

# Paper P1

Law and polity advisory group  
Appeal, reference and  
constitutional review between  
councils of the Church

United Church 2016  
Church 2016  
Reformed Church 2016  
Church 2016



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## Law and polity advisory group

Appeal, reference and constitutional review between councils of the Church

### Basic Information

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<b>Action required</b>	Decision
<b>Draft resolution(s)</b>	<b>Mission Council resolves to propose to the General Assembly the following amendments to the Structure of the URC and to the Rules of Procedure (the Rules changes to take effect only if the Structure changes are ratified)</b>

### Summary of Content

<b>Subject and aim(s)</b>	To amend and clarify the mechanism for appeals from more local councils of the Church to wider councils; to introduce a procedure for reviewing decisions of more local councils which are believed to lie outside their competence.
<b>Main points</b>	The proposals: clarify who can appeal; confirm that a wider council can substitute its own decision on an appeal; allow appeals out of time when fairness or the interests of the Church require this; provide for hearing by a commission as the normal procedure for disposal of appeals; and allow a wider council, following constitutional review, to quash a more local council's decision taken outside its competence or contravening a binding resolution of the Assembly
<b>Previous relevant documents</b>	
<b>Consultation has taken place with...</b>	

### Summary of Impact

<b>Financial</b>	Appeal hearings already have a cost in terms of time and travel. The proposals may increase their frequency, but the regular use of commissions would reduce the number of people involved.
<b>External (e.g. ecumenical)</b>	Decisions of an ecumenical area meeting are now clearly brought within the URC oversight mechanism if they have implications for the URC or any part of it.

# Appeal, reference and constitutional review between councils of the Church

- A. The law and polity advisory group (LPAG) was asked by the former Clerk of Assembly (Margaret Carrick-Smith) and General Secretary (Roberta Rominger) to look at the church's rules for appeals from its more local to its wider councils. The topic was introduced at the group's meeting in June 2014 and the general principles discussed at that meeting. Agreement having been reached on the main points, a detailed draft was presented for the group's November meeting. The current draft, reflecting one alteration asked for in November, was adopted by the group's meeting in June 2015 and commended to Mission Council.
- B. The proposed amendments seek:
- B.1. to remedy one clear omission from para 5 of the Structure as it stands (the lack of any appeal from an ecumenical area meeting, even if it has itself determined an appeal from a local church);
  - B.2. to clarify who can appeal;
  - B.3. to resolve any doubt whether a wider council can substitute its own decision on an appeal;
  - B.4. to allow appeals out of time when fairness or the interests of the Church require this;
  - B.5. to provide for hearing by a commission as the normal procedure for disposal of appeals.
- C. They also introduce a new procedure – 'constitutional review' – whereby a wider council can, on application or on its own initiative, review a more local council's action when that action is believed to lie outside the more local council's competence or to contravene a binding resolution of the General Assembly.
- D. They do not cover decisions made by trust bodies, or by members of elders' meetings when acting as trustees, since these are not decisions of councils of the Church.
- E. Proposed Structure para 5**
- E.1. The first three sub-paragraphs distinguish the three ways in which a council's decision may be brought before a wider council for review.
  - E.2. An appeal is appropriate when a council's decision aggrieves individuals (or some other council) who wish to challenge it, and have standing to do so. A reference, on the other hand, is made when a council wishes a difference arising in the local church, ecumenical area, province or nation under its oversight to be considered at a wider level – this can include questions that lie within the referring council's own competence, but which it feels have a wider import or would benefit from being considered elsewhere.

- E.3. Appeal and reference are both concerned with policy decisions, and can be used when it is felt that the more local council's decision is simply wrong. Para 5.4 indicates that the wider council can substitute its own judgment for that of the more local council. Constitutional review, on the other hand, is not about the rights and wrongs of policy: it is about a more local council arrogating a wider council's power to itself without authority, or taking action contrary to the Basis of Union, Structure of the URC or a binding resolution of Assembly. Here there is no question of substituting a decision: the outcome of a successful review application is simply that the lower council's decision is declared a nullity.

