

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### MARRIAGE (SAME SEX COUPLES) BILL

*First Sitting*

*Tuesday 12 February 2013*

*(Morning)*

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#### CONTENTS

Programme motion agreed to.  
Written evidence (Reporting to the House) motion agreed to.  
Written evidence reported to the House.  
Motion to sit in private agreed to.  
Examination of witnesses.  
Adjourned till this day at Two o'clock.

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED

£6.00

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**Saturday 16 February 2013**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY  
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IN GENERAL COMMITTEES

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**The Committee consisted of the following Members:**

*Chairs:* MR JIM HOOD, † MR GARY STREETER

|   |   |
|---|---|
| † Andrew, Stuart ( <i>Pudsey</i> ) (Con)  | † McDonagh, Siobhain ( <i>Mitcham and Morden</i> ) (Lab)                                    |
| † Bradshaw, Mr Ben ( <i>Exeter</i> ) (Lab)  | † McGovern, Alison ( <i>Wirral South</i> ) (Lab)  |
| † Bryant, Chris ( <i>Rhondda</i> ) (Lab)  | † Reynolds, Jonathan ( <i>Stalybridge and Hyde</i> ) (Lab/<br>Co-op)                        |
| † Burrowes, Mr David ( <i>Enfield, Southgate</i> ) (Con)  | † Robertson, Hugh ( <i>Minister of State, Department for<br/>Culture, Media and Sport</i> ) |
| † Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/<br>Co-op)                           | † Shannon, Jim ( <i>Strangford</i> ) (DUP)  |
| † Ellison, Jane ( <i>Battersea</i> ) (Con)  | † Swayne, Mr Desmond ( <i>Lord Commissioner of Her<br/>Majesty's Treasury</i> )             |
| † Gilbert, Stephen ( <i>St Austell and Newquay</i> ) (LD)   | † Williams, Stephen ( <i>Bristol West</i> ) (LD)  |
| † Grant, Mrs Helen ( <i>Parliamentary Under-Secretary of<br/>State for Women and Equalities</i> ) |   |
| † Green, Kate ( <i>Stretford and Urmston</i> ) (Lab)  |   |
| † Kirby, Simon ( <i>Brighton, Kemptown</i> ) (Con)  | Kate Emms, Alison Groves, <i>Committee Clerks</i>   |
| † Kwarteng, Kwasi ( <i>Spelthorne</i> ) (Con)   |   |
| † Loughton, Tim ( <i>East Worthing and Shoreham</i> )<br>(Con)                                    | † <b>attended the Committee</b>   |

**Witnesses**

Rt Hon Maria Miller MP, Secretary of State for Culture, Media and Sport

Rt Hon Michael Gove MP, Secretary of State for Education

Rt Rev. Graham James, Bishop of Norwich

William Fittall, Secretary General, Archbishops Council and General Synod

Rev. Alexander McGregor, Deputy Legal Adviser, Archbishops Council and General Synod

Archbishop Peter Smith, Vice-President, Catholic Bishops Conference of England and Wales

Professor Christopher McCrudden, Counsel, Blackstone Chambers

Charles Wookey, Assistant General Secretary, Catholic Bishops Conference of England and Wales

Rt Rev. John Davies, Bishop of Swansea and Brecon

John Shirley, Provincial Secretary, Church in Wales

Charles Anderson, Solicitor, Church in Wales

Lord Pannick QC

Baroness Kennedy of The Shaws QC

## Public Bill Committee

Tuesday 12 February 2013

(Morning)

[MR GARY STREETER *in the Chair*]

### Marriage (Same Sex Couples) Bill

8 am

**The Chair:** A warm welcome to everybody. Before we get under way in earnest, I have a few preliminary announcements. Most importantly, hon. Members may, if they wish, remove their jackets during Committee sittings, and I will be doing that shortly. In fact, if Tim could take that jumper off, it would do us all a favour. Will hon. Members ensure that all mobile phones, pagers and so on are turned off or switched to silent mode during Committee sittings?

As a general rule, I and my fellow Chair do not intend to call starred amendments, which are those that have not been tabled with adequate notice. The required notice period in Public Bill Committees is three working days, and amendments should therefore be tabled by the rise of the House on Monday for consideration on Thursday, and by the rise of the House on Thursday for consideration on Tuesday.

Not everyone is familiar with the process of taking oral evidence in Committee, so it may help if I briefly explain how we will proceed. The Committee will first be asked to consider the programme motion, which is on the amendment paper that should be in front of all Members, on which debate is limited to half an hour. We will then proceed to a motion to report written evidence and then a motion to permit the Committee to deliberate in private in advance of the oral evidence sessions, which I hope that we can take formally. Assuming that the second of those motions is agreed to, the Committee will then move into private session. Once the Committee has deliberated, the witnesses and members of the public will be invited back into the room and our oral evidence session will begin. If the Committee agrees to the programme motion, the Committee will hear oral evidence this morning.

