

Paper A4

The future of governance

Business Committee

Basic information

Contact name and email address	John Bradbury, The General Secretary john.bradbury@urc.org.uk
Action required	Decision.
Draft resolution(s)	Resolution 10 1. Assembly Executive welcomes the ongoing exploration of the United Reformed Church Trust company being replaced with a CIO and invites the Business Committee and the United Reformed Church Trust Company to continue further work leading in this direction. Resolution 11 2. Assembly Executive welcomes the exploration of a re-formed Business Committee, whose members would be members of the General Assembly, becoming the Trustee body of a new CIO and invites the Business Committee and United Reformed Church Company to continue exploring this option.

Summary of content

Subject and aim(s)	A Consultation Paper on the United Reformed Church General Assembly and Governance.
Main points	
Previous relevant documents	
Consultation has taken place with...	The Business Committee and URC Trust.

Summary of impact

Financial	The potential for a more effective management of our financial risks.
External (eg ecumenical)	None. We are thankful for colleagues in the Methodist Church and the Church of Scotland for their time in talking us through the changes they have recently made to trustee arrangements, and what we might learn from their experiences.

Background and introduction

*“The United Reformed Church declares that the Lord Jesus Christ, the only ruler and head of the Church, has therein appointed a government distinct from civil government and in things spiritual not subordinate thereto, and that civil authorities, being always subject to the rule of God, ought to respect the rights of conscience and of religious belief and to serve God's will of justice and peace for all humankind”.*¹

At ordinations and inductions of Elders and Ministers, when the statement of *Nature, Faith and Order* of the United Reformed Church is used, this paragraph is the one that is commented upon frequently. It is dear to the hearts of many within the Church and is heard as being distinctive by our ecumenical counterparts. The predecessor traditions of the United Reformed Church find their origins in a Scottish National Church tradition which is markedly different from English Establishment and protects the freedoms of the Kirk from political interference (you will have noted that the first thing the King had to do upon accession is to promise to uphold the Presbyterian governance of the Kirk), and in English non-conformity and independency that sought to protect the life of the Church from interference from the state. A wariness about the freedom and independence of the church to govern its own affairs is intrinsic to who we are.

As we look to Church History, we see that twice in the twentieth century, the Reformed Tradition recognised a ‘*status confessionis*’, that something had the ‘status of confessional’ – ie that certain convictions or actions fell outside of what can legitimately be considered Christian. Firstly, in Germany in the 1930s and 1940s where the state restricted who could be ordained, making someone’s Jewish ‘race’ more significant than their baptism, which the confessing church, and its international allies, could not tolerate. Secondly, in apartheid in South Africa, where again, ‘race’ prevented the full inclusion of people within the Body of Christ, the church. Both state policies that the orthodox Christian church could not tolerate.

We are fortunate to have lived in the history of the URC in a largely tolerant society, where our freedom of religion (protected in Human Rights legislation) is upheld, and inappropriate interference in the practice of our faith not a reality we have to contend with. As we look across the globe, however, we see that there is considerable instability. Partner churches, even in other places in Europe, face political interference. At times, that is affected through mechanisms such as charity law.

At the same time as we fiercely protest our freedom from the state, we also confess that the state has a God given vocation to protect ‘justice and peace’. We frequently campaign for (or against) government legislation and look to government to uphold rights which we believe are rooted in God’s creative action. As a tradition, non-conformity has tended to campaign for workers’ rights, the full inclusion of all in democratic processes and the like. Thus, we also understand the regulation of charities as being intrinsic to the role of government. That charities should carry out the work that money is given for, that they should do so in a fashion that is prudent, and safe, and seeks the common good and offers public benefit, we would uphold. We benefit from the fact that our funds are charitable – the loss of ‘gift aid’ to the United Reformed Church would be a blow. The whole family of the United Reformed Church probably benefits from upwards of £1 Billion pounds of charitable funds if one were to include all denominational, Synod, and local church property and funds. With the rights that we receive through charitable funds come responsibilities. That we accept, and indeed,

¹ United Reformed Church: *Basis of Union*, Schedule D, *A Statement concerning the Nature, Faith and Order of the United Reformed Church*. Paragraph 8.

support and uphold. It is vital, being such an interrelated collection of large charities (the United Reformed Church Trust is in the top 1% of charities registered in England and Wales by income. This places us under a high level of scrutiny).