## **F. Proposed Rule of Procedure 8**

### **F.1. Appeals**

- F.1.1. Following the principle of subsidiarity, nobody can appeal from a local church decision made within its competence except a member (or the elders' meeting collectively) of that church. The definition of 'dissentient' in rule 8.21 makes this clear.
- F.1.2. Comparable provisions apply to appeals from the ordinary decisions of wider councils. More local councils affected by an ecumenical area meeting or synod decision can also appeal from it. Finally, if a wider council has determined an appeal to it, the parties to that appeal are also given the right of further appeal.
- F.1.3. Time limits and procedure once an appeal is initiated are broadly carried over from the existing rules. So is the rule that action on a decision is halted once it is clear that an appeal is being pursued. However, the wider council with jurisdiction is allowed to lift the stay in appropriate cases, and its moderator can waive time limits when fairness or the church's interests so dictate.

### **F.2. References**

- F.2.1. References are made only by councils, not by individuals. They are in themselves not of a litigious nature, but represent the referring council's judgment that other minds than its own should be brought to bear on the difference or dispute in question. It did not seem necessary to impose time limits on such action. Once a reference has been made, however, the question passes out of the referring council's hands, so there is a stay on further action similar to that flowing from an appeal.

### **F.3. Constitutional review**

- F.3.1. It is important to be clear that constitutional review is very different from the other two processes. Appeal and reference are appropriate when a question is difficult or controversial, but they do not suggest any breach of URC rules. A constitutional review application (CRA), however, does suggest such a breach. The procedure does not, therefore, take away from the local church (or intermediate council) any competence that it had: rather it suggests that the church or council in question was claiming a competence it did not have, or acting in disregard of a mandatory procedure.
- F.3.2. (Illustration: if a local church objects to a synod decision to commission the publication of a booklet about local community projects for the involvement of church members – arguing that it is too expensive, and contentious in its selection – the remedy is an appeal; since that comes clearly within synod function (xiv) and a decision about how to discharge that function is therefore a policy decision (not a constitutional decision). However, if the synod has

decided to allow all retired ministers a vote in its decisions, which a local church feels has 'drowned out' local church opinion on important questions, a CRA is appropriate. Since the Structure stipulates that such ministers shall be associate members of the synod without a vote, the decision to give them a vote (and any decision where those votes have swung the balance) are nullities, and the CRA enables this to be authoritatively stated.)

- F.3.3. Rule 8.9.3 allows a person or council which could appeal against a decision on policy grounds to make a CRA where that is believed appropriate. But there may be cases where a council takes a decision that is very popular locally, yet still outside its powers. In order that the constitution of the URC may be respected, it is necessary for people outside that council to be able to initiate a constitutional review. Rule 8.9.1-2 suggests that the General Secretary, or a person named by a Synod Moderator (probably following a synod executive discussion) for the purpose, should be able to apply alone; otherwise any three members of the wider council can bring their concern for adjudication by it. The clerk of the council with jurisdiction, however, is not designated to make the application since it will be his/her task to decide independently whether there is a *prima facie* case. If there is not, the CRA will proceed no further.
- F.3.4. We have not suggested any strict time limit for a CRA since sometimes there may be a long time-lag between a local church decision and the synod or its officers learning of it. (There may be a case, though, for a time limit where the CRA is made by a dissident).

#### **F.4. Commissions**

- F.4.1. Much of the section on commission procedure is carried over directly from the existing rules. What is new is the provision that hearing by a commission of 3 or 5 persons, which then reports to the full council with jurisdiction (or to Mission Council, if the review of a synod's decision needs urgent disposal), should be the norm. The existing rules allow disposal by a commission only if the parties agree.
- F.4.2. If a commission's decision is accepted on all sides there seems no need to take up the full council's time. Otherwise it becomes a report to the full council (or Mission Council), which can (a) confirm it, (b) embark upon a plenary rehearing or (c) refer the case further 'up' (e.g. from a synod to the Assembly). We envisage both the latter courses being rare.

