Part 11 is continually under review. It has agreed that the group will be constituted as a sub-committee and its membership expanded to include a representative of the Safeguarding Committee.

The aim of the sub-committee shall be to assist the Conference Officer for Legal and Constitutional Practice and the Complaints Worker in fulfilling their responsibilities for administering and overseeing Part 11, to assist in interpretation of Standing Orders and to consider areas of concern. The sub-committee will be responsible for overseeing the training events for members of the Connexional Complaints Panel.

The sub-committee will annually report to the Law and Polity Committee and meet at least once a year. The membership of the sub-committee will be annually appointed by the Law and Polity Committee and will comprise:

- The Conference Officer for Legal and Constitutional Practice
- The Complaints Worker in the Connexional Team
- Two discipline committee chairs
- Two lead members of connexional complaints teams
- A convener of discipline committees
- A representative from the Safeguarding Committee

*****RESOLUTION**

9/8. The Conference received the Report.

SECTION E AMENDMENTS TO PART 11

Report

The Law and Polity Committee received a report from the complaints and discipline liaison group about complaints made against the President, District Chairs and the Secretary of the Conference. The local complaints officer in such cases is defined in Standing Order 1110(3) (set out, with proposed amendments, below). The Committee recognised however that the nature of the complaints made against such individuals and distance often mean Standing Order 1110(8A) has to be used to appoint an alternative local complaints officer in order to give better effect to the principles in Standing Order 1100.

It is however sometimes the case that complainants will view the use of SO 1110(8A), which is the general provision for appointing an alternative local complaints officer, as an indication that their complaint is not being taken seriously. The expectations of complainants could be better managed if there were a provision for delegation of the role of local complaints officer role in Standing Order 1110(3) itself. This proposed amendment to Standing Order 1110(3) would reflect the ability of a Superintendent to delegate the role of local complaints officer in SO 1110(2), albeit that this has to be in advance.

Amendment to Standing Order

1110 (3) Where the complaint is against the President, a Chair or a minister or probationer in connexional appointment (whether full-time or part-time), or against a lay connexional officer (including, for the purposes of this Standing Order, a lay member of the connexional Team) in respect of conduct in the discharge of his or her office, the local complaints officer is the Secretary of the Conference (or the President in the case of a complaint against the Secretary). ***The Secretary or the President may delegate his or her functions as the local complaints officer to a former President or Vice-President or such other member of the Church as he or she deems appropriate.*** For the purposes of this clause 'connexional appointment' includes an appointment under Standing Order 340, 340A or 341 if made by or on behalf of the Conference.

The Law and Polity Committee has considered the report to the Conference in 2016 from the Relationship and Marriage Task Group and the definition of homophobia that is now contained in Book VII Part 15. The Committee is of the view that in light of the seriousness of someone being subjected to homophobic harassment by a member of the Methodist Church it would be appropriate to include this within the categories of complaint mentioned in Standing Order 1120(4) that can be referred directly to the connexional complaints panel in accordance with Standing Order 1120(5). At present the complaints so mentioned are complaints involving allegations of sexual or racial harassment or abuse or abuse of a person with a disability. The Committee deems it appropriate to propose that homophobic harassment is included within SO 1120(4).

Amendment to Standing Order

1120 (4) If a recipient receives a complaint involving allegations of sexual, *homophobic* or racial harassment or abuse or *of the harassment or* abuse of a person with a disability (in this Part called 'an abuse complaint') or allegations of matters which in the opinion of the recipient amount or might amount to a criminal offence (in this Part called 'a criminal complaint'), he or she must inform the relevant connexional Team member before taking any other step.

The Liaison Group noted that recently a complaints team have wanted to follow more than one course of action open to them in SO 1124(11), including reference for a charge and utilise an alternative procedure in SO 1123(6). The Liaison Group's view was that the intention of SO 1124(11) is that if a team decide to refer for charges under (11) (i), the complaint is dealt with. If the team decide to use one of the alternative procedures in SO 1123(6), the team has dealt with the complaint and have no further action to take. In both instances, the following courses of action in (iii) to (v) are not then available to the team.

The group recognised that there would be a possibility of a team using more than one of the courses set out in (iii) to (v). It is therefore proposed that clarification in the Standing Orders on this point might assist complaint teams.

