

# Paper P2

Law and polity advisory group  
Report to Mission Council  
on the group's work and  
terms of reference

United Church 2014  
Church 2014  
**Reformed**  
Church 2014  
**Church**



# Law and polity advisory group: Report to Mission Council on the group's work and terms of reference

## Basic Information

<b>Contact name and email address</b>	Dr Augur Pearce (Secretary) <a href="mailto:augur@dunelm.org.uk">augur@dunelm.org.uk</a>
<b>Action required</b>	Part I for information only  Part II for decision – to amend and clarify the group's 2007 terms of reference and composition, including provision for attendance of a sub-group at General Assembly and Mission Council
<b>Draft resolution(s)</b>	<b>See end of document</b>
<b>Alternative options to consider, if any</b>	The draft resolution can be amended to confine the group's function to issues of the civil law, or to issues of the church's internal polity and constitutional change. If it is passed unamended the group will be concerned with both.

## Summary of Content

<b>Subject and aim(s)</b>	To report on the group's work to date and bring its formal terms of reference into line with the demands made upon it.
<b>Main points</b>	Part I lists and briefly summarises the topics on which the church has consulted the group since its first members were appointed in 2010.  Part II recognises a discrepancy between this range of topics and the purposes for which the group's formation was originally proposed in 2007. The draft resolution seeks to rectify this; to clarify who can refer issues to the group; to amend the group's membership slightly from the 2007 pattern; to indemnify the group's members against claims; and to give the group a more formal role in scrutiny of church legislative proposals.
<b>Previous relevant documents</b>	Mission Council minute of October 2007 recording the establishment of the group.
<b>Consultation has taken place with...</b>	The former holders of the offices chiefly affected (clerk of Assembly and general secretary) attended preliminary discussions leading to this report.

## Summary of Impact

<b>Financial</b>	<ol style="list-style-type: none"> <li>The draft resolution contains an indemnity for errors and omissions against liability in the course of the group's civil law functions.</li> <li>The draft resolution envisages a sub-group at Mission Council and General Assembly, which might consist mainly of existing members of those bodies but would include at least one advisory group member and thus add one person's board, lodging and travel costs.</li> </ol>
<b>External (e.g. ecumenical)</b>	None

# Report to Mission Council on the group's work and terms of reference

The law and polity advisory group was established in principle by a resolution of Mission Council in October 2007; but the first appointments were not made to the group until the General Assembly of 2010.

This report serves two purposes. Part I indicates progress on our current activity and the topics we have handled in the past. Part II proposes modifications to our terms of reference (and, in the light of these, to our membership).

The changes in Part II are suggested because, over the four years of our active existence to date, the church (acting mainly through the general secretary and clerk of Assembly) has looked to us for briefings and opinions on the law of the land (also thought of as the 'civil' or 'temporal' law), as this affects the United Reformed Church. We believe that, in responding to such requests, we have responded to a genuine need in the church. It is one which our membership is well-suited to meet. But a careful reading of the 2007 resolution establishing us suggests this is not what the word 'law' in our title was meant to indicate, and we have therefore gone beyond our existing terms of reference. If Mission Council foresees a continuing demand for assistance of this nature, it makes sense to regularise it by adjusting those terms.

## I : PAST AND CURRENT BUSINESS

### 1. Entry of United Reformed Church funds on the Register of Charities

After the Charities Act 2006, regulations excepting most church funds from entry on the Register were qualified by a charity annual income limit of £100,000. A group set up by the United Reformed Church Trust discussed with the Charity Commission the issues this would cause for local churches of the United Reformed Church, which had never before been asked to identify the trustees of their funds by name or set out concisely the trusts on which these were held. Registration guidance was agreed with the Commission in 2008-09, published on the Church website and followed by the churches then affected. The LPAG did not contribute as such to this guidance, because its first members had not then been appointed. The General Secretary invited the LPAG to take over responsibility for any subsequent updating of this guidance. Since the excepting regulations were recently extended until 2021, the existing guidance should suffice for the present. But the experience of some churches whose income has recently crossed the £100,000 threshold is that the Charity Commission has forgotten the agreement it reached earlier with the URCT working group. The LPAG is therefore assisting with further Charity Commission correspondence.

## 2. Pension issues where Baptist ministers serve Baptist-United Reformed Church LEPs

A serious problem has arisen over the pension contribution liability arising when a Baptist minister ceases to serve a single-congregation LEP with a United Reformed Church membership. The Trustees of the Baptist pension fund have been advised that this is a 'cessation event' which places on the church concerned a liability to contribute to the fund. The demanded contributions are extremely difficult for the LEPs concerned to meet, which also puts in doubt the viability of any future LEP of this nature.

