

All We Can: Proposal to Change Legal Status

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Status of Paper	For decision
Resolutions	81/1. The Council receives the report. 81/2. The Council directs the Connexional Team to liaise with the trustees of All We Can with a view to bringing final proposals on the change in legal structure to the Council, no later than April 2017. 81/3. The Council authorises the Chair of the Council and Secretary of the Council to appoint a small group, if necessary, to consider the final proposals and any legal advice obtained on behalf of the Council and bring recommendations to the Council on the proposals.

Summary of Content

Subject and Aims	To inform the Council of the advice being sought by the trustees of All We Can in respect of incorporation and that the intention of the trustees is to take proposals to the Conference in 2017 with a view to transferring the assets held in the MRDF to a new incorporated company limited by guarantee and merging the two organisations.
Main Points	<ul style="list-style-type: none"> ▪ All We Can is currently an unincorporated association and its trustees have been advised that this puts them at unreasonable risk of personal financial liability. ▪ Advice will be obtained to ensure that the change in the legal status of All We Can does not affect the role of the Methodist Conference in the work of All We Can. ▪ Steps will be taken to ensure continued positive and growing links between the Methodist Church in Britain and All We Can. ▪ The change in legal status will also provide the opportunity to renew and update the formal relationship between All We Can and the Methodist Church in Great Britain.
Background Context and Documents	MC/15/73 - All We Can and the Methodist Church report to the Council in 2015, which identified areas for continuing to work together.
Consultations	All We Can leadership and Connexional Team leadership have been in regular discussion. Governance and legal professionals have been commissioned. Other UK and international Methodist bodies consulted.

Summary of Impact

Standing Orders	SO 245 would need amendment to reflect change in name and status.
Financial	No financial impact on the funds managed by the Methodist Council. Minimal financial impact to All We Can as legal assistance is pro bono.
Legal including impact on other jurisdictions	The Council may wish to seek its own external legal advice but will be guided by the Conference Officer for Legal and Constitutional Practice.
External (eg ecumenical)	Proposal aimed to strengthen the Church's response to international relief and development through its partnership with All We Can.

All We Can Proposal to Change Legal Status

Introduction

1. All We Can is proposing to change its legal status as an unincorporated association with its funds and property held in a charitable trust to form a new incorporated organisation (company limited by guarantee). The old organisation will still exist in order to collect any income that specifies that organisation and charity registration number.

This paper is provided to the Council to inform it of the proposed changes in legal structure with a view to taking final proposals to the 2017 Conference which will need to consent to various changes to the current trust arrangements.

2. The aim is to ensure that the collaboration between the Methodist Council and All We Can will be clearer, closer and stronger because of this change.
3. There are four main types of charity structure:
 - a. charitable company (limited by guarantee)
 - b. charitable incorporated organisation (CIO)
 - c. unincorporated association
 - d. trust
4. MRDF is a trust registered as a charity established by a trust deed, dated 29 March 1985, and updated on 15 November 2011. While still closely linked to the Methodist Church in Great Britain, since 1985 it has been a separate charity registered with the Charity Commission for England and Wales, constituted by a trust deed. All We Can is the operating name of the Methodist Relief and Development Fund (MRDF).
5. A charitable trust is a legal form dedicated to charitable goals and consists of a group of people (ie the trustees) who have decided to co-operate to further the charitable purpose that the association was formed to undertake. It has no separate legal personality from its members; it is simply an association of people bound by identifiable rules as detailed in the Trust Deed. The Trustees for Methodist Church Purposes (TMCP) act as custodian trustee and hold property on behalf of MRDF.
6. As a trust, the MRDF is fundamentally different from a company with one major variation in that the trustees are personally responsible for all charitable contracts.
7. Due to this legal form, the All We Can trustees raised the issue of their liability in the event of negligence or insolvency of the charity. There is trustee liability insurance in place but this has limitations, specifically, personal liability in the case of insolvency of MRDF. The main concern expressed by trustees is that the present legal form means that they are personally exposed to unreasonable risk and specifically financial liability.

The organisation's legal form was set up by the Conference and therefore any changes to the trust deed would need to be approved by the Conference. The concern about liability has led to legal advice being obtained by the All We Can trustees and discussions being held with the Connexional Secretary and the Conference Officer for Legal and Constitutional Practice. It is evident that there is no obligation on the Conference or the Council to indemnify the trustees of All We Can if financial liability were to arise. There is nothing to prevent All We Can from seeking to incorporate but it is necessary for the approval of the Conference to be obtained.

