ADDENDUM 5
to Set Aside Motion delivered
to Methodist House 27th January 2017.

Concerning line 596 of the decision of the panel.

At line 596 of the panel's decision is the declaration:

"*In accordance with Methodist Church practice the burden of proof in this investigation was judged on the "balance of probabilities."*

This is in line with S.O. 1133(8c):

"The standard of proof required to establish a charge is the balance of probability."

The panel felt the need to define what this system of judgment meant at Line 599:

"This meant that the complaints team had to be convinced that the complaint was 51% likely to be true; that is, the complainants' story only had to be slightly more plausible than the respondent's story. Expressed another way, the complainant's case would need to be accepted as more likely than not to be true for the complaint to succeed; that it is more probably than not."

This is an inadequate definition of the system of "balance of probabilities". The panel's definition of the system is faulty.

In particular it fails to point out that decisions may not be made subjectively without forensic examination and assessment. The panel quotes the percentage of 51%, but demonstrates no attempt of how to measure probability so as to achieve this percentage.

This standard of proof is not defined further in the Standing Orders. However, the system is well known in law. It is used in civil courts.

The phrase "balance of probabilities" does not mean that the judge may decide what is *probably the truth on a whim or a hunch -* yet that is what seems to have occurred in this case. Such is even implied by the team's own definition of the system, for their definition does not include any *forensic* obligations placed upon the judge under such a system.

The panel states that it "had to be convinced". In fact the true position is that the panel *needs to work in order to convince itself.*

The two statements may seem to mean the same thing, but they do not, for one of the essentials of the "balance of probabilities" system is that the judge may – and indeed should – take evidence from other, often outside, sources.

In the end the onus is on the judge to *weigh* the two sides – and this requires measurement and judicial assessment.

There are rules and principles involved in the "balance of probabilities". The balance of the arguments put must be carefully considered and interrogated forensically.

It is clear that the inquiry panel had little more than a layman's view of the rules qualifying the system of judgement on the balance of probabilities. This was one of the core reasons why the inquiry was a failure.

As with the system of "beyond reasonable doubt" in criminal law, in the system of "balance of probabilities" there must be a desire to find "best evidence". This is required in order to achieve the best measure of the "balance of probabilities".

This "best evidence" may be documentary or forensic evidence – and such will generally out-weigh verbal evidence in the "balance of probabilities."

If, after reviewing documentary evidence and such, the tribunal is still left in doubt, the question is resolved by a rule that the asserting party carries the burden of proof.

There is no position of "reasonable doubt" with the system of "balance of probabilities". The fact that an accuser has provided evidence, but not *sufficient* evidence, to give his case the greater probability, *does not leave any lurking doubt* over the accused.

The probability of both sides must be considered.

Probabilities are measured. The more *improbable* the event, the *stronger* the evidence must be to substantiate it. The *more* probable the event might be, the required evidence to substantiate it is *less.*

A well-known example of this rule is told to students. One side in a case states that a creature seen walking in the public area of Regent's Park (where there is a Zoo) was a Lion. The other side says it was an Alsatian. Which is the more probable?

An investigation will help.

Lions are rarely seen walking around our parks. And even in Regent's Park Zoo they are locked away in cages. There are keepers at the Zoo whose job it is to ensure that they do not get out. Therefore probability is low –unless evidence is, perhaps, taken from the keepers that a lion escaped. Even so, there is still, perhaps, a probability that the lion would stay away from public areas for fear of being caught.

Nevertheless, it is true that there *are* lions in Regents Park. So the measure of probability cannot be absolute zero. However, to raise that probability level higher would require more evidence – and *strong evidence*.

Other hand, how many Alsatians does one find in Regents Park? Investigation might show that there are many Alsatian owners who regularly walk their dogs in the park. This is high probability and requires less evidence to support it.

This is how probabilities are weighed and measured. Judges in the above homily would wish to hear *strong* evidence before raising the probability that the creature was a Lion.

Best evidence is the essential element. The strong forensic evidence of a photograph of a lion roaming the park could establish the measure of probability. Counting the lions in the zoo would also help.

The key point is that the balance of probabilities is not reached on a hunch – nor on the experience of the judge who simply looks at the initial statements in a case.

