

# **Governance Structures in the Regional Partnerships**

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Published 2006 for the Ministry Division of the Archbishops' Council  
by Ministry Division

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## Foreword from the Bishop of Norwich

Since the publication of the original consultation draft on the Governance of the Regional Partnerships the staff of the Ministry Division have prepared this further report which gives advice for establishing light touch partnerships with a small 'p'.

The guidance draws on advice from the Charity Commissioners, the Higher Education Funding Council for England and the Committee of University Chairmen and has more specific advice on personal and corporate Taxation, VAT, and employment law.

The governance of our institutions is an issue that must be properly addressed whatever structures are adopted. It is significant that a great many of the recent reports from the independent Inspections Working Party have commented on the weaknesses and deficiencies in the governance structures and decision making processes of some of our training institutions. These issues must be addressed in our institutions and it is important that they are not carried over into the Regional Partnerships.

This report, which will need to be read with the guidance to be issued shortly by the Ministry Division which will set out the summary of the issues that governing bodies should consider, offers sound advice to make our institutions better and to offer solid foundations for the new partnerships that are coming into existence.

**The Rt. Revd Graham James**

**Bishop of Norwich**

**20<sup>th</sup> September 2006**

# 1. Introduction and purposes of this report

- 1.1. We live in an age where, rightly, people look for Quality and Assurance in the provision of many forms of service. The formation, education, and training of the people of God for their ministerial role as God's servants demands the highest standards.
- 1.2. Within the corporate world there has been a keen movement towards the highest standards of governance with the publication of the reports of the Cadbury and the Higgs Committees leading to the Combined code on Corporate Governance<sup>1</sup>, which places high standards on those who are accountable to owners or shareholders. Some would argue that the absence of shareholders or owners places a higher duty of care on institutions within the voluntary sector and that the sector cannot be complacent about governance.
- 1.3. The report **Formation for Ministry within a Learning Church (GS1496) (FMLC)**, as amended and approved by the General Synod, holds before us a renewed vision for theological education for the whole people of God, which is resourced and delivered through the creation of Regional Partnerships.
- 1.4. That Report noted that our present training arrangements involve too many and too small institutions, many of which as 'stand alone' institutions face difficulties in providing a balanced and cost effective training. The vision of the report was described as:  
  
*“to provide high quality training for the clergy that will equip them to offer vibrant and collaborative spiritual leadership, to empower a vocationally motivated laity and, thereby, to promote and serve God's mission in the world” (9.4)*
- 1.5. The Regional Partnerships have the task of providing high quality ministerial education, formation, and training for lay

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<sup>1</sup> The Combined code on Corporate Governance published by the Financial Services Agency in July 2003 and available at [http://www.fsa.gov.uk/pubs/ukla/lr\\_comcode2003.pdf](http://www.fsa.gov.uk/pubs/ukla/lr_comcode2003.pdf)

and ordained ministry. The Regional Partnerships are intended to overcome the disadvantages of the small institutions whilst retaining the variety of provision by bringing together the many institutions in working relationships to realise significant ecumenical, financial and structural advantages.

1.6. The Regional Partnerships to be formed should involve:

- Dioceses in the Church of England, the Methodist Connexion at National, District and Circuit levels, and the United Reformed Church Synods as they are involved in ministerial and lay training and formation;
- the Colleges, Courses and Schemes of the ecumenical partner Churches currently involved in initial ministerial formation;
- the University Theology Departments and Church Higher Education Institutions.

1.7. This report draws upon these possible structures outlined in FMLC and the theological understandings of the FMLC report and seeks to facilitate the ongoing dialogue within the Churches as to the most appropriate forms of partnership.

## 2. The role of Governance within the Regional Partnerships

### 2.1. Introduction

- a The shaping of effective providers of ministerial education and formation will call for leadership, governance, and management of the highest order if the expectations of all are to be fulfilled.
- b The Regional Partnership will be responsible for the direction and channelling (if not the actual payment) of significant resources for the training institutions and dioceses. The role of good governance is to provide assurance to the stakeholders that these funds will be used to bring about the expectations of individual people and Church bodies in ways that are publicly accountable.

### 2.2. The concept of Governance.

- a A paper produced for the National Council of Voluntary bodies describes Governance as *'the systems and processes concerned with the overall direction, effectiveness, supervision and accountability of the organisation.'*
- i Governance will involve the exercise of formal authority over the way in which:
  - the principal purposes and policies of the organisation are formulated;
  - the organisation monitors and assesses the ways in which these purposes and policies are fulfilled;
  - the organisation sets the parameters within which it, and its employees and agents, can function;

- it ensures that the organisation complies with both internal and external regulations (e.g. charity, company, legal, employment and financial law).
- ii The Governing body is to:
- ensure that the existence of a sound governance framework;
  - ensure the financial health of the institution;
  - ensure that sound relationships exist both within the institution and with bodies outside the institution;
  - ensure that there is good performance throughout the institution;
  - communicate and advocate effectively;
  - to develop and then update a long term plan for the organisation
- b Whatever systems are adopted it is important that they are **transparent** and that accountability **and responsibility** are clearly set out and understood.
- c The requirements of charity and trust law, employment legislation and corporate and taxation law, both in respect of the Regional Partnership and the bodies that they represent, will apply to all Regional Partnerships.
- d It is essential that those holding the posts of governors or directors act in the best interests of the trust or company and are aware that at any time they may face conflicts of interest that must be declared.

