

September 20, 2021

## FAQs: The UMC and the Boy Scouts

### *1. What is the crux of the disagreement between the Boy Scouts and The United Methodist Church?*

The Boy Scouts of America (BSA) and its local councils have entered an \$850 million settlement to address approximately 84,000 child sexual abuse claims. The bankruptcy counsel representing the various local churches and the national committee with Chancellors and other leaders representing The United Methodist Church's interests in the BSA bankruptcy is very disappointed and quite concerned that the BSA did not include its sponsoring organizations, charter groups like the local UMC churches, in the \$850 million settlement with the claimants.

The BSA agreed to indemnify the local UMC churches against a number of things, including the claims of child sexual abuse, and those indemnity provisions are in the Charter Agreements. The indemnity was placed in the Charter Agreements to ensure the BSA would cover any costs associated with claims like those being made by the survivors of child sex abuse. The local UMC churches were not supposed to be required to pay anything toward a settlement involving issues with the conduct of anyone associated with the BSA.

The BSA is offering to cover all charter organizations for any claims after 1976 but that offer comes with some inappropriate strings attached. In order for the BSA to honor their indemnity agreement, they are now requiring all UMC local churches to provide their insurance coverage for any specific claims not covered by the BSA insurance. That means that any congregation with a non-BSA claim for the same year there is a BSA claim, the local church **will not** have insurance coverage for that non-BSA claim. Our lawyers and leaders have rejected this offer from the BSA because of the improper strings attached that are not part of the indemnity in the Charter Agreements. Our local churches should not have to surrender their insurance policies to have the BSA provide the indemnity in the Charter Agreements. The BSA is not honoring their commitment to indemnify the local UMC churches.

The bankruptcy lawyers representing the local churches that filed proofs of claim last year, the national committee, and the Virginia Conference leadership strongly believe the BSA has a legal and moral obligation to honor the indemnity provision in the Charter Agreements.

The BSA's failure to do so is distressing. Nationwide, as many as 5,000 United Methodist congregations – or more than 15 percent of U.S. congregations – are now exposed to potential claims by the survivor claimants. Charter Organizations were promised by the BSA to be covered by their insurance, but at this time, it is not clear to

what extent United Methodist congregations will be covered by the BSA. The UMC is proceeding to deal with this issue without support from the BSA as they agreed in the Charter Agreements. The local UMC churches now need to protect themselves going forward as the Charter Agreements with the BSA in their current form are not being honored by the BSA.

## ***2. What is a Facilities Use Agreement and why does the church want the Boy Scouts to sign one?***

A Facilities Use Agreement, or FUA, is a contract that governs how a third party is allowed to use local church property. The Conference has provided a FUA that is being used by the other Conferences during this most difficult time instead of the Charter Agreement. The FUA requires that the Boy Scouts abide by the rules, regulations, policies, and directives of the local UMC church and the BSA will now assume all liability pertaining to the activities it engages in the local church.

The Charter Agreement put certain legal requirements on the local UMC church and the local UMC church took on those legal requirements when the BSA agreed to indemnify the local UMC church for any damages or legal fees. Now that the BSA has made the decision not to indemnify the local UMC churches under the Charter Agreements, the legal relationship needs to change so the BSA assumes that legal liability and the local UMC church does not. The FUA provides that protection to the local UMC church. FUAs are widely used by churches and other non-profit entities.

We have provided a [template](#) (link provided) for the FUA. This agreement was prepared by the General Commission on United Methodist Men and slightly modified for the Virginia Conference.

Please note that the Boy Scouts and their Councils have also recently begun circulating their own template Facilities Use Agreement. Their FUA does not provide sufficient coverage for local UMC churches, is not endorsed by UMC leadership, and should not be basis for future Boy Scouts activities at churches.

## ***3. Will churches be breaching their legal agreements with the Boy Scouts if they terminate the Charter Agreement and seek to replace it with an FUA?***

No. The Boy Scouts were the first to breach their Charter Agreement when they chose to expose The United Methodist Church to potential child sexual abuse claims in the current bankruptcy. The BSA did this by not honoring the indemnity provision in the various Charter Agreements. Honoring such indemnity provisions would have meant that any settlement by the Boy Scouts of any claims would include those that signed a Charter Agreement, like the local UMC churches.

When a party, such as the Boy Scouts here, decides not to honor the Charter Agreement, the local UMC churches have a choice: the local UMC church can terminate the Charter

Agreement or refuse to sign a new Charter Agreement with the BSA. When one party decides to no longer honor an agreement, the other party to an agreement is not obligated to continue to honor that same agreement.

There is no requirement that a termination or cancellation clause be in a legal agreement and the Charter Agreements we have reviewed do not have termination or cancellation provisions. When one is not contained in the agreement, the agreement can be terminated by either party without notice.

The BSA's decision not to honor the indemnity clause is a material breach of the Charter Agreement. Local UMC churches relied on the indemnity clause to protect the local church from any damages or the payment of attorney's fees to defend a claim. The BSA's decision not to honor the indemnity provision means that the local UMC churches are responsible for any potential damages, attorneys' fees, and costs that may arise because of the conduct of those associated with the BSA.