<u>The likelihood of facts must be investigated.</u> *<u>Probability must be forensically</u> measured.*

There appears to be no such measurement of probabilities in the considerations of this panel. They work on the basis of what "*is more likely"* or "*more plausible*". This is a <u>subjective</u> approach. They take the view that the respondents are right – and that the complainant must prove 51% that he is right. That is not how the system works. <u>The procedure begins with equal probability or improbability on both sides; the judges then measure evidence, and assess the balance.</u>

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There are many examples of failures by the panel in the present case to properly *measure* the probability of an issue. For the sake of brevity I will list just a few.

A.

"Wishing to become a superintendent."

The rules on probability, as in the "lion example" above, are particularly applicable in one part of this present case. An accusation is raised that I wished to become a superintendent and take on the active life.

If I were a thirty year old man, this idea might be *probable.*

But is it probable in the case of an eighty year old man? For that to be judged probable, very *strong* evidence would be required.

This allegation originates in Line 185:

"*The complainant then presented a paper which proposed his own immediate appointment as acting superintendent."*

The basis for this appears to be a letter (line 205) sent by someone to the panel - detailing yet *another* letter which was actually written to a separate person.

There appears to have been no attempt to see the *original* document, which was clearly the best evidence and would have supported the probability one way or the other.

In measuring on the *basis of probabilities*, the further from "best evidence" that the matter is, the less the measure of probability. The less probable the matter is, the *stronger* the evidence must be to contradict it. When the panel accepted this evidence, it should have realised it was *not strong* – and attempted to find stronger (better) evidence to support the allegation. It clearly did not do so.

There appears to have been no attempt to assess the measure of probability.

The panel does appear to be aware of this failing in its work.

B.

The Westwood email.

Line 410.

"The Rev Westwood… came forward waving a paper at him saying "it was an email from the District Chair John Hellyer that he was to be allowed four minutes to make any comment about the item."

There are many points about the meeting of September 16th 2014 on which the balance of probabilities should be measured, this is a particularly pertinent one.

Rev Westwood's contention was that the email was from the District Chair. This appears to have been accepted as "probable" by the panel.

However, there was another side to the probabilities which they did not assess and measure.

(i) Rev Westwood would not allow me to see this email at the meeting or later – why not, when it would have established her right to interrupt me?

(ii) Rev Westwood was on sabbatical during this period. There was no apparent reason why she might have been called in from that sabbatical to make the intervention – *for Rev. Luscombe was actually in charge of the matter under debate and was available*.

(iii) Further, when responding to my grievance, *Rev Westwood made no mention of this email.* That was odd, for it would be powerful evidence that the District Chair had allowed her to intervene as she did. Why should she leave that evidence out of her response?

(iv) Rev Westwood later claimed that there had been an arrangement for her to take over the chair of the Circuit meeting – *yet the minutes do not record that she did so.*

These questions raise a probability that Rev Westwood was exceeding her authority in by-passing Rev Luscombe in this meeting.

How did that probability balance against the verbal assertion by Rev Westwood? We cannot know – for the panel *did not work towards measuring that balance.*

In this example, the *best evidence* to use in *finding the balance* is the supposed email itself. In spite of my repeated requests, the panel

appears to have made *no move towards locating and securing that email.*

This again demonstrates that they did not understand how they should properly make a judgement based on the "balance of probabilities".

There is some further documentary evidence which might measure the balance in this example. In her response to my grievance, Rev Westwood states:

"*What follows is largely constructed from notes made at the meeting*[1]"

If there were notes, those notes are "best evidence".

In fact, due to her actions rather than her words at the meeting in question, I began to suspect that the paper of the email she flourished were in fact the supposed "notes" she was taking – for she had no other paper with her.

The key reason why the panel should have obtained the email is that the complaints which they were investigating began with my allegations concerning the manner in which the circuit meeting of September 2014 was run and recorded. The content of this supposed email was the essential element in determining the manner in which the meeting was run.

How many points on which probability could be measured *were available to the panel* – and how many *did they actually use*?

It seems that their balance of probability measure was based solely on what Rev Westwood said. As was once famously said in court *"well, she would say that wouldn't she?*

I do not criticise Rev Westwood here. That is not the point of this paper. I criticise the panel – because it is quite clear that there was no desire at all to properly measure the level of probability in this dispute. Such was their duty – and they failed to carry it out.