- e Whilst the 'legal roles'<sup>2</sup> may not be wholly applicable until there is a corporate structure, it is essential that the forms of governance adopted by the partnerships can cope with organic growth and contain the necessary skills at both executive and board level to run complex partnerships.
  - f Trustee roles and obligations can be unwittingly created and it is better if the structure is in place from the beginning to ensure that this does not take place by default.
  - g Further details of the issues that should be considered by Governing bodies in the field of Governance will be found in the detailed guidance issued by the Ministry Division and on the websites of the Charity Commissioners, HEFCE, and NCVO.
- 2.3. Two concepts often confused with governance and which boards of governors may see their role are the roles of leadership and management. Unless the organisation is very small there should be a clear separation of duties.

**a Leadership**

- i The leader is the one who articulates the vision of where the institution or team of people are headed. Leadership is about bringing together the differing skills and abilities of a group of individuals to achieve a task. In these tasks the leaders can be supported by a sound system of governance that can ensure that there is the capability, capacity and resources to meet those strategic aims.

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<sup>2</sup> The Governors will only assume their responsibility under company and trust law upon the formation of the educational charitable company and their appointment to the body of governors. However prior to that point there will be the possibility that they will be placed in trustee or fiduciary responsibility. On occasions these responsibilities could lead to conflicts of interest that are best dealt with in clearly defined structures that serve to identify and protect the individual and the institution.

ii Leadership needs to operate within the structures of the organisation.

- The Chair of the Governors will need to lead the work of the Board.
- The Chief Executive Officer of the institution leads the organisation in its work.
- the staff of the institution will lead in specific areas of work.

b **Management.**

i Management is a process which:

- sets out the strategies that are necessary to fulfil the organisation's policies and purposes;
- sets objective targets to enable those strategies to be implemented;
- deploys the full resources (in terms of human, financial and plant) of the organisation towards the goal of achieving those targets;
- decides between the competing claims for the use of those resources;
- and monitors and assesses how those resources are being used and how well the individual targets are being met.

### 3. The possible structures for Regional Training Partnerships

#### 3.1. FMLC states at paragraph 6.35

*'Under our proposals each RTP would be charged with the responsibility for agreeing a constitutional framework whereby the dioceses, other churches and other stakeholders (for example, theological colleges) establish both the legal entities (e.g. a trust or charitable company) and a Memorandum of Agreement necessary for the smooth operating of the partnership. The models could include:*

- *A covenant between separate and distinct entities, with protocols for co-operation;*
- *One legal entity providing ordination training, with a covenant relationship with the dioceses and other denominations relating to Reader and lay theological education;*
- *One legal entity where all resources are organizationally subsumed under one legal framework.*

*We envisage that the creation of RTPs will often involve a process of growing together.'*

3.2. Even at the initial stage of discussions there will be a need for ground-rules and operating protocols to be established, in order to ensure that the relationships and working practices within the Regional partnership are clear and transparent to all parties. There will be a particular need to ensure that ecumenical interests are kept to the fore in all planning.

3.3. Whatever level of partnership is thought to be the best for each region, every partnership will need to have, as a minimum, agreed statements setting out:

- the common vision to which the parties are committing themselves;
- the levels of trust and confidence which they seek to have with one another;
- the resources that each party hopes to bring to the particular partnership;
- the way that decisions will be taken;
- the outcomes they are seeking and how these goals and aspirations will be measured.

3.4. These will be outlined by an agreement or exchange of letters in the Strategic Alliance, by the Covenant in the Covenant model and in the Memorandum and Articles of Association of the educational charitable company.

3.5. The Stakeholders will need to develop confidence that the process of creating the Regional Partnerships will be taken forward in ways that enable them to have assurance that their interests will be taken into account, not just in the immediate process but also into the future.

3.6. The Regional Partnerships are seeking to bring together not just individuals but institutions, each with their own identity, traditions, history, organisational culture, and priorities. The process for the formation of Regional Partnerships may be an incremental process with the various institutions moving through several stages of co-operation, collaboration, and possible merger or it can be a process in which the various partners join the partnership in a variety of different forms.

3.7. The methods of working can vary from region to region and from stakeholder to stakeholder with scope for local interpretation in terms of timescale, the make-up of each group, financial arrangements, common service provision and the balancing of responsibilities between the Regional Partnership itself and its constituent parts.

3.8. Four key potential pathways for development of these partnerships have been identified.

a PARTNERSHIPS WITH A SMALL 'p',

i **The Strategic Alliance**, at its simplest form is an informal agreement between the various bodies;

ii **The Covenant** - a more defined relationship with the institutions forming the Regional Partnership joining in a Memorandum of Agreement or Covenant;

iii **Corporate body** - an educational charitable company limited by guarantee provides the shared core around which the partners gather to fulfil their roles. The institutions retain their own legal identity. This organisational form overcomes many of the structural disadvantages of a simple covenant relationship. It does not imply a corporate bureaucracy.

b PARTNERSHIP WITH LARGE 'P'

**Single legal entity**. - a corporate structure encompassing the whole range of institutions providing ministerial formation. Formed by the merger of the existing institutions, as a single organisation it is the example of partnership in its most complex form. Even so it may be in covenant relationships with external institutional providers. *It is unlikely that any potential Regional Partnership would wish to move to this kind of organisation in the short or medium stages in their development.* The details of this kind of organisation are included for completeness.