*Ordered,*

That—

(1) the Committee shall (in addition to its first meeting at 8.00 am on Tuesday 12 February) meet—

- (a) at 2.00 pm on Tuesday 12 February;
- (b) at 11.30 am and 2.00 pm on Thursday 14 February;
- (c) at 8.55 am and 2.00 pm on Tuesday 26 February;
- (d) at 11.30 am and 2.00 pm on Thursday 28 February;
- (e) at 8.55 am and 2.00 pm on Tuesday 5 March;
- (f) at 11.30 am and 2.00 pm on Thursday 7 March;
- (g) at 8.55 am and 2.00 pm on Tuesday 12 March;

(2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

| <i>Date</i>          | <i>Time</i>                  | <i>Witness</i>   |
|----------------------|------------------------------|--|
| Tuesday 12 February  | Until no later than 9.00 am  | Department for Culture, Media and Sport; Department for Education  |
| Tuesday 12 February  | Until no later than 9.45 am  | The Church of England  |
| Tuesday 12 February  | Until no later than 10.30 am | The Catholic Bishops' Conference of England and Wales  |
| Tuesday 12 February  | Until no later than 11.00 am | The Church in Wales  |
| Tuesday 12 February  | Until no later than 11.25 am | Lord Pannick QC; Baroness Kennedy of the Shaws QC  |
| Tuesday 12 February  | Until no later than 3.00 pm  | Stonewall; Lesbian and Gay Foundation; Gender Identity Research and Education Society                                |
| Tuesday 12 February  | Until no later than 3.45 pm  | Liberal Judaism; Board of Deputies of British Jews   |
| Tuesday 12 February  | Until no later than 4.15 pm  | Out4Marriage   |
| Tuesday 12 February  | Until no later than 4.45 pm  | Coalition for Marriage   |
| Tuesday 12 February  | Until no later than 5.15 pm  | Professor Julian Rivers, University of Bristol Law School  |
| Thursday 14 February | Until no later than 12.15 pm | The Religious Society of Friends (Quakers in Britain); the General Assembly of Unitarian and Free Christian Churches |
| Thursday 14 February | Until no later than 1.00 pm  | The Methodist Church; the United Reformed Church   |
| Thursday 14 February | Until no later than 2.45 pm  | Liberty; Equality and Human Rights Commission; The Co-operative Group  |
| Thursday 14 February | Until no later than 3.15 pm  | Schools OUT; PHSE Association  |
| Thursday 14 February | Until no later than 3.45 pm  | The Very Reverend Jeffrey John, Dean of St Albans; Alice Arnold, broadcaster   |
| Thursday 14 February | Until no later than 4.15 pm  | Brendan O'Neill, journalist; Mark Jones, partner at Ormerods Solicitors  |

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 4; Schedule 1; Clauses 5 to 10; Schedule 2; Clause 11; Schedules 3 and 4; Clause 12; Schedule 5; Clause 13; Schedule 6; Clause 14; Schedule 7; Clauses 15 to 18; new Clauses; new Schedules; remaining proceedings on the Bill; and

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 12 March.—(*Hugh Robertson.*)

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Hugh Robertson.*)

**The Chair:** Copies of memorandums that the Committee receives will be made available in the Committee Room.

## Written evidence reported to the House

MB 01 Lord Pannick QC

*Resolved,*

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(*Hugh Robertson.*)

8.3 am

*The Committee deliberated in private.*

### Examination of Witnesses

*Rt Hon Maria Miller MP and Rt Hon Michael Gove MP gave evidence.*

8.7 am

**The Chair:** Thank you for agreeing to come in a bit early; we are going to be very kind and let you go at 8.55 am so that you can hasten away to what I am sure will be an important Cabinet meeting.

Before we ask a series of questions, I understand you might want to make a few opening comments, but would you first introduce yourselves for the record.

**Maria Miller:** Maria Miller. I am Secretary of State for Culture, Media and Sport, and I am also Minister for Women and Equalities.

**Michael Gove:** I am Michael Gove, and I am currently the Secretary of State for Education.

**Q1 The Chair:** Would either of you like to make an opening statement?

**Maria Miller:** That is very kind.

I would briefly like to remind the Committee of some of what I said on Second Reading. Marriage is a good thing, and what we are proposing in the Bill is extending marriage to more people. It is apposite that we are discussing this in the week of Valentine's day. The Bill is about fairness and making sure that those who want to get married have the opportunity to do so, but also about protecting the rights of those who do not agree with same-sex marriage. A great deal of the Bill sets out the protections that we believe are important for that belief.

All religious organisations—Jewish, Muslim, Christian or any other—will be able to decide for themselves if they want to conduct same-sex marriages. The Church of England and the Church in Wales, which have a particularly unique position in our country because of the legal duty on their clergy to marry parishioners, have specific provisions. That is not to set them out as different, but to make sure that we can effect the same end result, which is that they enjoy the protections that other religious institutions have, as set out in the Bill.

As I have said, the Bill is about fairness and giving more people the opportunity to get married. It is very straightforward and I hope that we can have a constructive discussion on it this morning.

**The Chair:** Does the Secretary of State for Education wish to add anything to that?

**Michael Gove:** Only to associate myself 100% with my colleague's comments.

**The Chair:** Thank you very much.

Before I call the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick strictly to the timings in the programme order that

the Committee has agreed. I hope I will not have to interrupt Members mid-sentence, but will not hesitate to do so if need be.

**Q2 Chris Bryant (Rhondda) (Lab):** A happy Shrove Tuesday—pancakes for all.

I think that the Bill is slightly more complicated than it needs to be, but perhaps that is because of the anxieties to which the Secretary of State just referred. Will she explain why she has not consulted on extending civil partnerships to heterosexual couples? I do not mean brothers and sisters and everybody else, but just heterosexual couples.

**Maria Miller:** That was something that was covered in the consultation. We obviously paid great attention to the results, because there was an indication that there was support for such an extension, although I have to say that I think that the way in which the question was phrased in the consultation may have been somewhat complex. I take a very straightforward view on this matter, which is to ask whether there is a need to extend civil partnerships to heterosexual couples. There is clearly already an opportunity for heterosexual couples to enjoy civil marriage, or indeed marriage through a religious ceremony, which afford all the benefits that a civil partnership would afford. Based on that, we do not believe that there is a need to extend civil partnerships to heterosexual couples.

Over and above that, we believe that the Bill is all about extending marriage. That is what we believe is the gold standard and the thing to which people aspire. That is why we want ensure that we focus the Bill on that particular issue.

