

THE FELLOWSHIP OF INDEPENDENT EVANGELICAL CHURCHES LIMITED

Model Constitution

MAGDALEN ROAD EVANGELICAL FREE CHURCH CONSTITUTION

We hereby certify this to be the Constitution adopted by the members of Magdalen Road Evangelical Free Church at a meeting of the members held on the 19th of May 2015 at Magdalen Road Evangelical Free Church, 41a Magdalen Road, Oxford.

Chairman: Secretary:

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1. DEFINITIONS

- (1) “Basis of Faith” shall mean the basis of faith of FIEC as adopted from time to time.
- “the Church” shall mean the congregation established for the purposes set out in Clause 3 whose members are admitted pursuant to Clause 4 together with the property of the congregation.
- “Church Rules” shall mean the rules governing the internal practices of the Church as may from time to time be adopted by the members of the Church. The rules must be consistent with the provisions of this Constitution.
- “FIEC” shall mean The Fellowship of Independent Evangelical Churches, registered charity number 263354.
- (2) References to Clauses and Schedules are references to Clauses and Schedules within this Constitution.
- (3) References to legislation include all amendments, replacements or re-enactments and includes all regulations, determinations and directions made or given under it.

2. NAME

The Church shall be known as Magdalen Road Evangelical Free Church.

3. PURPOSES

The purposes of the Church shall be:-

- (1) the advancement of the Christian faith in accordance with the Basis of Faith primarily but not exclusively within Oxford and the surrounding neighbourhood; and
- (2) such other charitable purposes as shall, in the opinion of the members of the Church in general meeting further the work of the Church.

4. MEMBERSHIP

Membership of the Church shall be open to such persons who profess the Christian faith in accordance with the Basis of Faith and have satisfied such other requirements as have been specified in the Church Rules.

The Managing Trustees must ensure that an accurate register of members is maintained at all times in accordance with the provisions contained in the Church Rules.

5. **HOLDING TRUSTEE**

- (1) If a Holding Trustee is required it is usually to be The Fellowship of Independent Evangelical Churches Limited subject to the acceptance by The Fellowship of Independent Evangelical Churches Limited of such appointment. However, if it is the wish of the members of the Church or if, for any reason, The Fellowship of Independent Evangelical Churches Limited is unwilling or unable to act as Holding Trustee then the Managing Trustees may make arrangements for the appointment of such alternative Holding Trustee as they shall think fit.
- (2) Subject to the approval of the members of the Church (by a simple majority at a properly convened members' meeting) the Managing Trustees shall have power to terminate the appointment of any Holding Trustee and to appoint such alternative Holding Trustee as they shall think fit.
- (3)
 - (a) The function of the Holding Trustee is to hold the legal title of real property and investments belonging to the Church and to ensure that the same is used only in furtherance of the purposes of the Church as set out in Clause 3.
 - (b) The Holding Trustee must act in accordance with all lawful instructions of the Managing Trustees unless to do so would give rise to a breach of trust.
 - (c) Unless the Holding Trustee concurs with any act involving a breach of trust it will not be liable for any act or default on the part of the Managing Trustees or any of them.
- (4) The property listed in Schedule 1 to this Constitution is held by the Holding Trustee upon special trusts.
- (5) Subject to Clause 5(3), the Holding Trustee shall, in relation to any land which it holds, have all of the powers which would be available to it as if it were the absolute owner of such land.
- (6) The Managing Trustees shall pay to the Holding Trustee such sums of money as are required by the Holding Trustee in order to give effect to the

lawful instructions of the Managing Trustees.

6. **MANAGING TRUSTEES**

- (1) The Managing Trustees of the Church are the persons appointed as Elders and those other people appointed to be Managing Trustees in accordance with the Church Rules provided that a person may not be appointed as a Managing Trustee if he is disqualified from being a trustee of any charity under section 72 of the Charities Act 1993 (as explained in Schedule 2) or any statutory extension, modification, amendment or re-enactment of that statute or under any regulations or orders made under it unless such disqualification has been waived by the Charity Commission. There shall be not less than 3 Managing Trustees.
- (2) Whenever a new Managing Trustee is appointed (s)he shall be provided with a copy of:-
 - (a) the latest annual report and accounts of the Church;
 - (b) this Constitution and Church Rules;
 - (c) any other relevant documentation relating to the property of the Church, including, in particular, details of any special trusts the property of which is held for special purposes of the Church by the Holding Trustee in accordance with Clause 5(4).

