



2021

# **Information Sheet**

## **Charitable Company June 2021**

**GOSPEL STANDARD BETHESDA FUND**

# Gospel Standard Bethesda Fund

Registered Charity 209376

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# Gospel Standard Bethesda Fund

Registered Charity 209376

## Information sheet: Charitable Company

### Introduction

This information sheet has been produced and agreed by the Gospel Standard Bethesda Fund trustees to explain the reasoning behind the proposed move from an unincorporated charity to an incorporated one. The sheet intends to address the concerns that have been raised by some supporters about this proposed move.

### Why change Bethesda?

At the outset, it must be stated that the “Objects” of the proposed incorporated charity are exactly the same as in the current charitable Scheme which in itself is based on the original Trust Deed that established Bethesda. Bethesda was established for the relief of persons in need, and in particular elderly persons in need who are sick or infirm and are either members of a Gospel Standard Church, or who regularly attend a Gospel Standard chapel, and this remains the case today.

The trustees are aware that there are those who would wish to widen the entry criteria. To do so would not be faithful to that which has been put in their trust and would be the first step in undermining Bethesda’s ethos and distinctive position. Such a move would also require express Charity Commission consent.

Bethesda’s trustees are very conscious of the need to hold to the distinct position of the Gospel Standard (GS) causes of truth as set out in the GS Articles of Faith which is the common denominator between the three charities. (The GS Committee with its responsibility for maintaining the integrity of the list of churches and ministers, the GS Trust in providing for the needs of the churches either through support or advice and GS Bethesda in meeting the needs of older persons from churches on the GS list).

The proposal for Gospel Standard Bethesda Fund to move to an incorporated charity (such as a charitable company) from an unincorporated one is a decision that has been prayerfully taken by the charity trustees (trustees). This has been done in view of the need to have a legal entity that would allow the charity to respond to the needs of the legal, social and economic environment in which it is operating, one that is very different from previous times.

A charitable company is a company limited by guarantee with charitable status. It has trustees (who are regarded as directors in company law) and members. Members of the company are legally distinct from trustees (directors) even if the same persons often occupy the roles. Members have a range of legal powers and rights relating to the articles of association and appointment of trustees.

Membership of a charitable company, depending on circumstances, is usually limited to the same people as the trustees/directors or a wider membership where the charity is dependent on its membership in carrying out its work.

Currently subscribers to the Gospel Standard Bethesda Fund are those who have applied for membership as a subscriber and been accepted by the committee (Board of Trustees). As subscribers they have limited ‘rights’ and are not legally bound in undertaking the role.

For a charitable company, members have a number of legal obligations and responsibilities placed upon them under company law. These include having a greater liability and therefore an increased risk for the actions of the charity. Although the liability of members is limited, there are legal obligations placed on them within the Memorandum and Articles of Association and they could be liable for the actions of the charity if, for example, the charity was mismanaged.

Members also have legal obligations regarding attendance at meetings and voting. Further, a member of a charitable company is considered a 'fiduciary' i.e. the powers and rights of being a member were afforded with a view to acting in the best interests of the charity.

Allied to this is that meetings of members are very structured and formal in their conduct as well as having involved voting procedures (the use of postal ballots, as at present with the unincorporated charity, would not be permissible within the articles of association).

In addition, there is a 'burden' placed on charitable companies regarding a duty to keep records of all members (up to a period of 10 years) and make these available for public inspection every working day. There are also obligations on the charity to make returns, after the AGM, within tight timescales to Companies House.

The trustees have considered the membership options for the proposed charitable company with our solicitors who are Christian lawyers, experienced in charity law. They have stressed the importance of ensuring that the type of charitable company chosen must be 'fit for purpose'. They have considered the activities that Bethesda are currently engaged in, together with our needs for the future (as outlined in the open meetings held in November 2019) and strongly advise us to adopt a 'simple model' of the trustees/directors being the members of the charitable company. Whilst this does not have wider membership, there is nevertheless a provision made within the Memorandum and Articles of Association to maintain the level of involvement of supporters, as will be explained later within the sections "How will the new charity be structured?" and "How will supporters be involved?".

