

# Paper M4

Law and Polity Advisory Group  
Appeal, Reference, and  
Constitutional Review

United Church 2017  
Church 2017  
Reformed Church 2017  
Church



# Paper M4

## Law and Polity Advisory Group Appeal, Reference, and Constitutional Review

### Basic Information

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<b>Action required</b>	Decision
<b>Draft resolution(s)</b>	<p><b>Resolution 1: Acting on behalf of General Assembly, Mission Council adopts the following amendments to the Structure of the URC: &lt;text as in paper&gt;.</b></p> <p><b>Resolution 2: Acting on behalf of General Assembly, Mission Council makes the changes to the Rules of Procedure as set out in paper M4 of Mission Council May 2017.</b></p>

### Summary of Content

<b>Subject and aim(s)</b>	Updating and clarifying appeals procedure.
<b>Main points</b>	Following reference to the Synods, the changes to the Structure are now ready for a final vote. The consequent changes to the Rules of Procedure are now also brought to Mission Council. Following legal advice (in part three of this paper), LPAG do not recommend making mediation a formal part of these processes, but this does not prevent its informal use.
<b>Previous relevant documents</b>	Reports to, and Record of, General Assembly 2016. Paper P1 of Mission Council, March 2016.
<b>Consultation has taken place with...</b>	Synods, and the Legal Advisor.

### Summary of Impact

<b>Financial</b>	Nil.
<b>External (e.g. ecumenical)</b>	Decreases possibilities for reputational damage.

# Appeal, reference, and constitutional review

## 1. Changes to the Structure.

1.1. The proposed changes to the Structure were passed unanimously by the General Assembly in July 2016, and referred to the Synods. One Synod (Thames North) has resolved that they be not proceeded with. The National Synod of Scotland has not so resolved, but has asked that the matter be discussed at Mission Council.

1.2. The changes are now presented to Mission Council for approval, and this requires a two thirds majority. Mission council is free to accept or reject the changes, but cannot amend them at this stage.

1.3. This the proposed new version of the relevant section of the Structure. The numbers reflect the numbers that the clauses will have in the Structure:

**Acting on behalf of General Assembly, Mission Council adopts the following amendments to the Structure of the URC:**

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

**5.1. Any decision of a Church Meeting within an area of ecumenical experiment may be taken by way of appeal to the area meeting. A decision of any other 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 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.**

2. Changes to the Rules of Procedure.

2.1 The following changes to the Rules of Procedure are proposed, to enable the changes to the Structure to be put into effect. A simple majority is required.

2.2 The proposed changes to the Rules of Procedure are set out below. The numbering reflects the numbering to be used in the Rules of Procedure:

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

9.0 Limit of applicability. In single congregational Local Ecumenical Partnerships and Union Churches, these rules shall only apply to business that clearly comes under the jurisdiction of the United Reformed Church, or when it has been agreed by the participating denominations that these rules be used. In such a case, ecumenical representatives may serve on a Commission, as agreed by all parties.

### **I – Appeals**

9.1 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 dissident.<sup>1</sup>

9.2 The right to appeal from a decision of an ecumenical Area Meeting belongs:  
 9.2.1 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 dissident;  
 9.2.2 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 dissident.

9.3 The right to appeal from a decision of a Synod belongs:  
 9.3.1 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 dissident;  
 9.3.2 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 dissident.

9.4 The following time limits apply to appeals governed by rules 9.1 to 9.3:  
 9.4.1 The potential appellant must, within fourteen days of the decision, request the Clerk of the respondent council, in writing, to supply a copy of the minute of the decision.  
 9.4.2 This copy minute must be supplied within fourteen days of the request.  
 9.4.3 Within fourteen 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.

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<sup>1</sup> For definitions see rule 9.20

- 9.4.4 For the purpose of rule 9.4.1, 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 decision is communicated in writing to the appellant (or to Church Secretaries, if the appellant is a local church);
    - (b) the date of the next plenary meeting of the synod after the decision.

9.4.5 An appellant may appeal out of time, giving reasons for the delay, but such an appeal shall only be entertained if the Moderator and Clerk of the council with jurisdiction, after considering the reasons given for the delay and (if they think fit) inviting comments on behalf of the respondent council, so directs in the interests of the Church or of fairness.

- 9.5 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

- 9.6 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.
- 9.7 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.
- 9.8 In either case the Clerk of the referring council must, within fourteen 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

- 9.9 A decision of a Synod or any more local council of the church which seems to be in contravention of the Basis of Union or the Structure of the URC, the Rules of Procedure, or a binding resolution of the General Assembly, and which is not already the subject of an appeal or reference may be considered for constitutional review on the application of
- 9.9.1 in the case of a Synod decision,
    - (a) any three members of the General Assembly or
    - (b) a majority decision of the Assembly Officers
    - (c) the resolution of any two Church Meetings within the Synod taking the decision
  - 9.9.2 in the case of any other decision,
    - (a) any three members of the Synod having oversight of the council taking the decision who are not also members of the council taking the decision or

9.9.3 in any case, of a council or person who would be entitled to appeal from the decision.