#### **F.5. Recording outcomes**

- F.5.1 The final provision, apart from definitions, requires the minutes of any council whose decision is reversed or annulled to be annotated to reflect that fact.

#### **G. Resolution**

The following changes of wording are therefore proposed to the structure of the URC:

**Mission Council resolves to propose to the General Assembly the following replacements in the Structure of the URC and in the Rules of Procedure (the Rules changes to take effect only if the Structure changes are ratified).**

## **Structure of the URC**

### **5. Appeal, Reference and Constitutional Review**

- 5.1. Any decision of a URC Church Meeting within an area of ecumenical cooperation may be taken by way of appeal to the area meeting. A decision of any other URC Church Meeting may be taken by way of appeal to the synod on which the local church concerned is represented. Any decision of an ecumenical area meeting having implications for the United Reformed Church or any part thereof [with the exception of decisions concerning Local Ecumenical Partnerships or Union Churches] may be taken by way of appeal to the synod on which local churches in the area are represented. Any decision of a synod may be taken by way of appeal to the General Assembly.
- 5.2. A Church Meeting may itself refer any dispute or difference arising within the local church for resolution by the synod. An ecumenical area meeting may refer any dispute or difference arising within the area for resolution by the synod. A synod may refer any dispute or difference arising within the province or nation under its oversight for resolution by the General Assembly.
- 5.3. The Synod may declare any decision of a Church Meeting within the province or nation under its oversight, or any decision of an ecumenical area meeting within that province or nation having implications for the United Reformed Church or any part thereof, which is (or has been reached by a procedure) incompatible with the Basis of Union, the Structure of the URC, the constitution of the ecumenical area (where applicable) or any rule or resolution of Assembly binding on the local church or the ecumenical area to be a nullity. The General Assembly may declare any decision of a synod to be a nullity on analogous grounds. The review of any decision with a view to declaring it a nullity shall be known as constitutional review.
- 5.4. Appeals, references and constitutional review under this paragraph shall be subject to conditions and processes laid down by the Assembly in Rules of Procedure. A wider council determining an appeal or reference may either substitute its own decision for that of the more local council, or remit the issue to the more local council for reconsideration. No procedure governed by this paragraph shall be used to review decisions reached under the ministerial disciplinary process or the incapacity procedure.
- 5.5. The decision of the General Assembly on any matter which has come before it on appeal, reference or constitutional review shall be final and binding.

## Rules of Procedure

### 8. Appeal, Reference and Constitutional Review (Structure, paragraph 5)

#### I – Appeals

- 8.1. The right to appeal from a decision of a Church Meeting belongs to (a) the elders' meeting of the local church concerned and (b) any dissentient.<sup>1</sup>
- 8.2. The right to appeal from a decision of an ecumenical area meeting belongs:
- 8.2.1 In the case of a decision in appeal proceedings, to (a) the appellant in those proceedings, (b) the respondent council in those proceedings and (c) any dissentient;
- 8.2.2 In the case of any other decision, to (a) the Church Meeting of any local church of the URC subject to the oversight of the area meeting and (b) any dissentient.
- 8.3. The right to appeal from a decision of a synod belongs:
- 8.3.1 In the case of a decision in appeal proceedings, to (a) the appellant in those proceedings, (b) the respondent council in those proceedings and (c) any dissentient;
- 8.3.2 In the case of any other decision, to (a) the Church Meeting of any local church subject to the oversight of the synod, (b) any ecumenical area meeting subject to the oversight of the synod and (c) any dissentient.
- 8.4. The following time limits apply to appeals governed by rules 8.1 to 8.3:
- 8.4.1 The potential appellant must, within ten days of the decision, request the clerk of the respondent council, in writing, to supply a copy of the minute of the decision.
- 8.4.2 This copy minute must be supplied within ten days of the request.
- 8.4.3 Within ten days of receiving such copy minute, the appellant must notify his or her desire to appeal, in writing, to the clerk of the council with jurisdiction.
- 8.4.4. For the purpose of rule 8.4.1, the date of a decision shall be
- (i) in the case of decisions taken at a plenary meeting of the synod, the date of that meeting;
- (ii) in the case of decisions taken by officers or committees under powers delegated by the synod, the earliest of the following (a) the date on which the