**Q3 Chris Bryant:** That makes me feel as if my civil partnership is not the gold standard, and I gently suggest that the Secretary of State might want to rethink the way she talks about that matter.

Getting down to the nitty-gritty, the Government have included a small provision in relation to adultery. Will the Secretary of State explain why they have put anything about that in the Bill at all, as previously statute law has not referred to adultery? Is she happy with the bizarre anomaly whereby a gay man cannot commit adultery with another man, but can with a woman?

**Maria Miller:** Just referring back to my previous comment, if we were content with the current situation, we would not be extending marriage. By definition, we believe that it is important to extend marriage to more people, which is why the Bill is in front of us, and I would not want to cause any offence to the hon. Gentleman, but ultimately that is the reason why we are doing this. We are not content with the current situation, and we believe that there should be equality and that everybody should have the ability to access marriage, which is an internationally recognised status.

To move on to the point that the hon. Gentleman raised about adultery and the way in which it is treated in the Bill, the approach that we have taken is to recognise that whether we are referring to adultery or to consummation, those things are recognised within the law. Adultery relates to heterosexual couples and will continue to relate to the relationship between heterosexual couples. It is a relevant consideration in divorce, as if

people want to divorce, they can cite adultery as a reason for doing so. We have no intention of changing that provision. For same-sex couples who face difficulties in their relationship and wish to consider divorce, the provision on unreasonable behaviour is available—in fact, many couples already use that as grounds to effect a divorce. Therefore that provision will be available to same-sex couples as a clear avenue that they can take if they wish to dissolve their relationship. That is a practical way of dealing with this issue, and leaving adultery as it is defined in law and unchanged is an effective way of dealing with this, given that we have provisions around unreasonable behaviour for same-sex couples to access.

**Q4 Chris Bryant:** How many people cite adultery for divorce now? You may not be able to provide the precise numbers, but the numbers and the proportion would be helpful for the Committee.

**Maria Miller:** I have looked at this. I do not have the figures in front of me, but fewer people cite adultery than cite unreasonable behaviour, which is understandable—

**Q5 Chris Bryant:** Massively fewer or slightly fewer?

**Maria Miller:** May I, Mr Streeter, write to the hon. Gentleman about that?

**The Chair:** Yes.

**Q6 Mr David Burrowes (Enfield, Southgate) (Con):** Clause 1 provides for what is lawful in terms of access to marriage. How would the Secretary of State define marriage in terms of its meaning and purpose?

**Maria Miller:** As my hon. Friend will know, there is no one definition or meaning of marriage. Already we have a situation in which the state defines marriage more broadly than religious institutions do, and that is basically a result of the fact that some religious organisations do not have a wish to recognise divorce, so there are already differences. I see marriage very simply as an ability for two people to come together and stay together, and to pledge their commitment to stay together for life. It is that strength of commitment that we as a society thrive on, and that is why I support so strongly the idea of extending marriage to all people.

**Q7 Mr Burrowes:** Is that the meaning and purpose that is the foundation of the Bill?

**Maria Miller:** As my hon. Friend will know from his legal background, there is no one definition of marriage.

**Q8 Mr Burrowes:** In this Bill.

**Maria Miller:** In this Bill, we are extending marriage to more people. Marriage will mean different things to different people. It will mean different things if one is getting married in a religious institution or if one is getting married through a civil registry office. That is the premise on which we have put forward this Bill.

**Q9 Mr Burrowes:** I am not one to read the *Daily Mail* too much, but it made reference to e-mails going between the Equalities Office and the Department for Education that talked about to the implications of same-sex marriage on schools' legal responsibility to teach marriage. Apparently an e-mail from the Equalities Office warned of the possibility of walking into a minefield on this. How have both Departments considered the impact on schools in relation to the Bill?

**Michael Gove:** As you would expect, both Departments have looked carefully at the impact, not just on schools, but on public services and their provision overall. I have had the opportunity to talk at length with the Department's superb legal team and we have sought external legal advice as well. We have also been helped by the public debate, to which a number of eminent lawyers—not least David Pannick, Lord Lester and Baroness Helena Kennedy—have contributed.

**Q10 Mr Burrowes:** Does that include John Bowers QC as well?

**Michael Gove:** We have not sought his advice, but I have read the legal opinion from Aidan O'Neill QC.

**Q11 Mr Burrowes:** But what about John Bowers QC? He said that schools could lawfully discipline a teacher who refused to teach materials endorsing same-sex marriage.

**Michael Gove:** I have not read that advice, but it is perfectly clear that there will be no requirement on any teacher to promote a view or doctrine with which they feel any discomfort. At the moment, any teacher is required—for example, in sex and relationship education—to refer to concepts such as adultery and to deal with facts such as divorce or abortion. It may well be that if a teacher—whether they are Roman Catholic or strongly of another faith, or of no faith but with clear moral convictions—is invited by a student to express their view, they might express their disapproval of the termination of an unborn child, for example, or the premature termination of a marriage. However, no teacher can ignore the fact that divorce is provided for in the law of the land or that abortion is a key reproductive right that women can deploy. There is a key difference between denying a fact and a law of the land—if the Bill passes, equal marriage will be a fact and a law of the land—and requiring someone to promote it. It is on that distinction that the liberty of conscience of teachers—and, indeed, of anyone in public service—rests.

**Q12 Mr Ben Bradshaw (Exeter) (Lab):** Maria Miller, given that a lot of my heterosexual friends seem to think that concepts of consummation and adultery are themselves rather antiquated, did you consider modernising the general marriage law in this Bill, given the problems over such issues that you may well encounter as it passes through Parliament?

**Maria Miller:** No. We looked very closely at the relevance of those two concepts to extending marriage, but I did not really feel that it was appropriate to get into reforming those particular concepts as part of the scope of the Bill. This is obviously an issue that generates a great deal of strong feeling on both sides, and trying to keep it very much focused on extending marriage was our objective from the start.