Whilst at the Open Meetings it was mooted that Bethesda needed to move from an unincorporated charity to an incorporated one, it was only as the trustees were outlining the needs of Bethesda to our solicitor, that the advantages of a Charitable Company limited by guarantee, as opposed to the initial proposal of a Foundation Charitable Incorporated Organisation (FCIO) were identified. This option provides stronger governance and accountability for the Charity. It must also be noted that a FCIO does not have a wider membership. A charitable company is very similar to a FCIO in that both are without a wider membership and the trustees are not therefore proposing anything radically different from that proposed in 2019, but simply a more suitable corporate structure for the current needs of Bethesda.

Structurally, Bethesda needs to be a legal entity in its own right (which it currently is not), and to be able to enter into contracts and property transactions. In property development negotiations there are often confidentiality requirements such that business needs to be carried on 'behind closed doors'. An incorporated structure requiring the directors (trustees) to refer such matters to the wider membership would hinder and, in some cases, prevent such business, and severely tie the hands of the trustees in moving Bethesda forward. The need to refer such matters, also impacts the speed of decision making and the outcome of such transactions. All this is behind the need to be a more responsive and flexible structure.

It must not be forgotten that Bethesda is a charity responsible for the day-to-day management of three care homes and two buildings providing flatlets. The charity provides a 'home' for currently 32 residents, employs 60 full time equivalent staff and has an investment portfolio of nearly £3 million. Given the associated financial, regulatory, legislative and employment responsibilities, protecting current and future trustees from potential liabilities is also an important aspect; we need to act prudently, but not without faith.

In view of all the above, in the Lord's purposes, the trustees believe that the move to a charitable company is a right one in maintaining the purpose for which Bethesda was established.

## Who is responsible for Bethesda?

This is an important question and concern has been expressed about the 'ownership' of Bethesda.

# Gospel Standard Bethesda Fund

The current Charity Commission Scheme places the responsibility for the good management and governance of Bethesda and also the future direction of the Charity on the trustees. The trustees are responsible to serve the beneficiaries and the congregations within the causes of truth on the GS list.

Bethesda is a charity that is reliant on the Lord for the provision of financial, human and material resources and the wisdom needed to do all to the honour and glory of His Name.

The financial resources are from resident fees, rental income from the flatlets, donations, subscriptions and legacies. These latter three sources of income are provided through the kindness of individuals and churches. Sadly, due to the decline in the numbers within our churches, there are fewer coming forward to serve the Lord by working in Bethesda. This does not detract from the love and care shown to the residents by all the managers and staff in the Homes.

Although there has been provision for subscribers to Bethesda both before and after the change in status of Gospel Standard Bethesda Fund (209376) as set out in the Scheme dated 15 June 1999; this provision was identified as approving the Annual Report and Financial Statements at the AGM and voting on the appointment or re-election of trustees already nominated by the Bethesda committee. More recently postal voting has been used to agree the re-election of trustees and/or confirmation of newly appointed trustees.

In practice, the Annual Report and Financial Statements when presented at the Bethesda AGM have been approved *nem con* (without dissent) and there has never been a case where a trustee has not been elected/re-elected. This does not detract from the importance of subscribers, however, in practice the scope of their involvement in Bethesda has been linked to the AGM. Since April 2019, the current trustees have made efforts to communicate and engage with subscribers beyond the AGM. Whatever the form of the charity, this interaction helps their understanding and decision-making and is valued by the trustees.

In summary, whilst the trustees have the responsibility to run Bethesda in meeting its objectives and the needs of its beneficiaries, we desire to do so in the fear of the Lord and in conjunction with our supporters.