## 4. The structures in more detail.

### 4.1. The Strategic Alliance

A practical example might include diocesan OLM schemes, CME provision, Reader education, lay discipleship courses or schemes, a regional course, a theological college and a Church College

i This is the simplest form of working together and involves the least changes to the present structures.

ii This form of organisation is likely to be formed in the initial stages of a Regional Partnership.

iii The parties would join in a statement of intent whilst they worked to draw up the agreed Covenant between them.

iv The Regional Partnership works together in a collaborative manner with the parties undertaking the agreed roles within their own legal capacities.

v In terms of a governing structure:-

- the alliance would be guided by meetings of the parties on a regular basis;
- there is no need for a trustee or board structure;
- any executive officer would be an honorary position;
- the representatives have a purely representative function;
- the overriding aim is to work together for common agreed goals.

vi In terms of the decision making process it is essential that:

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- responsibility for actions or tasks is allocated to specific institutions that have the legal capacity to carry them out;
  - the contribution of resources including finance is clearly identified;
  - the representatives are careful not to take on trustee obligations that could render them personally liable;
  - all statutory obligations are observed.
- vii All the parties to the Regional Partnership remain separate legal entities and are free to take part in or to operate outside the scope of the Regional Partnership. The governing body of each institution within the strategic alliance decides and controls its own strategy and management objectives.
- viii In the provision of ministerial formation and training, the institutions will seek to work together but there will be no sanctions applied for a failure to observe or work towards any strategic vision.

#### 4.2. **The Covenant**

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| i  | This structure may move forward the relationships that have formed in the strategic alliance by making a Covenant or partnership document between the stakeholders. (Referred to in GS 1496 as a Memorandum of Association)  |
| ii | The Covenant sets out the terms of co-operation and working together. Each body within the covenant, whilst retaining its own separate legal identity accepts a commitment to work towards common aims and objectives, which may be legally binding on the constituent bodies. |

iii This structure summarises the view that many have of the partnership model and is one that many Regional Partnerships will form in the first instance.

iv In terms of governing structure it will be for the parties to the Covenant to decide the pattern of governance that will be required.

v However in some large Regional Partnerships, with other significant providers of lay and ordained training, the size of a fully representative body may become too large to allow for proper decision-making. At this point some form of consultative or reference group together with a smaller executive body will be necessary.

vi A suggested outline structure is:-

- a forum bringing together the representatives of all the stakeholders on behalf of their appointing institutions; and
- an executive committee or board of 'Governors'<sup>3</sup> who would need to be aware of the best interests of the Regional Partnership.

vii Whilst The Covenant remains a partnership or unincorporated body it is essential that: -

- responsibility for actions or tasks are allocated either to specific institutions who have the legal capacity to carry them out; or are agreed to be undertaken by the Covenant body with the members of the Covenant accepting any liabilities that might arise, including indemnifying the executive officers for their actions;

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<sup>3</sup> At this stage the 'Governors' would have no legal function. Such 'Governors' would need to ensure that they did not accidentally or inadvertently enter into trustee relationships or commitments. Without proper authorisation they could find themselves personally liable for any commitments that they entered into supposedly on behalf of the partnership.

- the contribution of resources including finance is clearly identified;
  - the representatives and any executive officers do not to take on trustee obligations that could render them personally liable for any debts or other obligations.
- viii Under the covenant partnership, **unincorporated all the parties** to the Regional Partnership remain separate legal entities. The governing body of each institution with the Covenant will decide and control its own strategy and management objectives. The institutions within the Covenant will be responsible for setting their own budgets and meeting their own costs but there will be an increasing need to do so in the light of the overall direction of the Regional Partnership. There will be an increasing financial interdependence.

#### 4.3. **Corporate body (Regional Partnership Company)**

- i As the Regional Partnership company starts to employ the joint staff and provide some common educational and administrative services it is essential that a Corporate structure is adopted.
- ii The formation of an educational charitable company (**Regional Partnership company**), with liability limited by guarantee, enables the Regional Partnership to have a separate legal 'persona' with which to enter into contracts and employ staff. The various stakeholders may be the members of the company and usually agree to contribute £1 in the event of the company becoming insolvent.
- iii The directors of the company can be few in number<sup>4</sup> but should include the Chair of the Regional Partnership. The

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<sup>4</sup> The minimum requirement is for 1 director and a company secretary, continuing the example given under the strategic alliance the shares of company might be owned by the four Diocesan Boards of Finance, the Regional Course, the Theological college and the Church college.

strategic direction of the company would remain under the direction of the representative body as the members.

- iv The 'members' of the company will be the stakeholders and they will set the overall strategic direction of the company. Achieving that strategic direction will be the responsibility of the directors or governors.
- v It may be appropriate to determine the voting rights and any specific rights of appointment for the directors.
- vi As the Regional Partnership company assumes a greater role in training and begins to set the strategic direction of the member institutions, it will become necessary for the Directors to have less of a 'representative' function and to be appointed for their specific skills as outlined later in the report.
- vii The Members (stakeholders) through their power of appointment of the Directors will retain overall control of the regional partnership.

#### 4.4. **Single Legal Entity**

- i **FMLC** discusses the possibility of all aspects of regional training being brought together under one legal structure to provide all aspects of lay and ordained ministerial formation either directly or in partnership with other bodies.
- ii The Regional Partnership will employ all staff and operate as the provider of all accredited theological and ministerial training within the region.
- iii As these Regional Partnership companies will be complex organisations, it is essential that proper forms of Governance be in place and that the Directors and Executive Officers have the appropriate skills to run the organisation.

**Whilst this is a potential structure this report considers that it would require considerable experience of working together before moving to this complex structure would be possible.**

- iv Even with this structure there would still be the opportunity for covenant relationships with those stakeholders who have to or who wished to remain outside the formal structure of the Regional Partnership. In all regions some form of covenanted partnership with Universities and other external partners will continue to be necessary even if all the training providers form, in time, a unitary body.