7. **POWERS OF THE MANAGING TRUSTEES**

In addition to any other powers they may have the Managing Trustees shall, in furtherance of the purposes set out in Clause 3 but no further, have the following powers:-

Staff and Volunteers

- (1) subject to Clause 10, to employ staff or engage consultants and advisers who shall not be Managing Trustees on such terms as the Managing Trustees think fit and to provide pensions to staff, their relatives and dependants;
- (2) to recruit or assist in recruiting and managing voluntary workers;

Property

- (3) to acquire, deal with and dispose of any real or personal property subject to Section 36 Charities Act 1993;

- (4) to accept any real or personal property for special purposes of the Church;

Holding Trustee

- (5) subject to the approval of the members of the Church, to appoint a Holding Trustee to hold land and investments belonging to the Church and property subject to trusts held for the special purposes of the Church and, subject to the approval of the members of the Church, to remove any Holding Trustee so appointed;

Borrowing

- (6) to borrow and, subject to Section 38 Charities Act 1993, give security for loans;

Grants and Loans

- (7) to make grants, donations or loans, to give guarantees and to give security for those guarantees;

Fund Raising

- (8) to raise funds, to invite and receive contributions provided that the Managing Trustees shall not undertake any substantial permanent trading activity;

Publicity

- (9) to hold, conduct or promote meetings, conferences, lectures, exhibitions or training courses and to disseminate information to publicise the work of the Church and other organisations operating in similar fields;

Research

- (10) to promote or carry out research and publish the results of it;

Contracts

- (11) to co-operate with and enter into contracts with any person;

Bank or building society accounts

- (12) to draw, make, accept, endorse, discount, execute and issue bills, cheques and other instruments and to operate bank or building society accounts in the name of the Church;

Investments

- (13) to invest the money of the Church in any investments, shares, securities or property (real or personal) of any nature (including investments involving liability and those not producing income) and in any location that the Managing Trustees decide;

Insurance

- (14) to insure the assets of the Church to such amount and on such terms as the Managing Trustees decide, to pay premiums out of income or capital and to use any insurance proceeds as the Managing Trustees decide (without necessarily having to restore the asset unless it is a requirement of a special trust);
- (15) to insure and to indemnify employees and voluntary workers from and against all risks incurred in the proper performance of their duties;
- (16) to take out insurance to protect the Church and property and those who use premises owned by or let or hired to the Church;
- (17) to take out indemnity insurance to cover the liability of the Managing Trustees for negligence, default, breach of duty or breach of trust in relation to the Church but this insurance may not extend to:
 - (a) any claim arising from any act or omission which a Managing Trustee knew was a breach of duty or breach of trust or which was committed by a Managing Trustee in reckless disregard of whether it was a breach of duty or breach of trust or not; or
 - (b) the costs of an unsuccessful defence to a criminal prosecution brought against a Managing Trustee in his capacity as a Managing Trustee of the Church.

Other Organisations

- (18) to establish, promote, assist or support (financially or otherwise) any charitable trusts, charitable companies, charitable industrial and charitable provident societies, charitable associations or charitable institutions whose purposes include any of the purposes of the Church;
- (19) to co-operate or join with any charity, voluntary body or public or statutory authority or any other organisation in any location whatsoever in furthering the purposes of the Church or allied charitable purposes, to exchange information and advice and to undertake joint activities with them;
- (20) to affiliate to, register with, subscribe to or join any organisation whose purposes promote, support or are in sympathy with the purposes of the Church;

Reserves

- (21) in accordance with an agreed policy, to accumulate income in order to set aside funds for special purposes or as reserves against future expenditure for such period not exceeding that permitted by law;

General

- (22) to make in consultation and with the approval of the members of the Church in general meeting rules and regulations consistent with this Constitution for the management of the Church and to agree the charitable purposes of the Church in accordance with Clause 3(2);
- (23) to do anything else within the law which promotes or helps to promote the purposes of the Church.