## How will the new charity be structured?

As the proposed charity will be a company it will operate under the Companies Act 2006 and the Memorandum and Articles of Association will need to meet the requirement of Companies House and at the same time be acceptable to the Charity Commission (The Memorandum and Articles of Association of the proposed Gospel Standard Bethesda Fund are model articles that meet this requirement).

Whatever form a charity may take, the trustees have the ultimate responsibility for the charity in fulfilling its charitable objective(s)/purpose and providing public benefit. This involves determining strategic direction and ensuring that the charity is governed appropriately and management is effective and accountable. The duties of trustees within a charity are summarised in the Charity Commission's Publication "the Essential Trustee" and are as follows:

- ensure your charity is carrying out its purposes for the public benefit (the reason for which it was set up)
- comply with your charity's governing document and the law
- acting in your charity's best interests
- ensure your charity is accountable
- manage your charity's resources responsibly
- act with reasonable care and skill

As already mentioned, whatever the charity's legal entity within charity law, it can only undertake that which is: (a) consistent with its objectives and (b) for the public benefit. The primary responsibility of a charity's trustees is to ensure that the charity adheres to these fundamental principles. Thus, the importance of having a clear and explicit Memorandum and Articles of Association to measure the effectiveness and performance of the trustees. Hence the use of the Charity Commission approved model Memorandum and Articles of Association.

For an incorporated charity (e.g. Charitable Company), the trustees will be 'directors' and have duties imposed on them both under the Charities Act 2011 and the Companies Act 2006

The main difference between the current GSBF unincorporated charity and the proposed (incorporated) Charitable Company is that the trustees will also fulfil the role of members. Members are distinct from trustees and act as the custodians of the Memorandum and Articles of Association. Additionally, they ensure that trustees who are both supportive of the charity's purpose and have the necessary capability and capacity are appointed or reappointed to the role of trustee. They also receive the annual report, financial statement of accounts and agree the appointment of auditors; this being undertaken annually at a meeting distinct from the trustees' meetings. Currently the trustees of the GSBF unincorporated charity identify new trustees and have put in place processes to ensure new trustees are able to fill the role required of them.

Members are required to conduct themselves in accordance with the requirements of Companies House and the Charity Commission. The Charity Commission has stated that:

*"In exercising their right to vote and influence the governance of the charity, members of the charity should ensure that their behaviour is not damaging to the running of the charity or to its good name.*

*The Charity Commission takes the view that members have an obligation to use their rights and exercise their vote in the best interest of the charity for which they are a member".*

To ensure the voice of supporters is heard, as set out in Clause 12.5 of the Memorandum and Articles of Association, they will be invited to an annual general meeting (AGM), to express their views and opinions on the Charity's work and performance for the preceding year. This aligns very much with the current arrangements albeit a show of hands will be used to express the opinion of supporters. (This is explained further below in the section 'How will supporters be involved'.)

In terms of when the new company is first incorporated, the first members for the proposed Gospel Standard Bethesda Fund Charitable Company will be the trustees. Although the existing trustees and future trustees will be members and charitable trustees/directors, it is important to note, as set out, that they have distinct roles, legal responsibilities and identities defined within the Memorandum and Articles of Association.

## How will trustees be accountable?

The question "How will the trustees be accountable?" has rightly been raised. The following paragraphs have been written to provide assurance and to demonstrate that the accountability will not be diminished in the proposed Charitable Company.

Above all else, the trustees desire to walk in the fear of the Lord to whom they are ultimately accountable.

To look at the practical aspects however, the following working definition is given as a reference point for the comments made below:

*"Accountability: the fact of being responsible for what you do and able to give a satisfactory reason for it, or the degree to which this happens."*

The current trustees are acutely aware of their accountability and responsibility concerning the resources the Lord has provided to Bethesda and their stewardship in fulfilling the purpose of the charity.