## 5. Benefits of incorporated status

- 5.1. It is important that the Regional Partnership is set up in such a way as
- to ensure the delivery of good quality education; and
  - to ensure that the Regional Partnership and individuals or institutions are not exposed to unexpected costs through unforeseen legal or financial risks.
- 5.2. In the initial period the Regional Partnership may exist solely as a meeting point or forum for the constituent stakeholders (referred to as the Strategic Alliance stage later in this paper). As a meeting point it does not need to have any legal structure, it will not hold any assets and will not employ any staff.
- 5.3. Once the decision is taken to formalise the structure; to hold assets; or employ members of staff, then a legal structure will be both necessary<sup>5</sup> and desirable.
- 5.4. The original working party having carefully considered the available options was of the opinion that it is essential that the work of the partnerships operate within the protection afforded by the provisions of the Companies Acts to incorporated institutions. There is no reason to change this view.
- 5.5. It is beyond the scope of this report to offer specific legal, taxation and HR advice. In any event the law in these areas can change rapidly. We therefore advise that proper professional advice is taken when setting up the Regional Partnership. The Finance Panel has available within the Vote 1 budget funds that can be used for these purposes.
- 5.6. The benefits of incorporation which fall into a number of defined areas:

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<sup>5</sup> It is possible that one body could agree to act as a secretariat for the RTP but if any element of charge is created then there may be potential VAT liabilities, if it cannot be shown that the supply of services is directly in connection with educational provision.

## 5.7. General and Governance

- a A corporate body can act as the legal owner of joint assets, employ common staff, provide common services, and act as channels for all or some of the financial resources of the Regional Partnership as a whole (particularly if there is a need to avoid potential VAT liabilities).
- b The Regional Partnership may eventually be entering into contractual relations with staff, suppliers, and other educational institutions. This will be a simpler process if there is one contracting party rather than a loose collection of separate legal institutions, or an ill-defined partnership.
- c The existence of a properly defined corporate structure with good systems of governance, leadership and management may provide a higher degree of confidence to the various stakeholders and those other parties such as ecumenical partners, the Universities and Church Colleges who will have dealings with the Regional Partnership.
- d If money is to be received directly from HEFCE then the Regional Partnership will have to comply with specific requirements for good governance that it expects from the bodies receiving its funding.<sup>6</sup>
- e The existence of a properly constituted educational charity would of itself mean that the trustees or directors would have defined duties and obligations, which can be objectively ascertained. Indeed the Charity Commission insists that appropriate and proper governance is in place in all charities.<sup>7</sup>
- f Under charity law and company law, trustees, and governors are required to show that they have acted in good faith and with the proper and appropriate advice. This can be best demonstrated if there exists a framework for proper governance of the institution.

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<sup>6</sup> The HEFCE website contains information on the patterns of Governance that are expected of educational institutions.

<sup>7</sup> See the Charity Commission papers CC3 Responsibilities of Charity Trustees, CC22 Choosing, and Preparing a Governing document. Available from the Charity Commission or from their website.

- g The creation of educational charities, with liability limited by guarantee, ensures that the individuals who might be deemed to have accepted trustee responsibilities can limit their liability if they show that they have acted in good faith.
- h The danger of risk to the reputation of the churches and other bodies is reduced if the proper structures or governance and management are in place with identified policies and procedures that need to be followed.

#### 5.8. **Educational**

- a Part of the Hind vision is that students will increasingly follow appropriate patterns of theological education and formation. These flexible pathways may mean that there will be a need to explore the place and content of residential training and how this could be facilitated within a Regional Partnership.
- b Following on from that, although the principles for Pathways for Expected Learning will be set at a national level there will inevitably be differences in the way that these are interpreted within different institutions. For the individual concerned and for the sponsoring diocese it is essential that there exist clear statements of the training undertaken. This is best achieved where there is commonality of structure.
- c The Hind report looks to the integration of all aspects of training within the regions and suggests that the resources of Church Colleges and the University Theology departments should become an integral part of the educational planning within the Region. It will simplify their relationships if they are able to relate primarily to one body rather than a number of small institutions.

#### 5.9. **Financial**

- a The Hind report envisaged that by the creation of the Regional Partnership it would be possible to make significant savings in academic and administrative staff costs through the synergies and economies of scale that would be possible. The Finance Panel has indicated that, in

its opinion, the savings will be very difficult, if not impossible to obtain within the budgets of the existing institutions. The existence of a corporate body would enable these savings in costs to be made more readily achievable.

- b The formation of a corporate body may enable resources to be retained within the Regional Partnership which otherwise might be lost to the Regional Partnership if the institutions were to become non-viable due to their small size.

#### 5.10. **Taxation**

- a An ill-defined partnership or an unincorporated body could find that it is liable to corporation tax on any profits made because the body might be deemed to be trading. Only if the terms of the charitable company prohibit the distribution of any surpluses except to other defined charities will exemption from these taxes be possible.
- b Where employees are deemed to have two separate employments then travel between the different places of work will be taxable if re-imbursed by the employer or somebody connected with that employer. Increasingly the Inland Revenue are taking a harder line over separate employments, therefore it may be to the advantage of employees to have one employer. It is possible for a person to be employed by one employer to be required to work at another place of work and for their additional travel costs to be met by their employer. However if a charge is made for these services than a liability to VAT may be unwittingly created if the supply is not deemed to be for educational services.
- c The creation of a corporate body would lessen the exposure of risk to Value Added Tax on its transactions. The issue of VAT on the transactions of the Regional Partnership is explored below.