**Q13 Tim Loughton (East Worthing and Shoreham) (Con):** The Culture Secretary just said that she thought that the definition of a marriage was the ability of two people to come together and commit together for life. Why is that not already catered for under civil partnerships? She said that the Government were not content with the current situation. At what stage did they become discontent, and why?

**Maria Miller:** My hon. Friend will know that “A Contract for Equalities”, which was published at the time of the general election in May 2010, indicated very

clearly that we would look at this area with a view to considering whether there was need for reform, so I think that that showed very early on—indeed, prior to the formation of the coalition Government—that there was an intention to consider this very closely. My predecessor, the Home Secretary, did a great deal of subsequent work such as talking to religious organisations and also undertaking the largest public consultation that any Government have ever undertaken. That consultation was announced just over a year ago and continued through 2012. I think that we took a great deal of time to ensure that people were aware of the Government's position and then to ask their thoughts on how that might be implemented. Since the beginning of the coalition Government, there has been clarity about our lack of contentedness in this area.

I think that the first part of your question was about strengthening marriage—that is what I have written down, Mr Loughton.

**Q14 Tim Loughton:** It was about your definition of marriage as the ability of two people to come together and commit together in public for life. Why can they not do that already under civil partnerships and, going back to the first question, at what stage did that change? Just mentioning “A Contract for Equalities,” which apparently came out three days before the election and of which I think most Conservative MPs were blissfully unaware, let alone the public at large, does not answer the question of at what stage and why the present Government have become discontent with the nature of marriage. I want to know what happened between this Government and the previous Government—in 2004, they were saying that civil partnerships absolutely achieved what we all agreed we needed to achieve, but then something apparently happened three days before the election, and more recently, for this legislation to be introduced. Under your definition of marriage, there was no need for it.

**María Miller:** I am not sure it is for me to answer for the decisions made by the previous Government on civil partnerships. I have already set out quite clearly that it was always the intention of the Conservative party to consider this. I can certainly remember sitting down and reading “A Contract for Equalities” very closely. Over the past two and a half years, there has been great clarity about how the Government wanted to move forward on this issue. With the Bill now in front of us, that is coming to fruition. It does not feel like a process that has lacked transparency when more than 250,000 people have participated in it, so I hope that I can reassure Mr Loughton on that.

On whether civil partnership offers the same things as marriage, I think that it is important as a society that we recognise the importance of dealing with people equally. Marriage at the moment is open only to some, not all, couples. As a Government and as a society, we want to treat people fairly. Giving same-sex couples access to marriage as well as civil partnership is a question of fairness. I do not personally believe that we should be nurturing a two-track approach. It is important that we have a strong institution called marriage and we should be strengthening that.

Just for the sake of completeness, Mr Streeter—I know this issue was considered on Second Reading—we looked closely at whether we should continue the availability of civil partnerships for same-sex couples. We came to

the conclusion that we should do so for a very important reason: there might be same-sex couples who, for religious reasons, decide that marriage is not something that they wish to opt into. That view was expressed on Second Reading. It would be wrong to deny such individuals the ability to formalise their relationship through a civil partnership. That is the logical reason why we decided to leave it in place, but we will continue to look at that as we move forward.

**Q15 Tim Loughton:** I am not entirely sure that that answers my question about what happened three days before the election and now. However, on the question of fairness, which you have come back to several times as a justification for the legislation, how is it fair that a same-sex couple who happen to be Anglicans and church attenders, who have been in a stable relationship for many years and might have had a civil partnership, will not be able to get married in a church?

**María Miller:** I do not think it is for the state to start to tell religious institutions what to do.

**Q16 Tim Loughton:** It is what we are doing with the Church of England in this legislation.

**María Miller:** With respect, it is not what we are trying to do. We are trying to give religious institutions the option to follow their beliefs and their conscience on these issues. We know that there are religious institutions—the Unitarians, Quakers and others—that wish to opt into being able to conduct same-sex marriage. They see it as a way of strengthening and taking their faith out to a broader community. I think that is an interesting view and it is something that I applaud.

Equally, there are Churches that do not wish to take that approach. In the Bill, we have given such organisations the ability to opt in if they wish to, but not if they do not wish to. That is an important point for the Committee to understand. There is no bar on any organisation being able to opt into undertaking same-sex marriage. It is down to the organisation itself.

**Q17 Kate Green (Stretford and Urmston) (Lab):** My first question is for the Secretary of State for Education. I want to pursue a little more the protections for teachers, because a lot of public anxiety has been expressed. My understanding is that teachers are required to teach about the nature and importance of marriage. I think that that is the Education Act provision. If they are teaching about the nature and importance of marriage, and this Bill is passed and becomes an Act, as I hope that it will, implicitly they will have to acknowledge that same-sex marriage is valid, whether that is contrary to their religious beliefs or not. What protection is there for a teacher—as described by the Secretary of State a moment ago—who says, “I will teach you that this is very important, but I do not believe it”?

**Michael Gove:** First, the language that you refer to exists in the statutory guidance that was issued in 2000 when David Blunkett was Secretary of State for Education. That statutory guidance has not changed, and I see no reason to change it. There is a difference between acknowledging the importance, both historic and current, of an institution such as marriage, and acknowledging how it has changed over time and brought within its ambit different people in different ways, and then inviting

someone to endorse a moral view that they do not share. I think all teachers understand the difference between teaching facts, introducing students to knowledge and at the same time expressing an opinion.

We would not expect teachers in any area to express strong or polemical opinions. In fact, there is legislation to ensure that overall when teachers are presenting anything that is political, they must ensure that children have access to a balanced view on the matter. But any teacher, if asked direct or invited to share his view by a parent or a student, is perfectly at liberty to say, with equal marriage—as with adultery, divorce or abortion—what their own moral view might be.