From a legal perspective, 'Trustees' (present and future) are/will be accountable to the Charity Commission for the way they discharge their authority and responsibilities. Incorporation adds a layer of accountability to comply with the requirements of Companies House. This does not preclude their responsibility to the beneficiaries whom they seek to serve, in making Bethesda a provision for the elderly from the congregations of the Gospel Standard chapels. The rigorous rules (within the Articles of Association) reinforce the need for trustees to be faithful stewards in their custodianship of the 'Trust Deed'.

The Articles of Association also contain a number of safeguards to ensure the accountability of the trustees in the conduct of business. In Section 4, there are detailed provisions regarding the tenure of trustees and their removal where it can be evidenced that they are not fulfilling their role. Equally, Section 7 provides limitations on the chairman. Both of these sections help prevent situations where a trustee may become a 'sitting tenant' and is not demonstrating the commitment to the charity that would be expected. In addition, provisions are in place to prevent a situation where unilateral action may be taken without the knowledge of all the trustees.

The Articles of Association (Section 10) provide a more robust approach than the current Scheme regarding conflicts of interest and conflicts of loyalty - the importance of which does need to be clearly stated in view of the relationships and ties within the GS group of chapels. This is becoming an increasing issue with the numerical decline in the churches.

The current trustees have also recently introduced a process of 'interview before appointment' of trustees: the trustees look prayerfully for the Lord to guide them to an individual who will be able to contribute to the work of Bethesda and who has the capability and capacity to do so. Once the trustees have identified a potential new trustee, they now meet with and interview the individual on a 'no commitment' basis before any appointment. This is undertaken to satisfy the trustees that the individual is fully supportive of Bethesda's ethos in meeting and maintaining the Charity's purpose.

Views have been expressed that there should be trustees from both the other GS committees, and that there should also be ministers on the Bethesda committee. As set out in this section, it is important that trustees are those led of the Lord and can bring skills and abilities to the running of Bethesda (although trustees often feel their insufficiency and look to the Lord for all needed help). Although Bethesda is an independent charity, currently there are three trustees who serve on the GS Societies, one on the GS Trust and one on the GS Baptist Library committee. In addition, there are two Bethesda trustees who are ministers of the gospel. Although Bethesda trustees serve on other committees, the confidences of those committees are respected. It is difficult to envisage a situation at the current time where there will not be an overlap of Bethesda trustees with other GS charities. (A list of current trustees is appended.)

Having the rigour and the necessary protection in place is designed to provide confidence in both the commitment and accountability of the trustees.

## How will supporters be involved?

Concern has been expressed that as the proposed Charitable Company will not have voting subscribers then there will be no voice for those who support Bethesda.

As explained in the section "Who is responsible for Bethesda?", the current Charitable Scheme does recognise subscribers with defined involvement in Bethesda. In moving to a charitable

company, the trustees are keen that supporters of the Gospel Standard Bethesda Fund are actively engaged in the work of the Charity. Furthermore, the trustees want to build on the engagement that has occurred since April 2019, by ensuring that this continues to be open and meaningful.

Within the proposed Articles of Association, Clause 12.5 sets out the obligation on the trustees to establish a supporter group, that would be an 'assembly' having clearly defined and agreed rights and responsibilities on both supporters and trustees.

As a result of feedback on the proposed move of the Gospel Standard Bethesda Fund from being an unincorporated charity to an incorporated one, the trustees have taken the opportunity to clarify further the role of supporters, by the addition within Clause 12.5 of the Memorandum and Articles of Association of the following:

*"The Trustees shall establish a group known as supporters of the Charity who will be invited to attend an AGM (or such other General Meeting of the Charity as the Trustees shall from time to time decide) and shall receive the annual report of the Charity and such other information as the Trustees from time to time think fit.*

*For the purposes of the Companies Act, the supporters are distinct from Members of the Charity. At the AGM supporters will be invited to express their opinion on the following matters by means of a show of hands:*

- 1. The appointment of new trustees*
- 2. The reappointment of trustees standing for re-election*
- 3. The annual report and financial statements".*

We trust that this addition provides the necessary assurance that the opinions and voice of supporters will be heard and taken into consideration.