This leaves us holding a complex balance between the life of the Church independent of the state, which is supported by activity carried out with charitable funds which are, rightly, regulated by the state. Part of the way this is achieved is through making a distinction between the Church *per se*, and the charities which hold the funds of the Church and are responsible for the activities carried out with those funds. The United Reformed Church itself is not a charity, its activity is carried out with charitable funds and is charitable. This is not a neat or tidy distinction. It is one we share with some other churches (less the case with the Church of England because of its established position). We very much mirror the Roman Catholic position, where the Church is established by canon law, and is not a charity, and subject only to its own jurisdiction. Its work is funded by charitable funds, and the trustees of those charities (which map onto the authorities within a Diocese or Archdiocese) are responsible for the proper use of those funds and the activity carried out with them. Broadly speaking, for the United Reformed Church we are constituted by the *Basis of Union* and *Structure* of the United Reformed Church. Insofar as the General Assembly carries out these functions, and particular those relating to the content of the faith and order, worship and mission of the life of the church it does so as the Church. The administration of the finances of the church and ensuring activity carried out with those financial resources is in general terms compliant with the legal expectations upon us as carrying out charitable work, is ultimately something which the Trust body is accountable, and liable, for.

We are also a conciliar church – we believe that we discern the will of God better together than we can apart. We believe that the oversight of church life, whilst having a personal dimension, is primarily a conciliar act. We therefore come together as Church Meeting, Elders Meeting, Synod and General Assembly to discern the will of God. Traditionally Synods and the General Assembly are quite large meetings. This can sit in a difficult tension with the expectations of Charity Law. Charity law is in line with our convictions in the sense that trustee bodies are, effectively, councils – no one person has authority, and decisions are taken collectively. The responsibilities and liabilities upon trust bodies lead them to be considerably smaller than we might normally think of as a Council of the Church. This does lead to a tension that we need to continually manage creatively and carefully.

The current situation

The United Reformed Church, not being a charity, is, in legal terms, an unincorporated association. As such, it does not have a 'legal personality' – it cannot itself own property, make contracts with other entities and so on. It can only act through its officers. Hence the United Reformed Church Act specifies that if anyone wishes to bring legal proceedings against the United Reformed Church it must do so through the persons of the Moderator of the General Assembly and the Clerk. The Officers of the Assembly, technically, contract on behalf of the Assembly. As an unincorporated organisation, the Church also technically has unlimited legal liability. With incorporation comes limited liability which can be an important protection. Ideally, we would wish as much protection from unlimited liability as possible, which means as much of our activity as possible being undertaken and controlled by an incorporated entity and done so visibly and obviously. The United Reformed Church Trust is an incorporated charitable company, and its activity receives the protection of limited liability.

It was the Charities Act in 2006 which first required churches to register with the charities commission. This caused some confusion at the time. Initially, the United Reformed Church was expecting that it would register itself as a charity. It was the Charity Commission itself which insisted that we were not a charity, but that our funds were charitable. The Charity Commission whilst wishing to ensure that we act prudently with charitable funds, and that our activities are safe, have no interest in policing our doctrine, worship or the order of church life (in terms of polity or orders of ministry). Indeed, these things are protected by human rights legislation, under which the Church has corporate rights to freedom of worship. We subsequently have come to agree with them on this point and seek to protect the distinction between the Church and the charities which hold its funds and carry out its activities.

In 2007 a Governing Document was adopted which would be the basis upon which the United Reformed Church Trust Company would become the charity trustee of the church's funds and activity. The process of this gaining recognition from the Charity Commission resulted in a clearer understanding all round of the church-charity distinction. The principles of that governing document were subsequently incorporated into the revised Memorandum and Articles of the Trust Company (at the point at which it became charitable, so it could hold the charitable funds of the church and become charity trustee – previously it had only held buildings and land on behalf of the church). Once the Memorandum and Articles were adopted (agreed by the General Assembly, and then adopted by the URCT) the governing document was then rescinded, as no longer relevant.