- 9.10 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. This must be done within fourteen days after the applicant has become aware of the decision. The copy minute must be supplied within fourteen days of the request. Within fourteen days of receiving such copy minute, the applicant must notify his or her request for a review, in writing setting out their reasons, to the Clerk of the council with jurisdiction. In case of urgency the request may be notified in advance of receiving the copy minute.
- 9.11 The Clerk of the council with jurisdiction must forthwith notify the Clerk of the respondent council of the application, and 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**

- 9.12 As soon as the Clerk of the council with jurisdiction has received due notice of an appeal or reference 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 five members of the council with jurisdiction representing at least three different churches within that council, 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.
- 9.13 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 9.8 appear and the commission considers itself adequately informed regarding the issues in dispute. A respondent council must also appear in support of its decision.
- 9.14 Individual parties appear in person; a council of the church appears by two or more members authorised by the council to represent it.
- 9.15 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.
- 9.16 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 decision to them
  - (e) report in writing to the council with jurisdiction through its Clerk, who supplies copies of the report to the parties.

- 9.17 The decision of the commission shall have effect as a decision of the full council that commissioned it. The commission's report shall be presented to the council with jurisdiction for information only, at the council's next meeting.
- 9.18 Decisions of the council in 9.17 may be appealed to the next wider council according to 9.1 above.
- 9.19 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

- 9.20 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.
- 'ecumenical area meeting' means an area of ecumenical cooperation as defined under paragraph 2(5) of the Structure.
- '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.

2.3 Resolution: **Acting on behalf of General Assembly, Mission Council makes the changes to the Rules of Procedure as set out in paper M4 of Mission Council May 2017.**

3. Mediation

3.1 LPAG spent considerable time at several meetings considering how mediation could be incorporated into the appeals procedure. LPAG was aware that this has never been a formal part of any appeals procedure since 1972. Although LPAG spent a good deal of time trying to meet this request, it was simply unable to do so, because every attempt to do so created more problems than it solved.

3.2 LPAG was guided in reaching this conclusion by formal legal advice, received from the Legal Advisor, in November 2016, which we accepted, and which is reproduced here for Mission Council:

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I have been looking at how mediation can be introduced to the Church Appeal process. I know that this is something that Mission Council has said that it wants to have as a feature of the amended appeals procedure but I have reservations about the practicality of introducing it for an appeal or indeed if introducing mediation at such a stage would be workable in practice.

In my view Mediation is better suited to primary decision making in respect of disputes between individuals or a group where one person has authority to make decisions on behalf of the body they represent preferably applied before the decision that is being appealed is made. In saying this I think it could have a role where an appeal is between individuals who have the power and authority to make decisions without the need to refer to another body. The court of appeal runs a mediation service whose function is to either resolve appeals or to narrow the issues in appeals which will then go to a formal hearing to resolve. Although this may at first look attractive my view is that unfortunately Mediation will not work well in a church context unless the appeal related to a dispute is between two individuals or an individual and a body that is represented by an individual who has the full authority of that body to make concessions and decisions on its behalf. For this reason I do not think that Mediation will work where the appeal is between an individual and a council of the church as it would not be possible for the individual representing that Council to make concessions and decisions on behalf of that council. To do so would mean that the individual would be able to vary a decision of a council reached as a result of discussions by the whole council as part of a democratic decision making process. In my view they could not have the authority they need to take part in a mediation in a meaningful way and the process would not accord with the democratic way in which the primary decision was made.

In my view if Mediation is to be used it would be better as a tool to aid primary decision making. It could be that a mediator is made available in advance of a meeting so that issues can be talked through and hopefully resolved before the meeting takes place. Alternatively it might be that during a meeting once differences to a proposal are identified which can't be resolved by general discussions within the meeting the making of the decision in respect of that particular piece of the business could be delayed until those involved have gone through a mediation process. This could be difficult to work in practice and would only do so if those involved agreed to enter into it and be bound by the outcome. If not then either mediation would not happen or it would be gone through with the risk that the outcome is disregarded by those that remained determined to oppose a particular decision which would or certainly



could be counter productive. This would also be a way of adding further delay to the making of a decision.

A better way in such a situation in my view would be to use the consensus decision making process (as currently used) which largely achieves all that mediation would, and will result in a decision being made much sooner than would be the case with mediation and also without the risks.

It seems to me that if an appeal is to be what it says then the appeal has to be heard by a body that has the power to make a decision. The appellant is able to make the same points within their appeal that they would have done in mediation but clearly the process would be different. One of the decisions available to the appeal body may be to refer the matter back for reconsideration by the original council if there has been a procedural irregularity or alternatively to make a decision that resolves the matter one way or the other. The important thing in my view is that the appeal body is vested with the authority to make a decision whereas a mediation is not and those taking part may not be. An appeal hearing also means that in terms of timing there will be more certainty as to when an issue is likely to be resolved.

In short I do not see that mediation assists the appeal process in that it can't make a decision. That is not the function of mediation although that is the purpose of an appeal. I appreciate that it could be used to narrow issues in dispute but in my view that would only assist where the parties are in a position with authority to make decisions. Even then if the parties agreed a position within the mediation it would not necessarily be binding on the original decision making body as the mediation does not have the authority to do this. In such a situation as a result of a mediation my view is that the issue could only be referred back to the original decision making body to reconsider which could then lead to a continuing loop developing between the decision making body and mediation without the issue being resolved. (I appreciate that both parties have to agree to a mediation, and so would probably be concluded by one party withdrawing consent. Any process would also need to be time limited so that it could not go on and on).

As a result my view is that despite the view expressed by Mission Council it would be best if mediation is not introduced into the appeals process. If mediation is to be introduced then this should be at an earlier stage although my preference would be to continue with consensus decision making over mediation as mediation builds in an unnecessary delay. If it is decided to delay a decision then it is better that this occurs as a result of a decision that this should happen rather than it happening by default through mediation.

*Andrew Middleton  
Legal Advisor  
3 November 2016*