Besides the annual meeting being an opportunity for the trustees to report on their past (financial and operational) performance, time will be made available to share and discuss, in the fear the Lord, their proposals for the forthcoming operating period. Consequently, it is expected that the meeting would be longer than the current AGM in order to provide the opportunity for open and purposeful discussion. The intention is that supporters would also be kept informed with newsletters and updates, together with, as appropriate, the opportunity to attend additional open meetings during the year.

The trustees are very aware of the importance of those that they seek to serve. Whether called a 'subscriber' or 'supporter' makes no difference, as the desire of the trustees is to seek 'meaningful engagement' rather than an approach which may be perceived as 'tokenism'.

The trustees desire to build a culture of engagement, that is felt to be essential to further develop the proposed Charity. If the Lord will, this approach will be continued by the next generation of trustees, yet at the same time maintaining the integrity and purpose of the Charity.

Finally, the trustees would assure current subscribers that they are certainly not casting off their valued support, but they (subscribers) will remain under the name of 'supporters', the dialogue will be more open, and their involvement greater rather than less!

## How can the trustees be trusted?

This is another interesting question in view of the concerns and comments received regarding the trustees becoming unaccountable and being divisive.



# Gospel Standard Bethesda Fund

This document has attempted to address the concerns regarding the accountability of the trustees and their commitment, in recognising the importance of those they seek to serve and their involvement in the process.

The desire of the trustees is to move Bethesda forward, in the fear of the Lord, and the move to a charitable company is not intended in any way to be divisive.

It is true to say that none of the trustees looked to be appointed as a trustee to Bethesda and each one has been led of the Lord to take up this responsibility that has been placed on them.

The trustees are very aware of the danger of leaning on their own understanding and their desire is to know and to do the Lord's will. Two Scriptures, amongst others, are perhaps descriptive of the trustee's pathway:

*"Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths". (Proverbs 3: 5-6)*

*"...neither know we what to do: but our eyes are upon thee". (2 Chronicles 20:12)*

The trustees prayerfully desire to see the pillar of cloud by day and pillar of fire by night going before them.

The trustees can testify that the Lord has gone before them, especially during this time of COVID-19 and the responsibilities regarding the safety and well-being of the residents and staff in the Homes. We would acknowledge that the Lord has appeared and has made a way possible which seemed impossible in addressing the issue of shortfalls in funding for local authority supported residents: all local authorities now pay full rates. The trustees have also introduced rigorous financial planning and control, to ensure the stewardship of the resources the Lord has provided.

There are still challenges ahead regarding occupancy in the Homes and their viability. In one Home staff costs are equivalent to resident fees and in another staff costs are in excess of resident fees. Only one Home is above breakeven.

Trustees also appreciate that some are looking for speedy action, yet it must be remembered that the decisions made by Bethesda trustees impact very much on the lives of people and must be done in the right way.

The trustees, as mentioned, seek the Lord's appearing to know His perfect will for Bethesda. The proposal to move from an unincorporated to an incorporated charity has not been made lightly but prayerfully. As a consequence, trustees would seek the prayerful interest of Bethesda's supporters in helping them make this move which the trustees believe, in the fear of the Lord, is right for the Charity.

The trustees desire that their conduct might be *"... but so did not I, because of the fear of God"* (Nehemiah 5:15) and that in *"that in all things he might have the preeminence"*. (Colossians 1:18)

Finalised and agreed by the Trustees.

M Ridout  
Chairman GSBF  
May 2021

**List of Current Trustees**

**June 2021**

Name	Chapel
Andrew Collins (Vice-Chairman)	Lamberhurst
Samuel Cottingham	Eastbourne
Philip Pocock	South Moreton
Michael Ridout (Chairman)	(Bethesda) Southampton
Ray Saunders	(Priory Chapel) Maidstone
David Stevens (Treasurer)	(Ebenezer) Ripley
Richard Woodhams	(Jireh) Haywards Heath