#### 5.11. **Ownership of Property**

- a In setting up the Regional Partnership it is essential that proper legal advice is taken in respect of the ownership of

property that will include not only land and buildings but also valuable libraries that have been built up over many years.

- b Many of these assets will be held upon specific trusts and it is essential that if these are transferred or given to other legal entities that the wishes of the benefactors are observed where this is practical.
- c Experience in the past has shown that where theological colleges have ceased to be used for the purposes of ministerial formation and education the assets have ceased to be used for the training of ordinands. This is particularly inappropriate when over the years the resources of the wider church have been used to maintain the College as a centre for ministerial education through the provisions of Vote 1.
- d It is of course perfectly possible for the trustees to continue to own the assets and to allow the continuing bodies to have the use of the buildings or other property at a reduced or nominal charge. In this case the trustees would continue to have specific duties and the observation of the terms of the trust deed would remain with them. In any event we express the hope that, where during the formation of the Regional Partnership it becomes clear that some assets are no longer required to be used in their present form, any independent trustees will seriously consider retaining the use of such assets in theological education.

#### 5.12. **HR issues**

- a It is possible for employees to have more than one employer as is seen with the example of the National Church Institutions. However given the number of differing institutions who will be coming together to form the Regional Partnership the Working party believes that serious thought needs to be given to having one employer with one set of employment contracts. This will simplify both the HR implications and make the transfer of staff between the different component parts easier.

### 5.13. **Value added Tax**

- a It is important to be aware that there is potential liability to VAT on some of the potential transactions within the Regional Partnership.
- b In order to make exempt supplies for VAT purposes it is advisable that the Regional Partnership is a charity for educational purposes.
- c The Archbishops' Council understands that the provision of education or vocational training is an exempt supply (i.e. no VAT is chargeable) where it is provided by an eligible body.
- d An eligible body is a school, university, institute of higher education, or a body that is precluded from distributing any profit and applies any profits to the maintenance or improvement of what it does.
- e Regional Partnership would pass these tests provided they are established through their formal constitution etc as for the provision of education/vocational training.
- f As far as it can be said that the Theological Colleges (and, in future, the Regional Partnership) are making a supply to the Archbishops' Council in return for funding, it is an exempt supply. If in future there was to be any cross charging between Colleges and Regional Partnership for training that would also be exempt.
- g Doubts have however been expressed as to whether transactions such as the supply of financial or IT services are necessarily exempt, because these supplies are usually made by companies who are VAT registered. The inclusion of these supplies could be held to distort the financial 'level playing-field' for such services which is part of the rationale in VAT law. Reference has also been made the potential liabilities that may be created.
- h A possibility might be to arrange for such specialists to be employed on a part time basis by each of the individual institutions but the view of the working party is that this

might lead to complications later and raise complex issues in employment law.

- i It would seem sensible therefore to ensure that Regional Partnership are sufficiently funded from the centre to be able to provide all shared services of a non-academic nature that are required to obviate the need to cross charge for them. It follows that the staff providing such services could be employed by the Regional Partnership.

#### 5.14. **Formation Costs**

- a The Finance Panel has indicated that funds are available to meet legal fees and details of the process for applying for these funds are given in the letter of June 2005 from the Bishop of Chelmsford.
- b It is beyond the remit of this working party to offer detailed advice on the financial issues arising from the formation of the Regional Partnership such advice can be found in the report of the Finance Working party.

#### 5.15. **Mergers of existing charitable bodies**

- a The University of Liverpool Charity Law Unit has published two useful documents that address the problems and pitfalls in pursuing the mergers of charities.<sup>8</sup> These were the result of a research project funded by the Economic and Social Research Council. The summary of the research was that:
  - i mergers need to be carefully thought through;
  - ii charities and their advisers must adopt a pragmatic approach recognising that there is no set way of dealing with the legal issues;
  - iii a charity with good governing documents will find it much easier to achieve its aims in connection with a merger;

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<sup>8</sup> Legal Issues in Charity Mergers by Debra Morris 2001 ISBN 0 9536666 1 1  
Mergers: a Legal Good Practice Guide by Jean Warburton 2001 ISBN 0 9536666 2 X

- iv Charities should not be afraid to spend money seeking professional advice. They need however to be clear what they are looking for from their advisers with clear information and instructions being given.
  
- b In particular if it is proposed that existing charities should merge it is essential that consideration is given to: -
  - i The form that the merger will take and which bodies will merge;
  
  - ii that all 'due diligence' work is undertaken to ensure that the trustees are not taking on liabilities of which they are unaware;
  
  - iii that the employment rights of individuals are respected;
  
  - iv that assets are properly transferred and that particular regard is paid to permanent endowment and the assets associated with it.

## **6. The Structures within the Partnerships in practice**

- 6.1. Within all partnerships there will be a need for specific roles of representation of the stakeholders interests, the governance of the partnership and the day to management.
- 6.2. Initially at the strategic alliance and early in the life of the covenant these roles may be blurred. However as the responsibilities of the partnership grow and become more complex there will be a need to separate these roles.
- 6.3. Outlined below are suggestions for the way in which the three key roles could be accommodated within a partnership structure whether a simple alliance or corporate body.