8. DUTY OF CARE AND EXTENT OF LIABILITY

- (1) When exercising any power in administering or managing the Church each of the Managing Trustees must use the level of care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that he/she has or claims to have ("the duty of care").
- (2) No Managing Trustee and no-one exercising any powers or responsibilities that have been delegated by the Managing Trustees shall be liable for any act or failure to act unless, in acting or failing to act, he/she has failed to discharge the duty of care.

9. CONFLICTS OF INTEREST

A Managing Trustee must absent himself/herself from any discussions of the Managing Trustees in which a conflict will or may arise between his/her duty to act solely in the interests of the Church and any personal interest (including but not limited to any personal financial interest).

10. REMUNERATION OF MANAGING TRUSTEES

- (1) Any office holder appointed in accordance with the Church Rules and any employee of the Church may receive reasonable compensation for carrying out their duties as office holders and/or employees notwithstanding that they are or may be Managing Trustees of the Church or a person connected to a Managing Trustee of the Church ("Connected Person").

- (2) Any office holder or employee receiving benefit pursuant to Clause 10(1) (or any Managing Trustee where the office holder or employee directly receiving benefit pursuant to Clause 10(1) is a Connected Person in relation to him/her) must be absent from the part of any meeting at which the terms of stipend or (where applicable) employment of the office holder or employee in question or the performance of his or her duties or (where applicable) any matter in connection with his or her employment is being discussed or determined and must not vote on any such matter provided that in relation to discussions concerning the performance of his or her duties the office holder or employee in question shall have the opportunity to address the meeting and respond to any points of concern which are raised.
- (3) At no time may a majority of Managing Trustees benefit directly or indirectly from payments made under Clause 10(1) and/or Clause 10(4). Where a payment to a Connected Person would represent an indirect benefit to the Managing Trustee and such payment would cause the number of Managing Trustees benefiting under Clause 10(1) or Clause 10(4) to be a majority of the Managing Trustees then the prior written consent of the Charity Commission to the proposed payment must be obtained.
- (4) In addition to the provisions of Clause 10(1) any Managing Trustee or Connected Person may receive reasonable and proper remuneration for goods or services provided to the Church provided that:-
 - (a) the goods or services shall actually be required by the Church;
 - (b) the Managing Trustee shall have fully disclosed to the other Managing Trustees the interest which he or she may have in and any benefit which he or she may derive either directly or indirectly from the supply of goods or services;
 - (c) the Managing Trustee or Connected Person shall not be present at or take part in any discussion relating to nor vote upon any matter connected with the supply of such goods or services; and
 - (d) the arrangements shall be approved by a majority of the other Managing Trustees who must be satisfied that it is to the advantage of the Church to employ or contract with the Managing Trustee or Connected Person in question rather than someone who has no connection with the Church.
- (5) Any other payments to a Managing Trustee or Connected Person or

arrangements involving the acquisition by a Managing Trustee or Connected Person for his own benefit of property belonging to the Church require the prior written approval of the Charity Commission unless authorised under statute from time to time.

- (6) For the avoidance of doubt nothing in this Clause shall prevent reimbursement to the Managing Trustees or Connected Person of reasonable and proper out of pocket expenses incurred in carrying out their duties and the reimbursement of the costs of purchases made on behalf of the Church, where such purchases have the prior authorisation of the Managing Trustees.
- (7) For the purposes of this Clause 10 “Connected Person” has the meaning set out in Section 188 of the Charities Act 2011 and any statutory extension, modification, amendment or re-enactment thereof (assuming for the purposes of this Constitution that all references to “trustee” in the section mean “Managing Trustee”). The relevant part of Section 188 of the Charities Act 2011 is set out in Schedule 4”.