At the time, it is clear both from living memory, and documents before the General Assembly and Mission Council, that there was concern about the loss of sovereignty of the General Assembly over the life of the Church. This was mirrored in other church bodies at the time. There was, for example, considerable anxiety amongst the Religious Society of Friends (the Quakers) at the adoption of a Trustee body separate from the General Meeting. There is a tension over who has ultimate 'control'. Paper P2 of Mission Council in 2007 sets out well the understanding that has pertained in helpful terms. It is worth quoting in full:

The role of a Trustee is to ensure that the charity acts in accordance with its purposes and sound principles; preserves the charity's assets and ensures it operates on a financially secure basis; assesses and responds appropriately to risks and opportunities. A Trustee is responsible for discharging various duties and exercises a number of discretions under general trust law and statute. A Charity Trustee is responsible in addition for ensuring compliance with the obligations under the Charities Act 1993. The Trustees also have a role in ensuring that the Church sets and seeks a credible vision. The role of a Trustee is not to formulate policy- that remains with General Assembly. But the 1 Trustees cannot carry into effect anything which is unlawful according to the law of England and Wales.

The Trustees have oversight of the administration and management - not the policy making – of the charity. They therefore exercise control over the affairs of the Church on behalf of General Assembly and accordingly make some executive decisions in furtherance of this function. The overall policy of the Church, its work and direction remain with General Assembly and between meetings with Mission Council.

Thus, it could be said that the Trustees give assurance to the Church that its affairs are being conducted in a law abiding and efficient manner in accordance with the policies agreed at General Assembly and Mission Council; that the necessary resources required are available: that risks are being managed; and that everything done is in accordance with the law and sound financial practice.

This is an excellent ambition, and as an overarching vision of how Church-Charity relationships ought to function and is largely still an effective articulation of what we might wish to see. Some years on, the Charity Commission might speak more about the strategy of a charity. Trustees are responsible for ensuring that the charity is guided by appropriate strategic thinking, operationalised through appropriate policies, structures and staffing. This can be complex for ordinary membership charities, where the members have a say over the direction of the charity, but the trustees are responsible and ultimately must have discretion because they carry the liabilities. We might today wish to recognise that the ultimate discernment, under God, of the strategic direction of the Church rests with the General Assembly. Incarnating that, through policies, structures and staffing is perhaps where the Trustee must have a particular interest as those carrying the ultimate liabilities. We cannot expect individuals to, as trustees, carry liabilities when they don't have the authority to adopt, or not, the policies which manage the risks around those liabilities.

The 2007 paper then goes on to outline the relationship between the URC Trust and the General Assembly, but at this point becomes rather vague. It states: 'many of the Trustees will be members of General Assembly and Mission Council. This should ensure that the Trustees have a real understanding of matters that affect the well-being of the Church and are fully conversant with its policies'. It is worth noting that the Directors of the URCT are appointed by the General Assembly (along with ex officio members, such as the General Secretary and Treasurer). The paper also recognises the potential for conflict between the GA and the Trust, and that creative dialogue between the two would be needed to alleviate this risk. No process for that is set out.

Paper P2 also set out a sense of the annual rolling agenda of the URCT which shows it concentrating on finance, property and risk management.

The reality of the current situation is that what was faithfully put in place is now struggling to be adequate. There are a number of reasons for this:

- there is far greater emphasis of compliance, and far higher expectations of the Charity Commission on the compliance work of trustees.
- we believe an error was made at the time the arrangements were set up. The URCT as a charitable company may hold charitable funds. The funds of the General Assembly which it took over have never been registered as a charity in their own right. The URCT accounts for them as its own funds, which is not quite technically correct. This is all explained adequately in the introduction to the annual report, so no one is being misled, but we do need a pathway to a resolution of this issue.
- the Church continued to contract in its own name, in a way it technically cannot. This continues to be the case with regard to employment contracts. The decision to move these to the URC Trust has been taken, but not yet enacted. This is because this would change who the employer is in the eyes of the pensions, and whilst the Ministerial Pension scheme is heading towards buy-in and buy-out this is not

advisable. This paper leads in the direction of setting up a new trust body in the form of a CIO. To resolve this once that new body is in operation would be the most sensible route.