### **6.4. THE REPRESENTATIVE FORUM**

- a This forum will draw together the various parties or stakeholders. Initially it may be the Regional Partnership which will be responsible for all the aspects of governance, leadership, and management within the Regional Partnership.
- b One of its prime roles in the early history of the Regional Partnership will be as an enabling group for agreeing the terms of the Strategic Alliance or Covenant.
- c Clearly it would be inappropriate for this body to take day-to-day decisions once the Regional Partnership begins to function.
- d As the Regional Partnership increases in size, and a possible Regional Partnership company is formed, the Representative Forum will become the 'shareholders' in the Regional Partnership. As such the role of the forum will change to provide a representative responsibility for the stakeholders in the formulation of the broad policies of the Regional Partnership that will be the responsibility of the Governing body to articulate.

- e We recommend that the Representative Forum should consist of representatives from:
- the Church Leaders reflecting the varying ecclesiology of the partner churches,
  - the Regional Facilitator,
  - others involved in the education, formation or placement of lay or ordained ministers (e.g. DDOs/Adult Educational Advisers/Readers and lay minister trainers),
  - Representatives (all) the Principals and Chairs from the educational establishments within the Regional Partnership.

If it is desired to make the body fully representative of the region then it may be desirable to include additional members:

- Church Community level (e.g. Diocesan Synod, Methodist District Synod and URC Synod);
- An agreed number of representatives from outside of the educational and formational system;
- Representatives from local government or the local communities.

## 6.5. **THE GOVERNING BODY**

- a Given that the Regional Partnership will involve a significant number of institutions some form of governing body will be necessary. Initially this body may be comprised of the Church Leaders and representatives from the institutions.
- b The role of such a governing body will be to formulate the policies, to provide leadership and to manage the work of the Regional Partnership in accordance with the broad strategies determined by the Representative Forum.

- c However as the functions of the Regional Partnership company, increase the competencies of the governors will need to be enhanced so that the governing body takes on a more formal existence to include:
- educational expertise;
  - experience in prayer or formation and the spiritual life;
  - human resource experience;
  - someone with finance experience;
  - someone with business experience.
- d ***As and (only) when the Regional Partnership educational charitable company has taken on a significant part of theological education and training role (The Single legal entity) then the skills and competences that members will bring need to change to be broad enough to encompass the needs of managing a complex institution.***
- e The Church Leaders may like to consider the use of a Nolan<sup>9</sup> type process for the appointments to the board. From then on a nominating body<sup>10</sup> should be appointed by the governing body to ensure that the appropriate skills were available to the Regional Partnership. Above all it needs to be a process that is sufficiently open for people to have confidence in the independence of the Regional Partnership Governing Body.
- f In respect of the Governing Body it is appropriate that:
- i The Governors should be appointed for time limited terms. Three to four Governors should retire each year in a rolling

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9 Refers to the Nolan Committee's First Report on Standards in Public Life- Cm paper 2850-I) which identifies seven principles that apply to all who serve the public in any way.

10 Following the Nolan type process adopted by the Government possibly using advertising and interviewing as a method of selecting people.

programme and there should be an agreed limit to the number of terms that individual governors can serve.

- ii It is essential that the Governors are appointed for their skills and expertise rather than being appointed solely or even primarily as a representative of the body that nominated or appointed them.

#### 6.6. **EXECUTIVE OFFICER AND EXECUTIVE TEAM**

- a There will be a need to sustain day-to-day executive leadership within the Regional Partnerships and therefore we believe that an Executive officer of the Regional Partnership should be appointed usually for a set time. During the creation of the Regional Partnership the Regional Facilitator will carry out the role.
- b As the Regional Partnership takes on an existence it may be decided to appoint a person to have the role of executive officer (paid or unpaid) to manage the day-to-day affairs of the Regional Partnership.
- c At first this may be a *primus inter pares* role from amongst those who are involved in training or have previous relevant experience. In time it may be desirable that this post becomes an appointed or seconded position.
- d As the Regional Partnership develops and begins to provide training in its own right then the role may become more defined in terms of managing a team of academic or administrative staff.
- e The Governing Body will need to define an open and transparent process by which the person will be appointed. These appointments should be open to members of all ecumenical partners within the Regional Partnership.
- f More specifically the Executive officer will be responsible for:
  - i the institution and its day-to-day direction;

- ii implementing the decisions of the Governing Body or ensuring that they are implemented through the relevant part of the institution's management structure.

## 6.7. Training

- a Regular meetings and workshops should be organised at which members of Regional Partnerships can share their experience and best practice. In addition to the regular national meetings of the Principals and Bursars there should be opportunities for training for the members of the Governing Bodies and Foundation Forums to share best practice.
- b It is essential that proper training be undertaken by those who will be involved in the governance, leadership, and management of the Regional Partnership at trustee and executive level. Those who are involved in the role as governors should be aware of the importance of:
  - the roles for non executive directors and the demands for demonstrable independence;
  - the role of charity trustees;<sup>11</sup>
  - risk management;
  - scrutiny of the affairs of the company;
  - and the requirements for greater openness, accountability, and increased disclosure now required.

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<sup>11</sup> Reference can be made to the Charity Commission website which gives detailed advice on the role and conduct of Charity Trustees.

## Appendix

### Supporting information and advice from HEFCE, Charity Commissioners, and The Committee of University Vice Chancellors.

A.1. **HEFCE** has published a Research and Development Report Evaluation of collaboration in the higher education sector in December 2002. It highlights that the benefits of successful collaboration are potentially immense. Much depends on the aims and type of collaboration, but the achievable benefits include:

- financial savings;
- greater inclusiveness and wider participation;
- wider student choice;
- critical mass in research ability;
- increased flexibility in responding to external drivers;
- greater leverage on external funds;
- strengthened institution brand;
- stronger regional and national voice.