Pensions law lies outside the legal specialisms of any member of the LPAG, which seriously limits the contribution it can sensibly offer; but it has sought to understand the issues and made suggestions which some of its members have been able to pursue because of their ecumenical involvement. The group has suggested to the general secretary and legal adviser what expertise may best contribute to long-term resolution of this difficulty, and the convener met with the treasurer of the North Western Synod at General Assembly to discuss the latest developments.

## 3. Civil partnership and marriage reform

A section of the Equality Act 2010 allowed the approval of religious premises in England and Wales for the legal formation of civil partnerships, something that had originally been forbidden in 2004. Mission Council commissioned the group to draft a response to the Westminster government consultation on how precisely this would work. This began our involvement with successive stages of law reform in this area, which continued with the extension of legal marriage to same-sex couples in England and Wales in 2013 and then with the Scottish legislation of 2014 on both civil partnership and marriage. The group has worked in liaison with the human sexuality task group and on one occasion sent a member to attend the church and society committee of the Synod of Scotland. Members attended several meetings with government officials at the request of the general secretary and the group's secretary testified (alongside officers of ecumenical partner churches) before a parliamentary committee. The group's guidance to local churches and trustees regarding approval of premises for civil partnership formation appears on the Church website. The general secretary has sought an opinion from the group (to be delivered before the end of 2014) on procedural issues related to the consideration of the church's position on the marriage of same-sex couples initiated at this year's Assembly.

In the longer term, the group believes that a guide to marriage (and now civil partnership) under the auspices of the United Reformed Church is needed, and is prepared to work on its production when the current raft of statutory regulations is complete. Members have reported instances of incorrect practice, and it is clear that even some registration offices are misapplying the law. A guide which explains both the English and Scottish systems in parallel may be of particular use if ministers with experience in one jurisdiction are called to pastoral charge in the other.

## 4. Trusteeship of local church assets

This is an example of how one of the group's tasks can lead it to a different, and potentially larger, issue. As we considered the implications of civil partnership and marriage law reforms, it became necessary to identify with certainty who should be considered the 'trustee(s)' of United Reformed Church buildings.

During the 20th century, most local churches (or their predecessor churches or congregations) appointed a company limited by guarantee to be trustee of their chapels, halls and manses. When we first came to this subject, the notion was prevalent in certain quarters of the church that these companies or their successors (i.e., the trust companies now serving our provinces or nations) were custodian trustees and that local elderships were managing trustee bodies.

This notion was questioned by the group and was recently confirmed to be incorrect by an opinion of charity specialist counsel. The opinion drew attention to a range of responsibilities which therefore lie not *prima facie* with the local church, but with the company. The difficulty is that some are responsibilities very difficult for a minimally-staffed remote body to discharge, especially since the charities comprising such church land do not comprise any liquid funds.

The group has passed the opinion to Trust Companies and discussed the implications at a meeting of PLATO. As requested at several briefing sessions held in Spring 2014, the group undertook to provide some central guidance. A full note indicating the group's understanding of the legal position, including its implications for the relationship between synods, Trust Companies and church meetings, was prepared and amended in the light of PLATO members' comments. At the date of this report the final version of the note has not yet been agreed. It is not proposed to publish it widely; but the intention is that it will be kept for reference to form the basis of any advice for which the group may be asked in specific future cases. At the same time (since the Trust Companies concerned operate at provincial or national level rather than that of the denomination), a PLATO working group is preparing briefer guidance on those aspects directly relevant to local churches.

## **5. Issues arising following the resignation of a Moderator-elect**

After a moderator-elect of General Assembly stood down before taking office, the Assembly of 2012 appointed a Commission to identify issues arising from this experience. With Assembly's blessing, this Commission referred to the group a number of questions concerning matters of governance, management and procedure. The group has already reported orally to Mission Council on certain of the issues raised by the Commission, but a report covering all outstanding questions is submitted to the same session of Mission Council as this report.

## **6. Secession with property**

Under United Reformed Church Act 1981 s.21 and United Reformed Church Act 2000 s.25, local churches can be given permission by General Assembly to secede from the United Reformed Church with the property held for their use. On so doing they revert to being stand-alone Churches of Christ, Presbyterian or Congregational churches, unless they choose to join some other federation. The United Reformed Church is almost unique in having such a provision, of which only very occasional use has been made.