11. MANAGING TRUSTEES TO ACT JOINTLY

- (1) The Managing Trustees must exercise their powers jointly, at properly convened meetings.
- (2) Any matter requiring a decision of the Managing Trustees shall require a simple majority of those present at a properly convened meeting.
- (3) In the event of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.

12. MANAGING TRUSTEES' MEETING

- (1) The Managing Trustees must hold at least 4 meetings in each 12 month period.
- (2) Meetings shall require at least 10 days' notice unless all of the Managing Trustees agree to a meeting being convened on shorter notice.
- (3) The chairman or any 2 of the Managing Trustees may call a meeting at any time.

13. CHAIRMAN

- (1) The Managing Trustees must elect one of their number to be chairman of their meetings and shall determine the period for which the person so elected is to continue as chairman.

- (2) The Managing Trustees present at a meeting must elect one of their number to chair that meeting if the chairman is not present, does not wish to act or the office of chairman is vacant.

14. QUORUM

No business may be transacted at a meeting of the Managing Trustees unless there are present at least one-half of the Managing Trustees for the time being or three Managing Trustees, whichever shall be the greater.

15. RECORDING OF MEETINGS

The Managing Trustees must keep proper written minutes of their meetings.

16. TERMINATION OF MANAGING TRUSTEESHIP

A Managing Trustee will cease to be a Managing Trustee if he or she:

- (1) is disqualified from acting as a trustee by Section 72 (1) Charities Act 1993 (or any statutory re-enactment or modification of that provision) unless such disqualification is waived by the Charity Commission pursuant to Section 72 (4) Charities Act 1993; or
- (2) becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs; or
- (3) is absent without the permission of the Managing Trustees from all of their meetings held within a period of 12 months and the Managing Trustees resolve (with the approval of the members of the Church) that his or her office be vacated; or
- (4) gives not less than 1 month's notice in writing of his or her intention to resign (but only if at least 3 Managing Trustees will remain in office when the notice of resignation is to take effect); or
- (5) ceases in the reasonable opinion of a majority of the other Managing Trustees to hold the Basis of Faith and his or her removal is confirmed by the members of the Church in accordance with the Church Rules; or
- (6) ceases to be a church officer as provided in the Church Rules.

17. CHURCH MEETINGS

- (1) There shall be an annual general meeting of the Church in May of each

year, or as soon as possible thereafter. The Managing Trustees shall present to the annual general meeting their report and the accounts of the Church for the preceding financial year.

- (2) The election or appointment of church officers other than Pastoral Staff shall take place in accordance with the Church Rules at the annual general meeting or at a general meeting called specifically for the purpose.
- (3) Every matter not requiring a greater majority in accordance with the Church Rules must be decided by majority decision of those eligible members present. The chairman of the meeting may cast a second or casting vote only if there is a tied vote.
- (4) There shall be such other meetings of the members of the Church in each year as laid down in the Church Rules.
- (5) Notice of each meeting must be given to the members of the Church at least 14 days before the meeting.

18. CLOSURE OF THE CHURCH

- (1) In the event that the number of members of the Church shall fall below 7 or if the Managing Trustees decide that it is necessary or advisable to dissolve the Church they shall call a meeting of all members of the Church of which not less than 21 days notice shall be given. The notice must state the terms of the resolution to be proposed. The resolution must be passed by a simple majority of the members of the Church present at the meeting.
- (2) If:-
 - (a) a resolution to close the Church is passed in accordance with Clause 18(1); or
 - (b) if the members of the Church refuse or are unable to meet to pass a resolution pursuant to Clause 18(1); or
 - (c) if for any other reason the Church ceases to operate

then the Managing Trustees shall have power, after the satisfaction of any proper debts and liabilities, to transfer any remaining personal property to such other charitable institution or institutions having purposes similar to the Church as the members of the Church shall have determined.

- (3) In the event that the Managing Trustees are prevented from complying with the provisions of Clause 18(2) because there are, for any reason, less than three Managing Trustees and no other person is prepared to act

as a Managing Trustee then the Holding Trustee must apply to the Charity Commission to be appointed as trustee for all purposes for authority to act in the winding-up of the affairs of the Church.