**Q18 Kate Green:** I am concerned that while a school may have a policy and a teacher may be required to follow it, there is no Ofsted inspection of PHSE, so we will not know, or be able to validate, the way in which schools approach this. Is there any concern in the Department about what teachers may be doing and saying in schools and how we can know what is going on?

**Michael Gove:** I suppose there could be two concerns on either side of the spectrum. There could be a concern from people who, because of strong religious faith, fear that children are taught things about sex and relationships that they may consider too permissive, for want of a better word; indeed, there is then the opposite concern that some people may think that a particularly traditional teacher may present a moral world view that is at odds with the view that they hold as parents.

Parents have several protections. The first protection is that there is an absolute right on the part of any parent to withdraw their children from sex and relationships education; the only exception to that is the national curriculum content in biology which refers, basically, to the birds and the bees—the mechanics of reproduction. If any parent had the slightest concern, they could withdraw their child. Of course, it is the case that, prior to that, there is an expectation that any parent would raise any concerns that they had with a teacher or head teacher.

As well as those protections, and the article 9 protection which exists for any teacher to safeguard their freedom of thought and conscience, there is another thing that is important to bear in mind: common sense. We expect teachers—particularly, but not exclusively, in secondary schools—to navigate their way through all manner of potentially contentious areas; whether that is citizenship or history, parts of personal, social, health and economic education or SRE, there are all sorts of tough questions that young minds face as they grow up and part of the approach that we take is to respect the professionalism of teachers and to respect the way in which head teachers operate. By definition, there is no way that we can turn our schools into Orwellian institutions in which a central inspector can be aware of every word that is uttered by every teacher at every time, but it seems to me to be curious to imagine that on this issue, as distinct from any others, teachers will somehow collectively take leave of their senses and obligations to young minds and seek to turn themselves into either latter-day Torquemadas or anything else.

**Q19 Jane Ellison (Battersea) (Con):** Obviously lots of people wrote to us about provision of services and that area. Secretary of State, could you talk a little about

how those people who perhaps hold strong Catholic views, such as the hotelier and the famous bed and breakfast owner, would be impacted by this and your expectations of them under current legislation?

**Maria Miller:** Obviously, the Bill deals particularly with marriage and extending that, in a civil sense, to more people. It does not impact directly on those people who provide services such as those that Ms Ellison suggests. Clearly, as we all know, that is something that has been raised as a spectre, particularly for those who might be offering marriage ceremonies within their premises. I know that one particular example was cited where someone with a strong religious faith who runs a hotel and may be offering civil marriages within their premises would be concerned about the impact of this. I would draw the Committee's attention to the fact that, actually, those individuals already have an obligation to offer civil partnerships—it is part of their licence—and they would already be in breach of their duties if they were to refuse same-sex civil partnerships, so those individuals have probably had to take the decision on whether they are happy to undertake same-sex civil partnerships on their premises already. The most telling thing is that I am not aware that there have been any problems in the area or that there have been any breaches of duties in that respect. Although I understand entirely this particularly theoretical concern, I think it is that—a theoretical concern. In practice, it does not seem to be creating the problems that people might be worried about.

**Q20 Jane Ellison:** I have one follow-up question on that and a quick question for the Secretary of State for Education. The provision for conscientious objection for people in public services and jobs is something many people wrote in about. Can you give us some idea about that?

**Maria Miller:** You are absolutely right to raise the issue of people with strong religious beliefs, whether it is providing services or in the public sector. They have a clear ability to demonstrate their faith at work. Some of the recent rulings from the European Court of Human Rights affirm the Prime Minister's strongly held belief that people should be able to wear a cross at work as long as there are no health and safety reasons why they would not do that. People should be able to profess their faith in an appropriate way in a work setting.

However, there is always a reality that we have to do that in a way that does not discriminate against other people. The right to assert one's belief cannot be at the cost of another individual being provided with services. That perhaps returns to the bed and breakfast case and, most recently, to the case of civil registrars having to balance very carefully their religious beliefs with their public duty to provide civil partnerships for individuals of the same sex. I think the Court's rulings have shown that we have the right balance at the moment. That was a good thing to see coming out of the Court recently.

**Q21 Jane Ellison:** Just a quick question for Mr Gove. There is still a considerable level of homophobic bullying in schools throughout the UK. You have described the difficult balancing act that teachers have to strike. Would you expect them, whatever their views of same-sex marriage, to offer appropriate support to any child who was suffering homophobic bullying?

**Michael Gove:** Absolutely. It is striking that some of the schools that are best in dealing with bullying of all kinds, including homophobic bullying, include faith schools. The evidence is that, in the playground, there are new ways in which bullying is directed towards students, and homophobic bullying is a feature of that. It is a growing problem in some playgrounds.

**Q22 Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): Some of the evidence to the consultation urged the Government to take this opportunity to equalise pension provision for same-sex marriage couples, civil partners and widowers with benefits currently enjoyed by widows. Why have the Government not taken this opportunity to do that?

**Maria Miller:** As the Committee will know, we have done a great deal to try to equalise pension provision in this country. In the vast majority of cases, men, women, civil partners and same-sex married partners are treated equally.

There are issues regarding the state pension, particularly for individuals who are over 63. Equalising the anomaly that particularly affects that group of people would cost around £80 million. Particularly given the difficult economic times we are in, we did not feel that that would provide enough benefit for the amount of money that was being paid out. We would be paying disproportionately, and potentially not always hitting the right target.

**Q23 Jonathan Reynolds:** Thank you for that figure. I have a supplementary question. What work have the Government done to look at the impact on occupational pensions and the benefits enjoyed by people from those?