They trusted Rev Westwood, they did not trust me – that was their simplistic balance of probability. They thought it "more likely" that she was right and I was wrong. On what basis of probability was that decision taken?

[1] Westwood response line 2

C. Balance of Probabilities influenced by delay.

The balance of probabilities is also influenced by availability of evidence.

This is sometimes an issue if one of the parties does not attend a hearing or does not tender evidence to the hearing. If such is because of reasonable or unavoidable delay, the judge cannot fully consider the balance of probabilities.

In other circumstances, a judge may demand to see certain evidence, particularly "best evidence" which is being withheld from him - if he considers such evidence necessary to properly measure the balance of probabilities. The alternative might be for him to abandon the case.

In this present case, the panel decided that it was reasonable that the withholding of help to the complainant in obtaining various documents and witnesses was "not disadvantageous".(line 268)

This particular evidence was not *inadmissible*, and the withholding of it was potentially a breach of Standing Orders. To measure the balance of probabilities, the panel should have seen the documents and witnesses I wanted to provide. They did not.

Worse, it seems that their action was, in fact, a *direct intervention* which affected the balance of probabilities in favour of one side against the other. Best evidence was not sought, indeed, it was avoided – by the panel.

The panel had no right to do this. By doing so, it made itself incapable of properly considering the balance of probabilities.

A tribunal, which is working on the basis of a balance of probabilities, may not intervene in the preparation and submission of evidence in a manner that unjustly tilts the balance of probabilities; for this makes the balance an impossible goal. All evidence must be considered if the balance is to be fair and correct. In fact, the more evidence - and the stronger the evidence - it considers, the better chance it has of assessing which is "best evidence" - and therefore the best measurement of the balance of probabilities.

It is one thing to fail to look for evidence – it is quite another to refuse to look at certain evidence.

The only solution in this case was for the panel to first resolve the question of the "undertaking" (line 770). Only then could I have acquired the evidence I wished to present. And only then could the panel reach a fair measure of the balance of probabilities.

This aspect of the balance of probabilities affects the entire decision of the panel.

D. Medical Opinions.

Another area where the panel incorrectly applied the rules of the balance of probabilities was in its assessment of my health.

Actions were taken and judgments made - without reference to medical opinion from my doctor and the Conquest Hospital in Hastings - that I was too ill to attend the panel's hearing. I was taken into hospital twice during the latter parts of this complaints procedure.

At line 135 the panel states:

"*The team therefore believed that, as he was well enough to write, collate and send these documents, he would have been well enough either to speak with us or to answer our much briefer questions in writing*"

They thought it "more likely" that I would lie about facts *which could be easily checked by the panel*.

Is "more likely" a proper assessment of probability? What about "best evidence"? This is a lazy judge who cannot be bothered with doing the job properly.

Where is the *forensic* assessment of probability here? The opinion is a mere hunch.

Let us examine the possibilities of measuring the probability.

The judgement was that it was *probable* that I was fit to attend the panel meeting because *I was fit enough* to write the voluminous letters and reports which I submitted to the panel over the period of three or four months. There was therefore *some apparent evidence* on which to base that assessment of probability.

But was it *"best evidence"* - and were *other probabilities* explored and measured? Did the probability against me reach the 51%?

A means of finding "best evidence" on this aspect was available. There was possible recourse to consider the views of my G.P. I offered this. It was available to them, but *they did not ask for it*, nor did they wish to consider it. This, I contend, would have affected the balance of probabilities considerably in my favour.

As to the voluminous writing - my friend Peter Hill went to see Alan Bolton on November 29th. During that meeting he not only described

my health to Rev Bolton, but also detailed how I was able to *apparently* write as much as I did.

When I first became ill, I contacted Peter Hill. We set up a system for dealing with the matter. I would sketch letters and such, send them to Peter, or he would record what I said on the telephone with a dictaphone. He would email drafts to me. I would later add to these drafts on the telephone.

Peter also made several trips from London to Bexhill (for I was not fit to travel) and he took dictation from me. I recall at least two whole days doing this, for I found it very tiring.

This was not an easy process, but the only one that I was capable of. Peter told me that he described this to Alan Bolton. He added that he thought it was affecting my health. Alan will no doubt confirm this.