In 1987 Assembly approved an explanation of this procedure, which indicated what must be done before Assembly would consider a request and on what bases previous requests had been granted. The 1987 statement has been updated several times but never with Assembly's authority.

At the request of the clerk of Assembly, the group devoted some time to revising the 1987 statement. It assisted the clerk and general secretary to preparing a fresh update for the guidance of synod moderators, circulated in early 2014. This update contained no changes of substance but reflected the group's understanding of the legal position and took into account changes in the law (for example, the previous update had not mentioned the 2000 Act).

When the time is opportune the group hopes to submit a more far-reaching revision, to replace the 1987 Statement altogether, for the consideration of Mission Council and ultimately of Assembly.

## **7. Appeals**

The clerk of Assembly invited the group to review the Appeals procedure under Structure paragraph 5. This was discussed at the group meeting in June 2014 and points of principle agreed: it is hoped that proposals including draft revised texts will be ready for consideration at Mission Council's Spring meeting in 2015.

## **8. Charitable Incorporated Organisations and local church liability**

Through the group's PLATO liaison and from the legal adviser, the LPAG is aware that some local churches have considered forming CIOs as a way of limiting or ending potential personal liability of church members for loss or injury resulting from local church activities and contracts. A paper on this was considered by the group and forwarded to PLATO in August 2014.

## **9. Employment status of ministers and crews**

There is a regular stream of litigation on the question whether ministers of religion are employed, are parties to a contract for services, or neither. A number of such cases involving other denominations have reached the Supreme Court; the outcome has sometimes been in favour of the minister alleging employee status, sometimes not. A longer-term project of the LPAG is to examine the criteria used by the courts in these cases specifically in the light of the polity and practice of the United Reformed Church, with a view to predicting the likely outcome should a case from our denomination ever be litigated, and tendering any consequent advice to Mission Council.

## **10. Discipline of elders**

The clerk of Assembly invited the group to review the position on the discipline of elders, with particular reference to the fact that the eldership is an office to which candidates are ordained (as are ministers of Word and sacraments), even though it is more common to encounter currently non-serving elders than non-serving ministers. There may be extreme cases where some equivalent for elders of removal from the Roll of ministers is warranted; but an exact equivalent is not practical since there is at present no Roll of elders. The group hopes to report to Mission Council during 2015.

## **11. Miscellaneous issues**

The group has discussed at its meetings, or contributed in email correspondence to, the resolution of a number of other issues. Most were referred to us by the general or deputy general secretary, in some cases forwarding enquiries from local churches considered to raise denominational concerns. On two occasions the secretary for ministries raised queries which the general secretary relayed. On two occasions the legal adviser invited discussion within the group of situations on which he was advising synods. One issue was already under discussion in PLATO and referred to us by our PLATO liaison member.



The variety of these issues is clear from the following list:

1. Access to church buildings and the right, where necessary, to exclude individuals who may pose a threat to other church members and attenders.
2. The bearing of equality law on the proposed 'Zero Intolerance' campaign.
3. The procedure for the call of a minister by a local church.
4. Immigration status checks on ministers.
5. Capital contributions to work on Methodist/United Reformed shared churches.
6. The employment of children and youth development officers.
7. House of Lords reform (the general secretary having been invited to respond to a government consultation, particularly on the place of the lords spiritual).
8. Non-members of the church as members of its councils (the issue raised by Resolution 19 at this year's General Assembly).
9. Powers in pre-union trust deeds (an issue now resolved by the passing of Resolution 21 at this year's General Assembly).

## II : THE GROUP'S TERMS OF REFERENCE

1. The proposal of the then general secretary, the Revd Dr David Cornick, to Mission Council in October 2007 contained the following passage:

'I therefore suggest that we introduce a small law and polity task group whose function will be to advise Mission Council on constitutional matters being taken to Assembly. Its composition will be for Mission Council to decide, but I would suggest that its membership should include the clerk and the legal adviser *ex officio*, two synod clerks and three other people who have an expertise/considerable experience in church law and polity, one of whom should act as convener. I believe that this would be supportive for the clerk, and enable the smooth process of such business on the floor of the Assembly.'