A.2. The risks are also very real if the Regional Partnership are not established appropriately in respect of leadership and governance. These include:

- The Regional Partnership will not command trust or respect in the church at large and therefore will not be empowered to lead a process of change;
- The Regional Partnership will not win the trust of the institutions or of the potential participating denominations<sup>12</sup>, which may in turn step back from the

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<sup>12</sup> This may includes Churches other than the Church of England, the Methodist Church, and the United Reformed Church who were involved in the initial 'Hind' discussions.

process of engagement or, in some cases, pursue a different path;

- Progress in Regional Partnership may be effectively blocked through one or more institutions holding back commitment and collaboration through a desire to preserve a sectional interest;
- Inappropriately structured Regional Partnerships run the risk of both stifling local initiative and creativity and being led by entrepreneurial initiative from one or more of its component parts;
- If the opportunities to bring about synergies and economies of scale are ignored then a culture of driving down costs within the individual institutions may develop at the expense of training and education;
- Collaboration may not extend below the surface of regular meetings and shared services to the level of building common values and a vision for training.

A.3. The HEFCE report '*Evaluation of collaboration in the higher education sector*' identified that the two main costs of collaboration are (a) administration costs and (b) staff time and opportunity costs. Where the opportunities to obtain financial savings through synergies and economies of scale are not pursued then the adoption of a collaborative style of working may actually lead to overall increase in costs.

A.4. A report by Professor Brian Ramsden<sup>13</sup> for Universities UK<sup>14</sup> Patterns of higher education institutions in the UK found that:

- there is generally a correlation between the administrative cost per student (Full Time Equivalent)

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<sup>13</sup> Professor Brian Ramsden is the Former Chief Executive of the Higher Education Statistics Agency. His contribution in the field of higher education is highly respected.

<sup>14</sup> *Patterns of higher education institutions in the UK* Report by Brian Ramsden for Universities UK, October 2001.

and the size of institution, though it did not conclude that this was a causal relationship

- there is scope to reduce the overhead costs of the higher education sector through consolidation or collaboration.

a. He states '*There are two separate issues here:*

- *where collaboration has finite aims, objectives and timescales driven by resource pressures, it is likely in the long run to lead to reduced costs;*
- *where the primary aim of collaboration is to achieve benefits beyond those available to a single institution and partners are not motivated primarily by financial gain, the costs of collaboration will be on-going and there may be no*

Constitution	Level of Collaboration	Return on Investment	Expenditure	Economies
Physical restructuring	Merger	Long-term	High	High
	Transfer			
	Federation			
	Cooperative			
Networked partnerships	Alliance	Short-term	Low	Low

*administrative savings.'*

**Figure 1. Models and costs of collaboration**

A.5. The model in Figure 1 (above) illustrates the potential trade-offs between costs and benefits in different forms of

collaborative venture. For example, an alliance may increase effectiveness but will rarely achieve economy or efficiency gains because of its high transaction costs. Here, there is a much finer judgement about whether the benefits outweigh the costs.

A.6. The same report by Professor Brian Ramsden, looking at the benefits of collaboration, states

A.7. *'Much of the focus in policy at present is on collaboration between institutions. Collaboration between institutions thrives where it:*

- *builds on diverse missions and complementary strengths, and the institutions have more to gain from working together than competing;*
- *involves the whole institution;*
- *is driven by senior management;*
- *is based on a new joint vision.*

A.8. *Institutions collaborate in the student market but less often in the research market. As we have shown, collaboration between departments and subjects is also important. Some subjects are faced with a falling teaching market and are finding it increasingly difficult to provide national or regional coverage as critical mass evaporates. Collaboration offers two ways of resolving this:*

- *staff transfers between institutions to create critical mass;*
- *collaboration between departments across institutions.'*

A.9. Whilst the various stages identified in Figure 1 above do not correspond exactly with the stages to be used in this report, they do outline the possible pathways for change

- A.10. It is possible to draw from the analysis that the lowest savings are obtained through a network of partnerships. However if the decision is taken to merge the institutions, through a physical restructuring, then whilst the expenditure to achieve that merger will be high and any savings will be long term, there will be significant economies of scale in due course.
- A.11. Those forming the Regional Partnership will need to take decisions as to the optimum level of re-organisation and the appropriate structure of the partnership so that the aims and objectives of the partnership are achievable.
- A.12. In order that these decisions are well founded it will be necessary to identify the total real cost to the partner churches of the training currently available as some of the costs are currently hidden within the budgets of the various stakeholders.
- A.13. Many of these costs are included within disparate budgets of the various institutions with varying accounting policies. The Group looking at the Financing of Regional Partnership has recommended that full management accounts should be drawn up to identify the costs, and to enable the savings, that the Hind report suggested were available to be achieved.
- A.14. In this respect the representatives of the Methodist and United Reformed Churches have placed a greater stress upon paragraph 7.23 in the Hind report than some within the Church of England. It is their view that paragraph 7.24 presents a certain logical inconsistency when read in conjunction with paragraph 7.23<sup>15</sup> The Methodist and United Reformed Churches look for more powerful regional structures than some within the Church of England envisage.
- A.15. It is for each Regional Partnership to determine the pattern that is most appropriate for its region. Whilst this will produce diversity that, there are a number of issues that need to be

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<sup>15</sup> These paragraphs provide that the funding is to be provided to the RTP but also include the provision that whilst the Colleges remain separate legal entities payments will be made directly to them.

addressed, pitfalls to be avoided, and examples of good practice that can be shared.