The evidence from my doctor – and also from Peter Hill and Alan Bolton - was available to the panel. They chose not to seek it, and therefore did not consider it. Thus the balance of probability was unjustly weighted against me.

The panel decided that it was "more plausible" or "more likely" that I was *not* telling the truth about my health than that I *was* telling the truth. They did not see the need to examine such further evidence – because they did not understand the system of "the balance of probabilities".

Looking at the rules of the balance of probability, was it really *probable* that I was in some way faking my ill-health - *when I had to go into hospital twice* in the latter stages of this complaints procedure?

Surely it was highly *probable* that I was too ill to attend the meeting?

The rule is: the more *improbable* the event, the *stronger* the evidence must be to substantiate the assertion that it is probable. What was the strength of the evidence that the panel decided put the *improbability* of my claims over 51%? Apparently, it was a mere hunch.

Is it probable that I could fool the doctor and the hospital and that I was actually fit enough to attend the hearing? Or is this improbable?

If one considers that it is *less* probable (because doctors and hospitals are experts) then one must search for corroborative evidence to support any contrary contention - for the level of evidence to make it *improbable* must be *strong.*

In fact the panel did obtain some further evidence, though perhaps by accident.

The panel was given evidence that appeared to strengthen the probability that I was fit enough to attend the hearing.

Although ill – and advised against doing any work by my G.P. - I fulfilled a long-term engagement at a local church. I also visited a care home. This was several weeks after coming out of hospital for the first time.

Word of this (which actually constituted a breach of confidence) reached the ears of the panel. This was added to the measure of the probability that I was faking my illness.

If this is what the panel thought constituted a "51% probability", then it was achieved with evidence that was at least *second-hand hearsay* evidence. This was hardly "best evidence".

On a hunch and on second hand hearsay evidence, the panel simply contended that it was *probable* that I was fit enough to attend the inquiry. They demonstrated no desire to know anything of the probabilities on the other side of this fact at issue. There was no proper measurement of the balance of probabilities.

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From the above, it is clear that errors were made in the use of the system of "balance of probabilities".

I refer you to S.O. 1100 (3 vii):

"*there should be a means of correcting any errors which may be made."*

Throughout the procedure, my protests about the way the panel was acting were ignored.

The panel did not comply with this Standing Order.

In conclusion, I refer to S.O. 1100 (3 vi) which states:

"the person or body making the decision at each stage should be competent to do so"

It is clear from the above (and elsewhere in the decision) that the persons on this panel had little or no idea of how to assess a case on *the balance of probabilities.* Their own definition of the system is faulty and means that decisions were made subjectively without forensic examination and assessment. In general, only one side of the probabilities was assessed.

This indicates not only that they were incompetent to judge the case, but also that they breached S.O. 1133 8c:

"(c) The standard of proof required to establish a charge is the balance of probability."

They did not achieve the standard of proof necessary to establish their charges under the rules of the system for judging on *the balance of probabilities.*

This was because they were largely ignorant of the rules of the system of judgement they were using.

They do not appear to appreciate that the probability of *both sides* must be examined and measured in order to balance the probabilities. Their practice, as determined in their definition was simply to assess the probability – or likelihood – of one side.

Consider again how, in the example of the Lion and the Alsatian in Regents Park, probabilities of *both* sides are examined.

Is there any similarity in technique between judgment in that story and what occurred in this present case?

I think not.

The system is demanded of them by Standing Orders, yet they demonstrated that they knew little or nothing of it.

The decision of this incompetent panel should therefore be declared null and void. It should be expunged from the record.

The true fault lies with the Complaints team management, for ministers such as those who supported Mr. Kitchin cannot be expected to know the detail of the rules on "balance of probabilities". They needed guidance. Even Mr. Kitchin, though a magistrate, does not demonstrate that he is conversant with the rules of the system. Such panels of inquiry need more effective back-up from those who choose them to make such judgements.

I point you to our Methodist guide "Positive Working Together" (2015) and urge you to stop the downward conflict cycle of this matter at this point and answer the question, "*how does the church expect the Rev Peter Timms and the respondents in this – and others who might become involved at this point - to respond to the conflict which has arisen"?*

If you do not do this, you will allow the conflict cycle to run further and become even more destructive.

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