- The URCT is a company, and thus reports to companies' house and is required to abide by company law as well as reporting to the Charity Commission and responsible under Charity Law. Since the arrangements were set up CIOs (Charitable Incorporated Organisations) have become much more standard charitable vehicles, which bring limited liability through incorporation, but do not require adherence to companies' legislation. A CIO may be a simpler vehicle for the church's trust arrangements.
- The agenda of the URCT until very recently has not caught up with the wider compliance responsibilities it holds. For example, it is only since 2020/21 that safeguarding and compliance and been regularly on the agenda despite these being major areas of risk and liability. There are other major areas of risk which the Trust at the moment does not determine directly, or even have a detailed awareness of. That is also something which needs addressing. Guidance is being worked on for General Assembly Committees to ensure that there is effective consultation with the Trust when appropriate as work is being developed.
- There has been confusion over the years as to which areas of risk ought to be on the risk register of the church and which on the risk register of the Trust. The reality is that any risk the church holds, the trust do so as well in trustee terms. There are only charitable funds to meet financial risks, and the Trust is responsible to the Charity Commission for reputational risk management too.
- Whilst the Trust would carry liabilities for the activities of the General Assembly, there has been no agreed process which enables the Trust to scrutinize and contribute to the development of policies and processes that the Assembly might be invited to adopt making it difficult for the Trust to demonstrate it is taking its responsibilities seriously. The Trust as relied on overlap between membership of the GA and the URCT, but this kind of informal arrangement would be difficult to justify in the current compliance climate.
- The General Assembly has long struggled to be enabled to articulate priorities for the life of the Church, making it difficult for the Trust to meaningfully respond to those in the terms of budgeting.

A proposed way forward

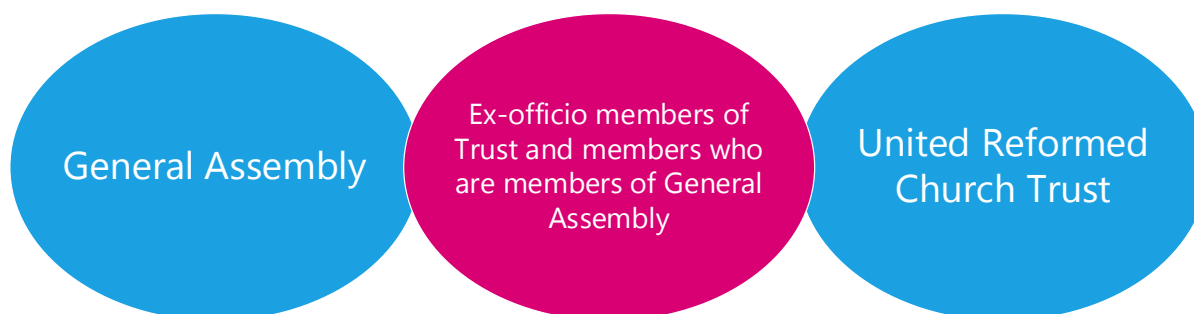
The United Reformed Church Trust believes that the future might be better served by the funds of the General Assembly and associated land and property being held in a CIO. This is also a topic that the Law and Polity Advisory Group has worked on. This would potentially achieve a number of benefits:

1. It would allow the funds of the General Assembly and associated charitable activity to be the charity itself, rather than a fund that the Trust Company holds. This would resolve the issue of the registration of the funds of the General Assembly.

2. It would mean that the CIO was only accountable to the Charity Commission, and no longer would need to report to Companies House, or act as a company.
3. Because the charitable purposes of the CIO would be precisely the funds charity of the General Assembly, it would allow a closer structural relationship between the General Assembly and its associated Charity.
4. It would maintain the benefits of incorporation and limited liability and indeed make it clearer that the activity of the church funded charitably, had the benefit of limited liability. Our present arrangements make it possible to argue that the activities of the General Assembly are the activities of an unincorporated association, making liabilities unlimited.
5. There is a risk – albeit limited, that Trusteeship could at present be determined to rest with the General Assembly because they have the direct control over the activities of the charity. This could potentially leave every member of the Assembly with a personal liability. This is an unlikely and extreme position, but nonetheless one that we should take all possible actions to limit. It would allow us to be clearer about the legal responsibility for the activity carried out with the funds of the charity being the responsibility of the CIO itself, not the General Assembly per se, thus better managing our risks.

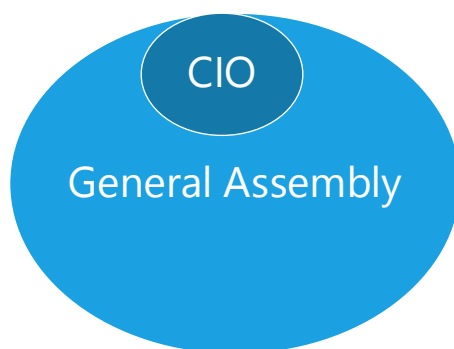
It might be helpful to imagine this pictorially.

The current relationship between the General Assembly and the United Reformed Church Trust might be represented like this:



The General Assembly and its Trust body are separate entities – they are linked by the membership, which spans both entities – but are fundamentally separate.