- A.16. The report tries to set out how the suggested structures might operate within the different legal and constitutional forms. Whilst some regions may adopt a looser federative or partnership style it is important that care is taken to ensure that statutory needs are observed. There are a series of legal, taxation, and financial issues that need to be carefully addressed after proper professional advice. Some of these have outlined in Chapter 5.
- A.17. Furthermore an element of consistency will probably be helpful if further funding for our theological and ministerial formation were to be forthcoming from, for example the Higher Education Funding Council for England.
- A.18. The opportunity to design new structures for Regional Training Partnerships therefore offers a moment of significant potential for the churches but also a moment of significant risk if the Regional Partnership are inappropriately structured.
- A.19. In terms of the **public accountability** it is useful to reflect on the advice offered by the **Higher Education Funding Council for England (HEFCE)** and the **Charity Commission** both of whom stress the importance of good governance in the running of educational and charitable bodies.
- A.20. The **Higher Education Funding Council in England** in its strategic plan 2003-2008 has identified the following key issues, which it seeks to develop through its relationship in partnership with Higher Education Institutions. These provide an example of the key areas, which the Regional Partnership will need to address. They are:
- Widening participation and fair access;
  - Enhancing excellence in learning and teaching;
  - Enhancing excellence in research;
  - Enhancing the contribution of HE to the economy and society;

- Building on institutions' strengths;
- Developing leadership, governance and management;
- Excellence in delivery.

A.21. Whilst the terms used may seem a little unusual in a church context, they do have their place within the various institutions and bodies that will come together to form the Regional Partnership. Even the role of enhancing the contribution to the economy and society has its place if this is seen as enhancing the contribution made by our training institutions to the wider church as expressed at a parochial and diocesan level.

A.22. HEFCE specifically sees its role, as expressed in its Mission Statement, as

*'Working in partnership, we promote and fund high-quality, cost-effective teaching and research, meeting the diverse needs of students, the economy and society.'*

A.23. Working in partnership to provide high quality, cost effective teaching and research and meeting the demands of the students and the wider church is the responsibility of the institutions forming the Regional Partnership.

A.24. To achieve this it is essential that the Regional Partnership have the highest order of Leadership, Management, and Governance. It is essential that the structure not only enables but also actively promotes and enhances these purposes.

A.25. The most suitable vehicle for such corporate activity will be a charitable company limited by guarantee and registered with the Charity Commissioners. The formation of such a charitable company does not imply that the concepts of partnership will no longer apply but that the appropriate legal structure has been created to carry out these administrative tasks with the minimum of legal and financial complications. The stakeholders will retain, if they wish, their own freedom of

action whilst the charitable company acts as trustee for those assets held in common.

A.26. The Charity Commissioners have published a regulatory framework for registered charities<sup>16</sup> setting out principles aimed at protecting and promoting the standards an effective charity and its trustees should aspire to achieve. These are seen as:

- **Focus on impact and outcomes.** So that the Charity considers the impact it wants to have, and actually has, on the people who benefit from it. That it is clear about its objects, vision, mission and values and how these will be achieved;
- **Fit for purpose.** So that its structures, policies and procedures enable it to achieve its mission and deliver its services effectively;
- **Sound Governance.** The charity is run by a clearly identifiable trustee body that has the right balance of skills and experience to run the charity effectively, understands its responsibilities and has systems in place to exercise them effectively;
- **Maximises potential.** The charity manages and uses its resources so as to optimise its potential;
- **Accountable and transparent.** The charity needs to be accountable to the public and other stakeholders in a way that is transparent and understandable;
- **Flexible.** The charity is flexible enough to influence, and adapt to, changes in the environment in which it operates and the changing needs of those who use its services.

A.27. The Working party commends these values to those who are tasked with the formation of the Regional Partnership. Whatever structure is adopted, either a strategic alliance or a more formal organisation, the church in its role of witnessing to society needs to exemplify the highest standards.

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<sup>16</sup> CC60 *The Hallmarks of an Effective Charity* available on the Charity Commissioners website.

A.28. The Committee of University Chairmen have recently published a booklet entitled *Governance Code and General Principles*<sup>17</sup>. This guide outlines the importance of good practice in the governance of institutions and accords with the principles laid down by HEFCE for the running of institutions receiving public funding. In the introduction the report comments:

*'Institutions of higher education in the UK are complex organisations. Each is characterised by a distinctive ethos, is autonomous, and is responsible for the management and direction of its own affairs. In other respects they are bound together by identical challenges. All are looked to by learners to provide much more than in previous decades, and by Government to underpin economic growth and social engineering. Those who work in the HE sector also have greater expectations of their career opportunities and progression. In 2004 higher education institutions are ambitious communities. Governing bodies must also be ambitious, as they create the circumstances to convert aspiration into outcomes within a rigorous framework of governance.'*

A.29. This sums up the position of our institutions and points out the reasons why it is important that Regional Partnership adopts the appropriate structures and styles of governance. In summary good Governance, Leadership and Management within the Regional Partnership are essential because:

- effective leadership is now seen as vital in any significant enterprise, particularly in a time of change;
- discovering appropriate leadership is not simply about finding the best person (or people). It is also about designing the structures and organisation within which appropriate leadership can develop;

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<sup>17</sup> Governance Code and General Principles Committee of University Chairmen ISBN 1-902369-16-5 available on the following website <http://www.shef.ac.uk/cuc/pubs/CUC-Summary-Guide-HEFCEFinal.pdf>

- we need to demonstrate the highest standards in the running of the institutions, in which the churches' resources and money are invested.

For this reason the report draws attention to the standards of Governance, Leadership and Management adopted within the Regional Partnership which should correspond to the standards identified by HEFCE, and the Charity Commission.