Amendment to Standing Order

1124 (11) If the complaints team decides that the complaint should not be dismissed, the courses open to it are the following:

- (i) to decide to refer the complaint to a Connexional Advocate for the preparation of a charge so that the matter can be dealt with by a discipline committee; *or*
- (ii) to decide that one of the alternative procedures specified in clause (6) of Standing Order 1123 should be followed;

or, if neither (i) or (ii) is adopted, one or more of the following:-

- (iii) to make a ruling on any point of dispute between the complainant and the respondent (including a point of dispute relating to the conduct of the complainant) as to:
 - (a) the interpretation of the 1976 Act, the Deed of Union, the Model Trusts or Standing Orders;
 - (b) the usage of the Church; or
 - (c) the responsibilities and obligations generally associated with a particular office within the Church;
- (iv) to issue advice to the complainant or the respondent relating to matters raised by the complaint or emerging from the complaints team's consideration of the complaint (including advice about training, mentoring and supervision);

(v) to give directions to the complainant or the respondent about how to conduct the relationship between them in the church context (including directions about how responsibilities are to be allocated for the time being or duties discharged).

In deciding whether or not the complaint should be dealt with by a discipline committee, the complaints team must have regard to the definition of a charge contained in Standing Order 1130(3) below.

*****RESOLUTIONS**

9/9. The Conference adopted the Report.

9/10. The Conference amended Standing Orders 1110(3), 1120(4) and 1124(11) as set out in the Report.

**SECTION F
STANDING ORDER 710(5)**

Report

The Ministerial Candidates and Probationers' Oversight Committee (MCPOC) raised a concern that the requirement in Standing Order 710(5) to ask all candidates within ten years of the normal pension retirement date to confirm that they can be stationed for a minimum of ten years might be contrary to the Equality Act 2010.

MCPOC upon considering legal advice has amended its policy to ask all candidates to confirm their willingness to be in the active work for at least ten years. An amendment is proposed to SO 710(5) as below to reflect this change in policy.

The exemption in SO 710(6) has been retained as there may still be other conditions of availability that will require exemptions to be considered.

710 (5) Unless an exemption is granted in accordance with clause (6) below an offer will not be accepted unless the candidate ~~can be stationed for a minimum period of ten years before 'normal Pension Date' as defined by the rules of the Methodist Ministers' Pension Scheme and meets such other~~ conditions of availability for stationing as are set by the Conference at the time of acceptance ***and provides in writing an affirmation of his or her willingness to be stationed in the active work for a minimum period of ten years.***

*****RESOLUTIONS**

9/11. The Conference adopted the Report.

9/12. The Conference amended Standing Order 710(5) as set out in the Report.

SECTION G

BENEVOLENCE FUND – STANDING ORDER 651(3)

Report

The Conference in 2016 received a memorial from the Chester-le-Street Circuit on the role that a deacon should have in the distribution of a benevolence fund.

The Conference in its response said that it was reluctant to break the link between presbyters with pastoral charge and the use of the benevolence fund as part of a presbyter's oversight of the mission of the local Church. The Conference declined the specific request in the memorial to allow a deacon or a diaconal probationer to distribute the benevolence fund. The Conference recognised that a deacon might well have a role to play in the distribution of benevolence fund monies and therefore directed the Law and Polity Committee to give expression to this by drafting a revision to Standing Order 651(3).

The Law and Polity Committee brings an amendment to Standing Order 651(3) accordingly, but in drafting the amendment recognised that there is a clear need to consider further amendments to this Standing Order in order to clarify what level of consultation is required with the communion stewards or church stewards. The Committee will raise this with the Ministries Committee.

651(3) The fund shall be applied first for the relief of poverty and distress in the congregation and neighbourhood. The Church Council may adopt and implement a scheme of distribution, and payments may also be made, in any event, at the confidential discretion of the presbyter or presbyteral probationer exercising pastoral responsibility in relation to the Local Church in consultation with *any deacon or diaconal probationers appointed to the Circuit who exercises ministry in the relevant Local Church, and with* the communion stewards, if appointed, or if not with the church stewards.

***RESOLUTIONS

9/13. The Conference adopted the Report.

9/14. The Conference amended Standing Order 651(3) as set out in the Report.