It would be possible, seemingly, with a CIO for there to be less ‘clear blue water’ between the General Assembly and the Trust body. The CIO trustees could effectively be a subset of the General Assembly (likely constituting its Officers and committee convenors or the like). This could be achieved either through drawing the membership of the CIO trustees from the General Assembly membership, or through making trustees of the CIO members of the Assembly (which may make it more possible to gain the skills and experience necessary in trustees). This model would look something like this:



Whilst there would still be the potential for the trustees to disagree with General Assembly, this is much less reduced, as they are a sub-set of the General Assembly. They would still have the legal obligation, were the Assembly to wish to do something which contravened the Trust or was not compliant in some way, to prevent charitable funds being used for such activities. That is a fundamental reality that whichever way around this is examined remains the case whilst the church is supported by charitable funds. It would much more closely meet the expectations of the Charity Commission that the Trustees are those with general day to day control over the operations of the charity. It would be wise to have determined a conflict resolution mechanism in advance, which could be used should the situation ever arise in which the General Assembly and the CIO Trustees had a difference of opinion over whether and Assembly decision could be enacted with charitable funds.

The suggestion is that the new CIO might be a re-formed version of the Business Committee. The Business Committee has the function of keeping an overview of the entire work of the General Assembly, ensuring it has strategic direction, managing its risk through spotting areas where work needs integrating, or issues need attending to that have fallen through the gaps of the committee structure. These are, in many ways, classic trustee responsibilities. The committee may need to be larger, and its composition altered to ensure it had the necessary gifts and graces, and independence from operational realities, to function effectively. One of the great benefits of the current formation of the Business Committee has been the integration of the Officers of the General Assembly with the General Secretariat, bringing together responsibility for the oversight of the business of the Assembly together with those who operationalise it. Also, key has been the presence of members appointed by the Assembly who fill neither category and bring some external and independent perspective because they are further removed from the day-to-day business. Were this group to become the trust body of a CIO, the COO and Deputy General Secretaries would likely need to be in attendance, not voting members (because of issues around staff exercising trustee responsibility). It would be possible, potentially, for the new Business Committee/CIO to be formed from the Officers of the General Assembly, the Convenors of the General Assembly Committees and additional members appointed by the Assembly to bring a more external view (but who would still, in likelihood, be members of the Assembly). This would more closely integrate the whole work of the Assembly, and more obviously align the authority and the responsibility in terms of liabilities and risk management.

Another ecumenical parallel might be helpful. The Methodist Church recently moved from the rather unwieldy position of the whole of the Conference being the Trustees of the Church, to the Methodist Council taking on this role (which is reduced in size from previously – it now has about 20 members). It has taken on the trustee responsibility for the Methodist Church. This replaces a body more the size of our Assembly Executive, and functions as the Executive of the Conference when it is not meeting. At the same

time, The Church of Scotland has a not dissimilar arrangement, with General Assembly Trustees who undertake the Trustee responsibility on behalf of the General Assembly. If we moved to a Trust body which was a sub-set of the Assembly, and had the responsibilities currently held by the Business Committee and the United Reformed Church Trust, we would be moving in a similar direction to that which ecumenical colleagues have found helpful.

A side note about Synods...

It is worth noting, although not central to the precise concerns of this paper, that it is possible for the General Assembly to adopt a Trust structure of this nature in ways that for many Synods their current arrangements would not so easily allow. Most Synod Trust companies (though not all) carry out two key purposes. Firstly, holding property in Trust for the purposes of local churches, and secondly holding and managing the funds of the Synod. There is a potential conflict of interest in this arrangement because there are moments, when determining matters around the disposal of property and the direction of proceeds of sales, that there could be a conflict between the local church and the Synod. This is normally handled by ensuring there are sufficient Directors of the Trust company (Trustees) who are not members of the Synod structures, to ensure that there is appropriate ability to handle matters for local churches without an impossible conflict of interest arising. This would make it difficult for Synods structured in this way to adopt a CIO to carry out all the functions of the current arrangements. It would be perfectly possible to adopt a CIO, whose trustees might mirror, for example, the Executive of the Synod, to hold and manage the funds of the Synod. That would require a separate Trust company to hold local church property (some Synods effectively have an arrangement rather like this, although at the moment CIOs are not used as the charitable vehicle to hold Synod funds – although there may be benefits to that). The General Assembly, not having competing functions for the Trust company that bring inherent possibilities of conflicts of interest, is freer to adopt a structure such as that proposed here.