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<sup>1</sup> For definitions see rule 8.21

decision is communicated in writing to the appellant (or to church secretaries, if the appellant is a local church); (b) the date on which the decision is published on a synod website; or (c) the date of the next plenary meeting of the synod after the decision.

- 8.4.5 An appellant may appeal out of time, giving reasons for the delay, but such an appeal shall only be entertained if the Moderator of the council with jurisdiction, after considering the reasons given for the delay and (if he or she thinks fit) inviting comments on behalf of the respondent council, so directs in the interests of the Church or of fairness.
- 8.5. On receiving due notice of a desire to appeal, the clerk of the council with jurisdiction must forthwith notify the clerk of the respondent council. The effect of this shall be to stay the action of the respondent council pending the decision in the appeal proceedings, unless the council with jurisdiction, on the application of the respondent council, lifts the stay.

## II – References

- 8.6. A council of the church wishing to refer a dispute or difference for resolution by a wider council under paragraph 5.2 of the Structure may do so, either without taking any decision of its own on the subject-matter, or by submitting a decision it has already taken to the wider council's judgment.
- 8.7. The effect of a resolution to refer shall be to stay any action or further decision of the referring council on the subject-matter of the reference pending a decision on that reference, unless the council with jurisdiction, on the application of the referring council, lifts the stay.
- 8.8. In either case the clerk of the referring council must, within ten days of the resolution to refer, transmit to the clerk of the council with jurisdiction a copy minute of the resolution and the names of any members of the referring council who appear willing and able to present the issues to the council with jurisdiction.

## III – Constitutional review

- 8.9. A decision of a synod or any more local council of the church which is not already the subject of an appeal or reference may be considered for constitutional review on the application of
- 8.9.1 in the case of a synod decision, (a) any three members of the General Assembly or (b) the General Secretary
- 8.9.2 in the case of any other decision, (a) any three members of the synod having oversight of the council taking the decision or (b) a member of that synod designated by the Synod Moderator
- 8.9.3 in any case, of a council or person who would be entitled to appeal from the decision.



- 8.10. A council or person wishing to apply for constitutional review of a decision must request the clerk of the respondent council, in writing, to supply a copy of the minute of the decision. There is no time limit for the making of this request but it should be done as soon as possible after the applicant has become aware of the decision. The copy minute must be supplied within ten days of the request. Within ten days of receiving such copy minute, the applicant must notify his request for a review, in writing, to the clerk of the council with jurisdiction. In case of urgency the request may be notified in advance of receiving the copy minute.
- 8.11. On receiving an application, the clerk of the council with jurisdiction must rule whether there is a *prima facie* case that the decision in question is incompatible with any of the authorities listed in paragraph 5.3 of the Structure. If not, he or she is to inform the applicant and no further action shall be taken; except that the applicant may require the clerk of a synod to reconsider his or her ruling after consulting the Clerk of Assembly.
- 8.12. If there is held to be a *prima facie* case, the clerk of the council with jurisdiction must forthwith notify the clerk of the respondent council. The effect of this shall be to stay the action of the respondent council pending the decision on the review.