The above answer is the considered opinion of the UMC's national legal team, the Virginia Conference Chancellor, and chancellors serving other conferences.

#### ***4. From a practical standpoint, what does the FUA mean for scouting activities at a church?***

The FUA does not alter in any way a church's ability to be fully supportive of the Boy Scouts. Rather, it shifts the legal liability to the Boy Scouts, where it should be, and better protects the church from claims in the future.

If the local church wants to go forward with the Troop and the BSA Council refuses to sign the FUA, then the BSA is making the decision that it no longer wants to have a relationship with the local UMC church and the Troop in question. The ministry with the BSA does not change by terminating the Charter Agreement and moving to the FUA. The Boy Scouts may claim it does, but that is just not accurate. The BSA prefers the Charter Agreement but that is not the only way to have a relationship with the local UMC church.

To reiterate, the church is in no way disbanding troops. If the Boy Scouts wish to keep their activities at a local UMC, they are welcome to do so by signing the FUA. The local church needs the FUA to protect the legal interests and the assets of the church. If the BSA decides it will not enter into the FUA, then it is free to find a different organization for the Troop in question.

If the local UMC church decides to keep the current Charter Agreement in place or sign a new Charter Agreement, it should make sure that there is enough insurance in place to cover any claims that may arise with the BSA using the local UMC church's facility. It is unlikely that most churches will be able to afford the insurance premiums necessary to provide the level of protection necessary.

### ***5. Why is the Facilities Use Agreement only to be in place until December 31, 2021?***

It is essential that The United Methodist Church in Virginia and nationwide re-evaluate our relationship with the Boy Scouts. We recognize that many children have benefited from Boy Scouts programs over many decades at local UMC churches.

It is our understanding, based on publicly available information, that the BSA is planning to emerge from bankruptcy in mid-December 2021. However, this is a quite fluid situation and could change. For the reasons state above, it is important that we have FUAs through at least the end of the year. It may be appropriate to consider returning to charter agreements after that.

### ***6. What if a church wishes to continue with a Charter Agreement?***

For the reasons stated above, this is strongly discouraged as it exposes the local UMC church to great and needless risk. The local church is unnecessarily assuming potential significant legal liability if it continues with a Charter Agreement and not a FUA with the BSA.

Once the BSA emerges from bankruptcy, they will again be eligible to be sued by anyone for claims that arise after the bankruptcy. If a claim is filed after that bankruptcy protection ends for the BSA, the local UMC church will be vulnerable to being a defendant in the claim with the BSA. If local UMC churches choose the continued Charter Agreement and not the path that the Virginia Conference and the national organization are recommending, the local church should obtain insurance that will provide for a substantial legal defense and pay any potential judgment if there is a claim against the BSA and the local church. Such insurance is very expensive, but it should be purchased if a Charter Agreement is in place. Many of the local UMC churches will not be able to afford the premium for such insurance coverage.

### ***7. Who owns a troop's assets and how will that be impacted by the shift to a Facilities Use Agreement?***

A Boy Scout Troop is not a legal entity. The Troop is like a Sunday School class of the local church, a gathered group whose activities can take place in many locations.

As such, any assets that are used by the Troop are assets of the chartered organization, the local church. Even if the Troop raised money to purchase something, it is owned by the chartered organization, the local church. The local church can transfer those assets to another chartered organization if the local church ceases being a sponsor of the Troop.

***8. Who from the Boy Scouts should sign the FUA agreement?***

The Boy Scouts local council is the entity that should sign the FUA for a Troop, as the local council is the proper legal entity, not the Troop. Whether the local council is willing to sign the FUA is a different matter, and they may refuse.

***9. Does the new agreement need to contain language nullifying any previous agreements?***

No. The local church should send a letter to the local BSA Council terminating the Charter Agreement and requiring the Local BSA Council to execute the FUA. If the local BSA Council refuses to sign the FUA, the local church should no longer host the Troop.

***10. What about the Cub Scouts?***

They are part of the Boy Scouts of America. As such, Cub Scout matters should be addressed in the same way as Boy Scouts matters.

***11. Where can I get additional information?***

Here are links to three notable documents

[August 25 National UMC Press Release](#)

[September 8, 2021 Letter from Bishop Lewis](#)

[September 10, 2021 Letter from Steve Summers on FUAs](#)

***12. What is next in this process?***

A national United Methodist leadership team has been formed to help develop principles, guidelines, and action steps to lead the church through the unfolding BSA bankruptcy and its impact on United Methodist chartered organizations. The team, chaired by Bishop John Schol, includes representatives of the Council of Bishops, as well as persons with financial, legal, and communications expertise.

We will share information throughout the Virginia Conference as it becomes available.

***13. What can I do to help with this situation?***

First and foremost, pray and pray fervently for the survivors of child sex abuse and their families. This tragedy is also a reminder to be vigilant, to update your Safe Sanctuary Policy, and continue to review your policy to ensure the congregation is following the policy.

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