8. In considering incorporation, the trustees of All We Can discussed the situation of personal liability. The consensus was that trustees should not consider the application of prudence (even with insurance) to be sufficient to protect their exposure to liability and negligence (committed or omitted) and unless there is a better alternative, incorporation should be seriously considered. It is evident that by becoming incorporated, All We Can would be similar to other Methodist organisations that have incorporated such as the Methodist Homes for the Aged and Methodist Independent Schools Trust. Internationally there are other examples such as UMCOR, which is an independently incorporated company separate from Global Ministries and UMC.
9. It should be noted that All We Can's board of trustees collectively oversee the work of the charity, approving its strategic direction, setting and reviewing policies, agreeing annual budgets and resource allocation and monitoring progress through regular reporting by the management team. There is nothing to indicate that the charity is at risk in terms of management, cash flow or reserve. However, incorporation would ensure greater legal and financial protection for the trustees of All We Can.

Process of Incorporation

10. If All We Can were to become a Company Limited by Guarantee, the charity trustees will be the directors of the company. As an incorporated company, the charity will have its own separate legal personality allowing it to enter into contracts and other legal relationships in its own name. This means that it is the company/charity, rather than the members or the directors/trustees, who is liable for the company's debts, except in certain circumstances.
11. Incorporation would also create an opportunity to review and update All We Can's governance arrangements, clarify liabilities and the legal relationship between All We Can and the Methodist Council and the Conference. It is proposed that steps are taken to strengthen the involvement of the Methodist Church in Great Britain with All We Can.
12. There are two options for All We Can in seeking to incorporate:
 - a. The current organisation be wound up and its assets, liabilities and employees transferred to a new company limited by guarantee. This new company is to be registered with both Companies House and the Charity Commission;
 - or*
 - b. The new company is set up as detailed above and the two organisations are then merged.
13. Legal advice has recommended that the second option is preferable because it avoids any complications with legacies where the will specifies the existing organisation as the beneficiary. It is this option that is being proposed for All We Can. Any merger will require Charity Commission approval.
14. A company limited by guarantee is subject to the requirements of both the Companies Act 2006 and the Charities Act 2011. Board members therefore act as both directors in accordance with the Companies Act and trustees in accordance with the Charities Act. In this paper, they will be described as trustees for simplicity, and the charitable company referred to as the Charity.

15. Both a Memorandum of Association and Articles of Association are required for a UK limited company to be formed. The Memorandum simply sets out the form of the company and the Articles of Association detail the objects, powers and scope of the company and how it is governed and it is therefore vital that these provisions are acceptable to both the Conference and to the trustees of All We Can.
16. For clarity, the trustees of the new charitable company would be the only members of the Charity and a member would cease to be a member if he or she ceased to be a trustee. The liability of members of a company limited by guarantee can be limited to a maximum of, say, £1.

Key Changes

17. It is proposed that there be no changes to the following governance arrangements, including those affecting the relationship between the Conference and All We Can:
 - a. The existing charitable purposes are maintained;
 - b. The Conference has to consent to winding up of All We Can with any remaining monies paid to TMCP to be used for such charitable purposes as the Conference directs;
 - c. The Conference has to consent to any name change;
 - d. The Conference has to consent to any amendments to the Memorandum and Articles of Association;
 - e. The Council retains power to appoint or remove trustees of All We Can.

Number of Trustees

18. The current All We Can governing document makes no provision for the number of trustees but only stipulates that the power of appointing new trustees be vested in the Methodist Council. In recent years, there has been between 8 and 12 trustees, plus two observer members who provide links to the Methodist Council and the World Development and Relief Committee of the Methodist Church in Ireland. We recommend that the number of trustees be specified in the Articles as a minimum of 8 and a maximum of 15.

In terms of what happens if the number of Trustees falls below the minimum, it is usual for a clause to be inserted in the Articles stating that the Board continues in place but that its only remaining power is to authorise the appointment of new trustees.

Appointment of Trustees

19. The current situation of the Methodist Council appointing an 'observer' to the Board of All We Can, who is not a trustee, is intended to develop the relationship between the Methodist Church and All We Can. However this has not always been an example of good governance, and has proved on occasions to be both awkward for the person appointed, and unworkable for the respective governing bodies. It could be preferable for the Methodist Council to have the ability to appoint one (or more) trustees either by virtue of their role (vis a vis International Development) or by virtue of an interest in this mission. To provide continuity, it may be desirable not to specify that they should be Methodist Council members.

*****RESOLUTIONS**

81/1. The Council receives the report.

81/2. The Council directs the Connexional Team to liaise with the trustees of All We Can with a view to bringing final proposals on the change in legal structure to the Council, no later than April 2017.

81/3. The Council authorises the Chair of the Council and Secretary of the Council to appoint a small group, if necessary, to consider the final proposals and any legal advice obtained on behalf of the Council and bring recommendations to the Council on the proposals.