**Maria Miller:** Again, we have looked at the matter in some detail. As the hon. Gentleman will know, the issue is reasonably complex. For occupational pensions, same-sex married couples will be treated the same as civil partners. The right to pension benefits for their survivors will be based on rights accrued since 2005, when the Civil Partnership Act came into force. That was something which, as hon. Members present who were on that Bill Committee will remember, was a particular point of debate at that time. The important thing to say here—I think this is really interesting—is that the majority of occupational schemes actually exceed the minimum requirement at the moment, and I think that is something to be applauded. I hope the Committee will urge more occupational pension schemes to take this approach, so that civil partnership pension rights are actually more than they are required to be by law. I think that shows good will by those organisations, and we should urge them to do even more.

**Q24 Stephen Williams** (Bristol West) (LD): This is a question for Maria Miller. It returns to the position of the Church of England and the Church in Wales about the duty to marry parishioners who wish to get married, either in their local parish church or in a nearby parish church. Why did you not consider removing this obstacle from the other end, so to speak, by removing that common-law right of people to marry in a parish church if they wish to?

**Maria Miller:** Because we did not feel that it was necessary to do that. We could effect the end that we wanted, which is to give organisations like the Church

of England the choice whether to opt in or not, simply by not extending that common-law duty. I think that is a more positive way of achieving the same end.

**Q25 Stephen Williams:** Would not removing that common-law duty actually remove the major problem with this Bill, as seen by a lot of religious organisations? They feel that they need protection under the Bill, but the only reason they need protection is because of that common-law expectation in the first place.

**Maria Miller:** There was no desire from the Church of England or the Church in Wales for that to happen.

**Q26 Mr Bradshaw:** If I were a Church of England priest and I had a gay or lesbian couple in my congregation, under this legislation I would not be allowed to marry them in my church. Would I be allowed to officiate at a ceremony at a Quaker meeting house, or one of the other churches that will offer marriage?

**Maria Miller:** This is very much something you would perhaps want to talk to the Church of England about. I have considered that very carefully, and my interpretation of their rules—and it is my interpretation—would be that for a priest within the Church of England to officiate at a ceremony at another church in their official capacity might well put them in breach of their obligations to the Church of England. As I say, that is something about which you may want to question the Church of England further. Each religious institution in this country has its own different ways of dealing with marriage. In the Church of England a vicar is able to practise within that Church, and also within the premises of that Church. If they are given a dispensation to go into a Quaker church to practise, our interpretation would be that that would potentially be in breach of the Church of England's regulations.

**Q27 Mr Burrowes:** Let us move forward a year to the celebration of LGBT History Month. There is a teacher who quite rightly would stick to the law and say that same-sex marriage exists, but wants to put forward her view that she does not in good conscience believe that it is equivalent to traditional marriage. Will she be fully protected in asserting that view? As LGBT History Month will go across the curriculum and teach children about the value of same-sex marriage, will parents have the opportunity to withdraw their children, not just from sex education, but also from other classes?

**Michael Gove:** The first thing is that again the article 9 rights of any individual are not affected by this legislation. Any individual has perfect liberty of conscience and freedom of expression. The question would arise if any teacher on any subject chose to go beyond the bounds of what we would consider to be reasonable behaviour for that teacher. If a teacher in the course of history or any other subject were to advance a view that was unbalanced, and which might lead any member of the class to think that they were subject to inappropriate teaching or any parent to think that they were subject to inappropriate teaching, of course there would be an opportunity for that parent or that individual to raise the issue with the teacher or the school. However, I have to say that I cannot see what the concern is here. By definition, if you express a view on any issue reasonably

and explain what your position is, there is no problem. If you express an unreasonable view on any issue or abuse the opportunity to be in charge of young minds, that could become a question for the school leader. The desire to suggest that the Bill changes the position of teachers perplexes me.

**Q28 Chris Bryant:** Secretary of State for Culture, I want to ask about anomalies. We will end up with a lot of anomalies if the Bill is enacted exactly as drafted. An issue that we came close to just now is that a religious same-sex couple can have religious symbols at the hotel where their civil partnership is celebrated, but a heterosexual couple getting married using exactly the same venue and the same registrar will not be allowed to use religious symbols. For that matter, a same-sex marriage will not be allowed to use religious symbols. Are we not in danger of creating an awful lot of anomalies?

**Maria Miller:** I do not believe so. We are simply saying that individuals, institutions and religious organisations are able to choose whether to opt into the measure. We are saying that people who currently offer marriage and civil partnerships on their premises should be able to extend that to same-sex marriages. I do not believe we are making it as complicated as the hon. Gentleman suggests. Perhaps he can explain his point further so I can give a fuller answer.

**The Chair:** Maybe he cannot at this point, but we may come back to that.

**Michael Gove:** Very briefly, when you deal with religions, which by definition are collective expressions of belief, there are anomalies. It is the case that the Roman Catholic Church would not allow either of us to take part in mass, but the Church of England allows members of other Churches to take communion.

**Q29 Chris Bryant:** That is wrong. The Roman Catholic Church allows—

**Michael Gove:** No it does not. That is quite wrong.

**The Chair:** We have seven minutes left.

**Q30 Tim Loughton:** Let me ask one quick question to each witness. The Secretary of State for Culture, Media and Sport said on Second Reading that she intends to see Northern Ireland brought into the remit of the Bill. How does she intend to do that, given the current situation with devolution and the recent vote in Northern Ireland?

**Maria Miller:** My reference was about making sure that we have an accommodation that recognises equal marriage in England and Wales, and also in Northern Ireland. That is what I was referring to.