2. The actual resolution passed at that meeting was 'That Mission Council appoint a law and polity advisory group to advise the Council on such constitutional and legal matters as the Council shall remit to it'.
3. In calling for the group to advise on 'legal matters' the resolution seems wide enough to cover advice on the law of the land. It has been understood in that way by the group itself and by those who have asked us to give opinions. But Dr Cornick's preamble suggests that he at least had in mind only 'church law and polity', using the term 'law' to describe the internal rules and structures of the United Reformed Church. Thus usage can be seen in the remit of the legal questions committee of the Church of Scotland and the law and polity committee of the Methodist Church. On the other hand, the legal advisory commission of the Church of England does advise on the general law of the land as it affects the church's life; so did the legal and trusts committee which existed in the very early days of the United Reformed Church.
4. From the first part of this report it will be clear that the group has as often been asked to assist with legal questions in the sense of the law of the land (for example charity and trusts law, family law, equality law, employment law, immigration law, and the liability of unincorporated associations) as with questions of the church's constitution and internal polity (ecumenical issues, the sharing of church buildings and United Reformed Church Acts, the chain of authority at Church House and expectations of denominational volunteers,

the movement of ministers and appeals to wider councils). It will also be clear that only a small proportion of our work was directly referred by Mission Council, whose infrequent meeting would make it an unwieldy channel of reference for all the types of issue on which we have assisted. Most references have come from the clerk or general secretary, in some cases acting as a filter for queries from elsewhere, or have been issues on which the legal adviser found a wider range of opinion helpful.

5. For the future we believe it would be sensible to have a clear remit for the questions we address, which we suggest should be able to come from the officers already mentioned as well as from Mission Council itself (or of course the General Assembly). If guidance on matters within our remit is to be published to the wider church, this should take place in the name and under the authority of the clerk of assembly, the general secretary or both, as appropriate. Incidentally, we see no particular justification for the present position under which the clerk is an *ex officio* member of the group whilst the general secretary attends only by invitation, and suggest that both could usefully be full members, with the general secretary free to invite an appropriate deputy to attend as necessary.

6. One other point should be made concerning our engagement with the law of the land. Whilst all of us are church members experienced in various aspects of the functioning (and in many cases the history) of the United Reformed Church, and can therefore contribute with reasonable confidence to discussions of the church's internal polity, we are not all lawyers. Above all, we are not all *practising* lawyers. Some are retired or academic lawyers or lawyers in government service; others have no legal qualification. Those learned in Scots law would anyhow be cautious in any opinion concerning the law of England and Wales, and *vice versa*. Although we may include in our number individuals with relevant specialisms, most of these lack the indemnity insurance required for lawyers currently in practice.

7. We cannot therefore, as a group, and do not profess to, give advice on the law of the land upon which others can rely when making decisions with financial or liability implications. This is one reason – though confidentiality of background facts is another – why we have not published opinions, and do not go into great detail even in this report, on many of the issues so far referred to us.

8. We believe it is sensible that any opinions we give on the law of the land in actual cases should either be channelled through the legal adviser (by way of assistance to him in deciding what advice to offer the church), or tendered confidentially to the general secretary for such further action as he thinks fit. And we seek a clear understanding that the LPAG is not qualified to advise on the legal and technical problems of the United Reformed Church, its councils, office-bearers and members, and does not profess to do so; and that the church will hold the group's members (including the legal adviser, except when he personally endorses an opinion as his professional advice) indemnified against liability for any error or omission.

9. We turn finally to the other ('polity') side of the group's work, and recall Dr Cornick's hope that it would 'advise Mission Council on constitutional matters being taken to Assembly ... and enable the smooth process of such business on the floor of the Assembly'.

10. The former clerk of Assembly did indeed refer a number of pure 'polity' issues to us, including the conciliar appeal procedure, the discipline of elders and the question of non-members of the church as members of its councils. But when the first of these came to this year's Assembly as resolution 19, the clerk who had moved the resolution was no longer in office and the group (which had fully supported the clerk's proposals) was not in attendance as such to address the concerns which those proposals aroused.



11. Our counterpart committees in the Church of Scotland and the Methodist Church have sub-groups which attend those churches' General Assembly or Annual Conference to advise as necessary. The Methodist sub-group does not significantly increase attendance since, apart from the secretary of the law and polity committee, its other members are chosen from those who are already members of the Conference, and do not have to be members of the committee themselves. It is also common practice (mandated, in Methodism, by standing orders) that proposals to amend the constitutional documents which correspond to our Basis of Union, Structure and Rules of Procedure are submitted to our counterpart committee, which reports on them and can offer a redraft for better achievement of the intention of the decision-making body. We suggest that, if the LPAG is to realise Dr Cornick's original vision for it, as well as addressing issues of the general law as described above, there may be a case for similar practice in the United Reformed Church.