#### IV – Commissions, their procedure and their reports

- 8.13. As soon as the clerk of the council with jurisdiction has received due notice of an appeal or reference, or has decided there is a *prima facie* case for constitutional review, the officers of Assembly (in the case of the General Assembly), the executive committee or other body charged with the synod's business between sessions (in the case of a synod), or the corresponding organ of an ecumenical area meeting (in the case of such meeting) shall appoint a commission to hear the case and report to the full council. The commission shall consist of either three or five members of the council with jurisdiction, except that one person who is not such a member may be appointed in respect of some particular relevant expertise. That person must be a member of the United Reformed Church or, in the case of an ecumenical area meeting only, of one of the other denominations represented on the meeting. No individual personally concerned with the case may serve on the commission. The commission shall proceed as it sees fit subject to the following principles.
- 8.14. An appellant, or the applicants for constitutional review, shall have the right and may be required to appear at a meeting of the commission. A council referring a dispute or difference for resolution must also appear, unless the individuals named under rule 8.8 appear and the commission considers itself adequately informed regarding the issues in dispute. A respondent council must also appear in support of its decision.
- 8.15. Individual parties appear in person; a council of the church appears by two or more members authorised by the council to represent it.
- 8.16. Appeals, references and applications for constitutional review shall be accompanied by all relevant records and papers. Appellants and applicants shall be entitled to see such papers as they deem necessary in order to bring their case before the commission.

- 8.17. Commissions proceed in the matter in the following order:
- (a) call for and read minutes and papers relevant to the case
  - (b) hear and question the parties
  - (c) consider and decide upon their report in the absence of the parties
  - (d) the parties being recalled, intimate the recommended decision to them
  - (e) report in writing to the council with jurisdiction through its clerk, who supplies copies of the report to the parties.
- 8.18. If all parties notify the commission, at the close of the hearing or in writing through the Clerk of the council with jurisdiction within seven days thereafter, that they acquiesce in the decision it recommends, then that decision shall become final and have effect as a decision of the full council. The commission's report shall be presented to the council with jurisdiction for information only.
- 8.19. Except where the foregoing provision applies, the commission's report shall be presented to the full council with jurisdiction at its next meeting (or, if the council with jurisdiction is the General Assembly and the commission sees need for a swift disposal, to Mission Council) and the recommended decision shall become final if confirmed by a simple majority. The commission may, if it thinks fit, lift any stay on actions of the respondent council at the close of the hearing. If the full council does not confirm the commission's recommendation it may reconsider the case in plenary session (following the same procedure as prescribed for the commission). The General Assembly may alternatively direct Mission Council to reconsider the case in plenary session; and any other council may refer the matter under rule 8.6 to the next wider council.
- 8.20. If a decision of any council of the church is reversed or declared a nullity on appeal or constitutional review, or the decision of a wider council substituted for it, the clerk of the respondent council must annotate accordingly the record of the decision in that council's minute book, and enter in the minute book a copy of the wider council's decision.

## V – Definitions

- 8.21. Throughout rule 8:

'appellant' means the person or council appealing to a wider council of the church

'Clerk', in relation to a church meeting, means the church secretary, and in relation to an ecumenical area meeting, means its secretary

'constitutional review' has the meaning ascribed in paragraph 5.3 of the Structure of the URC

'council with jurisdiction' means the council competent to hear a particular appeal, reference or constitutional review

‘decision’ of a council of the church includes an express decision not to take any action, or the refusal by any council (or by the person presiding at its meeting) to consider a proposal for such action

‘decision in appeal proceedings’ means the decision of a wider council of the church on appeal from a more local council

‘dissentient’, in relation to any decision of a council of the church, means a member of that council who dissents from the decision.

‘general decision’ means any decision of a council of the church except a decision in appeal proceedings.

‘minute’ of a decision includes, where no formal minute was made, a record of the decision made by the clerk of the respondent council at the request of an appellant or a person applying for constitutional review

‘Moderator’, in relation to a council with jurisdiction, includes the presiding member, by whatever title, of an ecumenical area meeting. In relation to the General Assembly, the moderators shall agree between themselves which one is to act in relation to a particular appeal as soon as it is notified, and the term ‘moderator’ in this rule shall thereafter apply only to the moderator so acting. A moderator in the sense of this rule may however appoint a deputy to act under the rule throughout a particular appeal.

‘respondent council’ means the council of the church whose decision is currently under appeal to a wider council or has been referred for constitutional review.