**Q31 Tim Loughton:** So how are you going to achieve that?

**Maria Miller:** We will achieve it in the same way that we do with other devolved issues. We will seek a legislative consent motion. I have already been in communication with the Northern Ireland Government to seek such a motion, in the knowledge that they do not seek to

extend marriage in the way that we are doing in England and Wales—I believe that Scotland intends to extend it as well.

**Q32 Kate Green:** I would like to return to the pensions issue. I was contacted by a trans couple who are pleased that the Bill will allow them to remain married—they are married currently—after one member of the couple changes their gender. However, after making that transition and becoming a same-sex married couple, one partner will lose their pension rights. Has consideration been given to that anomaly? Is the decision that that couple faces not rather unfair?

**Maria Miller:** As with all pensions issues, we look to be as fair as possible, but this is a particularly difficult area. If we make an exception for private and occupational pension schemes when a person changes their legal gender, we place additional regulatory and administrative burdens on pension schemes. We would require schemes to ask survivors intrusive questions to establish the gender history of the deceased and therefore be able to evaluate what the appropriate survivor benefits were. It is a very difficult and complex area that we have looked at in some detail. We have decided that it is best to avoid over-regulation and allow schemes to be flexible in the way that they provide these benefits. Some schemes can and do provide more than the minimum, as I have said before.

We are making an exception in this area for state pensions, because otherwise a married woman's pension payment could be reduced when her marriage becomes same-sex. This could happen if a spouse was born before April 1950. That is the particular area. We have tried to put in place an approach which will give as much equity as it can, but clearly I am very interested to hear in the discussions of this Committee whether you feel that further improvements can be made. We have tried to work within the existing framework as much as we are able to, but clearly Ministers will be interested to hear any further thoughts in that area.

**Q33 Tim Loughton:** The Education Secretary keeps referring to inappropriate teaching being a trigger for action being taken against a teacher who had a problem teaching about same-sex marriage. Recent cases in the ECHR referred to a registrar and a Relate counsellor who felt it would be inappropriate and that they would be unable to carry on in that work. That was not upheld and they were effectively sacked. If a teacher in a Catholic school, for example, said that he or she was unable to take an RE lesson—because you do not have to be an RE teacher—or a sex and relationship education lesson unless he or she could refer to same-sex marriage as, for example, a “pretend marriage”, would that be inappropriate teaching? What would be the repercussions?

**Michael Gove:** Why would a teacher want to go into the lesson with that aim in view?

**The Chair:** Let's not have a conversation.

**Q34 Tim Loughton:** As a recent survey has shown, there are many teachers who hold to the view that they did not agree with same-sex marriage. If a teacher was perfectly happy to teach religious education or sexual relationship education, but would not be able to include

teaching about same-sex marriage without explaining his or her view—the conscience that you have referred to—that it was not a real marriage, a pretend marriage for example, on that basis would she or he be allowed to take that lesson or not?

**Michael Gove:** I do not know any teachers who think: “Do you know what? As we discuss whatever it might be in the next hour available to me with these young people my most important aim is to explain why I think that this is a pretend marriage.”

**Q35 Tim Loughton:** That is not the question.

**Michael Gove:** That is my answer.

**Q36 Mr Bradshaw:** How much will it cost to convert a civil partnership to a marriage?

**Maria Miller:** You are absolutely right. There are provisions in the Bill for us to be able to do that. We do not have a cost worked out. It will depend on the cost to the Treasury and to those implementing this.

**Q37 Mr Bradshaw:** Do you have an approximate idea?

**Maria Miller:** I do not at the moment.

**The Chair:** Colleagues, we have more or less reached the time that we said we would allow our Secretary of State to go. Thank you for your evidence. We wish you well in making wise decisions this morning at Cabinet and thank you for seeing us today.

#### Examination of Witnesses

*The Lord Bishop of Norwich, William Fittall and Rev. Alexander McGregor gave evidence.*

8.54 am

**The Chair:** Good morning. Thank you for coming to give evidence before us today. Would you kindly introduce yourselves for the record?

**The Lord Bishop of Norwich:** I am the Right Rev. Graham James, the Bishop of Norwich.

**William Fittall:** William Fittall, secretary-general of the General Synod of the Church of England.

**Rev. Alexander McGregor:** Alexander McGregor, deputy legal adviser to the General Synod and the Archbishops Council.

**Q38 The Chair:** Would you like to make a brief working statement, or shall we go straight to questions?

**The Lord Bishop of Norwich:** I am happy to make a brief statement. The Church of England’s understanding of marriage is rather unambiguously set out in Canon B30, as many of you will be aware, which says, according to Christ’s teaching, marriage is the union of one man and one woman for life to the exclusion of all others. Since canon law is part of the law of the land, clearly there has been a need for the sort of legislation before us which acknowledges two understandings of marriage, one which will be gender neutral and one which will be more traditional.

Our concern has not been simply to ensure rights and freedoms for the Church of England, but is a concern for the good of marriage itself. The Secretary of State said that she believed marriage was a good institution in society; so do we, and we have been grateful for the way in which the Government have worked with us in shaping this Bill. Overall, we are broadly content with the way it has developed, although there is more work to be done. Our regret is that until now there has been a single understanding of marriage across Church and state, and between the world faiths. We regret there will not be the same unanimity and we think that there may well be consequences for this which none of us has fully identified as yet.

**Q39 Chris Bryant:** Is homosexuality curable?

**The Chair:** That might not be within the scope of the Bill, but let’s have a very brief response and then we will come back to the debate.

**The Lord Bishop of Norwich:** I do not think myself it is. There are Christians who believe it to be curable, but that is not the view that I take.