12. The resolution that we propose to Mission Council has separate limbs to address the different points made in this report, which should make it a simple matter to produce – by selective amendment – the outcome which the members of Mission Council desire. If, for example, the wish is for us to return to Dr Cornick's original vision and cease to address questions of the general law, this can be achieved by an amendment striking out certain paragraphs of the resolution. Striking out other paragraphs would make us purely an advisory body on the general law, with no role on constitutional amendments. We have also proposed a minor change to our composition; this is drawn on the supposition that both the group's current *de facto* responsibilities will continue.

**DRAFT MISSION COUNCIL RESOLUTIONS**

- 1. Mission Council resolves to receive the report of the law and polity advisory group.**
- 2. Mission Council resolves that the following terms of reference shall replace the original function of the law and polity advisory group**

**(a) Polity functions**

**To assist the clerk of Assembly, when required,**

- (i) in giving advice to the General Assembly, or rulings and guidance between sessions of Assembly, on questions of the interpretation and application of the Basis of Union, Structure, and other constitutional documents of the United Reformed Church, including ecumenical instruments and agreements which sanction deviation from the church's normal practice; and**
- (ii) in scrutiny of legislative proposals (meaning thereby proposals for new constitutional and ecumenical documents or amendment of existing texts) for their coherence with each other, and with existing constitutional provisions or usage.**

**(b) General legal functions**

- (i) To assist the legal adviser on questions on which he may invite such assistance and which lie within the experience or expertise of one or more other members of the group**
- (ii) To give an opinion, when so invited by the General Assembly, Mission Council or the general secretary, on any question of the application of the law of England and Wales, of Scotland, of Jersey, of Guernsey, of the Isle of Man or of any one or more of such territories to the life of the United Reformed Church, and to assist in the preparation of guidance on such questions to be distributed by authority of the general secretary to synods or local churches; provided, in either case, that the question raised lies within the experience or expertise of one or more members of the group.**

**(c) General**

**to undertake such other tasks in the field of church polity or the law affecting the church (provided that any question of the general law lies within the experience or expertise of one or more members of the group) as may be entrusted to it by the General Assembly, Mission Council or the general secretary.**

3. Mission Council resolves on behalf of the General Assembly, that the United Reformed Church will hold the members of the law and polity advisory group (including the legal adviser, except when he personally endorses an opinion as his professional advice) indemnified against liability for any error or omission in the discharge of their functions relating to the law of any territory.
4. Mission Council resolves to request the clerk of Assembly, in collaboration with the Assembly arrangements committee and the law and polity advisory group, to prepare, and submit to Mission Council as soon as possible amendments to the Rules of Procedure and/or the standing orders of Assembly to provide for scrutiny of legislative proposals in accordance with paragraph 2(a)(ii) of this resolution, and for the attendance and function at sessions of the General Assembly and Mission Council of a sub-group of the law and polity advisory group for the purpose outlined in paragraph 11 of the group's accompanying report.
5. Mission Council resolves that the law and polity advisory group henceforth consist of:

  - (a) a convener and secretary appointed by Mission Council, each for a renewable term of four years; the current convener to serve until 31 July 2018 and the current secretary to 31 July 2016;
  - (b) the clerk to the General Assembly, the general secretary and the legal adviser to the Church *ex officiis* (each being at liberty to attend the group's meetings by a deputy);
  - (c) one synod clerk nominated by the other synod clerks, the first member nominated after this resolution to serve until 31 July 2018 if remaining so long a synod clerk; and
  - (d) two other members appointed by the General Assembly on nominations committee's advice, with terms of office expiring on 31 July 2016 and 2018 respectively.
6. Mission Council resolves that so far as possible, future appointments to the group shall secure that:

  - (a) at least one member appointed under paragraph 5(a) of this resolution and at least one member appointed under paragraph 5(d) possesses a legal qualification in one of the territories in which the United Reformed Church exists; and that
  - (b) the other members appointed under paragraph 5(a) and 5(d) have expertise in the history, polity or administration of the United Reformed Church or in ecumenical constitutional issues.
7. Mission Council resolves that the group be at liberty to invite other committees and groups established by the General Assembly, by the provincial and legal trust officers (PLATO), or (where an issue of Scots law arises) by the Synod of Scotland to send representatives to the group's meetings to contribute knowledge or expertise required by particular anticipated business.