19. AMENDMENT OF CONSTITUTION

- (1) Subject to the provisions of this Clause, the Managing Trustees may amend the provisions of this Constitution.
- (2) Any amendment must be made under the authority of a resolution passed at a meeting of the members of the Church of which not less than 21 days notice has been given. The notice of the meeting must include notice of the resolution, setting out the terms of the amendment proposed. The amendment must be approved by at least 75% of the members of the Church present.
- (3) The Managing Trustees must not make any amendment which would:
 - (a) enable them to spend permanent endowment of the Church;
 - (b) have the effect of making the Church cease to be a charity at law.
- (4) The Managing Trustees must obtain the prior written approval of the Charity Commission before making any amendment which would:
 - (a) vary the Church's purposes;
 - (b) vary Clause 10 (remuneration of Managing Trustees); or
 - (c) vary this Clause 19; or
 - (d) vary the name of the Church.
- (5) The Managing Trustees must promptly send to the Charity Commission and the Holding Trustee a copy of any amendments made under this Clause.

SCHEDULE 1

PROPERTY HELD ON SPECIAL TRUSTS

Freehold property on Magdalen Road, Oxford known as Magdalen Road Evangelical Free Church, 41a Magdalen Road, Oxford, particularly described in an indenture made on 9th March 1904 between George Kempson and others.

Freehold property known as 5 Fern Hill Road, Oxford, registered at the Land Registry with Title Number ON9092.

SCHEDULE 2

Section 72 Charities Act 1993

A person is disqualified from being a trustee under Section 72 of the Charities Act 1993 if:

- a) he or she has been convicted of any offence involving dishonesty or deception;
- b) he or she has been adjudged bankrupt or sequestration of his/her estate has been awarded and (in either case) he/she has not been discharged;
- c) he or she has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- d) he or she has been removed from office of charity trustee by an order of the Charity Commissioners or of the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he/she was responsible or to which he/she was privy, or which he/she by his/her conduct contributed to or facilitated;
- e) he or she has been removed under Section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 from being concerned in the management or control of any body; or
- f) he or she is subject to a disqualification order made under the Company Director's Disqualification Act 1986 or the Insolvency Act 1986.

SCHEDULE 3

Connected Persons

Section 73B(5) Charities Act 1993

The following persons are “connected” with a charity trustee or trustee for a charity –

- a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
- b) the spouse or civil partner of the trustee or of any person falling within paragraph (a);
- c) a person carrying on business in partnership with the trustee or with any person falling within paragraph (a) or (b);
- d) an institution which is controlled –
 - (i) by the trustee or by any person falling within paragraph (a), (b) or (c), or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together;
- e) a body corporate in which –
 - (i) the trustee or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

Note: The above is the actual wording from the Charities Act 2006.

English law provides that a Managing Trustee cannot benefit from his/her position as a Managing Trustee. This means that they cannot receive payment from the Church for employment or other services unless payment is authorised in the Model Constitution, in statute (eg: Charities Act 2006) or by the Charity Commission or the Courts. This also means that people to whom they are connected (“Connected Persons”) cannot receive similar payments where these would result in a benefit to the Managing Trustee, unless the payments are authorised in one of the ways mentioned above. An example of this would be where the Church paid the Minister’s wife for work in connection with the Church. It would be said that the Minister (a Managing Trustee) was benefiting from the payment to his wife since it would increase their joint income. Therefore such a payment must be authorised in the Model Constitution, in statute (eg: Charities Act 2006) or by the Charity Commission or the Courts. The only payments to the Managing Trustees and Connected Persons authorised in this Constitution are those set out in Clauses 10(1) and 10(4) subject to the other provisions of Clause 10.

This note is by way of seeking to explain the situation of payments to the Managing Trustees and Connected Persons. If there is any doubt about such payments then the Managing Trustees should seek the advice/approval of the Charity Commission before making any payment.