**The Chair:** Another question on the Bill?

**Q40 Chris Bryant:** Mr Streeter, without your cynicism, it does strike to the matter of the Bill and in particular the Church of England, because the Book of Common Prayer of 1662 lays down three reasons for marriage. First of all, procreation, which does not apply to many who get married because they either have no intention or no ability to have children, and we do not consider theirs not to be proper marriages. Secondly, to prevent fornication—*[Interruption.]* It was written in the language of 1662 and for a particular understanding. The third reason was for mutual society. The bit I do not understand about the Church of England’s position is why—and that is reaffirmed in the 1928 prayer book, not passed by Parliament, but passed by the Church of England—if you do not believe homosexuality is a moral disorder or you do not believe it is incurable, why you would be opposed to homosexual couples being able to have that mutual society?

**The Lord Bishop of Norwich:** I think the mutual society, help and comfort one may have of the other is affordable in civil partnerships. When the Church of England marries someone, the preface in the Book of Common Prayer is recited even when the woman is past child-bearing age. There is a distinction between idealism in relation to what the purposes are for marriage and realism about the couple who stand before you. I have married a couple who are both in their 80s and I have said the first purpose of marriage is for the procreation of children and they have understood it. It does not apply in its fullness to them, but it is a purpose for which marriage exists.

**Q41 Chris Bryant:** But do you understand why people would then think if the Church of England had campaigned aggressively or assertively or voluntarily for civil partnerships, then you might have a bit more to say on this subject?

**The Lord Bishop of Norwich:** I can understand why you think that. You are speaking to somebody who voted against the wrecking amendment in the House

of Lords which tried to prevent civil partnerships being brought on to the statute book. There were a number of us who did so.

**Q42 Stephen Williams:** Coming back to this common-law duty to marry, as I understand it, a parishioner could turn up at a parish church and one of your vicars in Norfolk would marry them if they were divorced—indeed if both parties were divorced—or even if they were atheists and not even professing Christians. Is that the case? If they are atheists, they do not have to prove they are adherents of the Church of England?

**The Lord Bishop of Norwich:** No, they need to be residents of their parish, or have a connection with the parish.

**Q43 Stephen Williams:** So a vicar in one of your parishes would marry a double-divorced couple who could be atheists but would deny that right to committed Christians?

**The Lord Bishop of Norwich:** He is unlikely to do that with those who are divorced if he adheres to the guidelines from the House of Bishops on the further marriage of the divorced in church.

**Q44 Mr Bradshaw:** May I ask the question I posed to Maria Miller about what would happen to a priest who wanted to give pastoral support to a gay or lesbian couple in his or her parish, and wanted, but was not allowed, to officiate at a ceremony at a Quaker meeting house?

**The Lord Bishop of Norwich:** He would have trouble officiating at a ceremony at a Quaker meeting house, since there are no officiants at a Quaker marriage.

**Q45 Mr Bradshaw:** Or anywhere else.

**The Lord Bishop of Norwich:** I recognise the point. In the first place—I do not think we have discussed this in the Church of England—it would need to be recognised and regarded in another denomination in order to operate. He or she might need to be recognised as a civil registrar to undertake that function. Whether or not that would be an offence against the canons of the Church of England, I would need to ponder and think about. Within the Church as it is at the moment, there are possibilities of Church of England clergy presiding at marriages in non-conformist Churches if they are recognised and regarded under the ecumenical Canons. I would need to go back and look at that, and we could write to you with a much more informed answer.

**The Chair:** If either of the two other witnesses want to chip in at any time, please feel free to do so.

**Q46 Stephen Gilbert (St Austell and Newquay) (LD):** One quick question and then a main question. Do you accept that there are other views within the Church, with vicars in different parishes in different places, and that the Church of England does not have one stable view across the country shared by every member?

**The Lord Bishop of Norwich:** The Church of England has doctrine which is expressed in its canons which it believes to be consistent across time and with the teaching of Jesus Christ. I think that I have been ordained in the

Church of England long enough to know that unanimity of view on anything is impossible to find, on this as on everything else. So no, certainly there is no unanimity of view, but there is a distinction between the doctrine of the Church of England and what people who belong to it think. One of the glories of the Church of England is that we recognise conscientious dissent. There is a right of conscience, and we welcome couples who have registered a civil partnership who may not agree with the Church of England's doctrine to the Eucharist and to be part—full part—of the body of Christ.

**Q47 Stephen Gilbert:** On to my main point which is about humility. I was very lucky to go to a Church of England primary school, and one of the lessons that struck me there was about humility and questioning whether you might be wrong even in the strongly held views that you have. It strikes me that if the Government are wrong in introducing this Bill, then the worst that will happen upon the death of a married couple is that God will not recognise that marriages. It strikes me that if you are wrong, the worst that will happen is that people will perpetuate a discrimination that, on their death, God says is unjust. Have you ever considered the possibility that you might be wrong?

**The Lord Bishop of Norwich:** I think one of the characteristics of Christian life must be to always think that you may be wrong. That is true on every side of this debate as on every other. If there was not Christian humility in all of our churches and, pray God, in Parliament too, we would all be the most to be pitied.

**Q48 Jonathan Reynolds:** If this Bill is passed, same-sex couples will have the choice of a marriage or a civil partnership; heterosexual couples will just have marriage. Do you believe civil partnerships should be extended to heterosexual couples?

**The Lord Bishop of Norwich:** I am here supposedly speaking on behalf on this variegated body of the Church of England, and it does not have any official position on equal civil partnerships. I can tell you, from my own point of view, it seems a strange anomaly that heterosexual couples cannot register a civil partnership. You have only got to look at the figures for marriage; there are now 100,000 fewer marriages in this country each year than there were 20 years ago. The figures are quite striking, and that has given much greater acceptance of remarriage after divorce. A great many heterosexual couples decide not to get married, and they do so conscientiously; it is not an accident. It may well be that heterosexual civil partnerships might fulfil a need for them. That is not something over which the Church of England generally would have an opinion, but I can understand, within this context, why you might argue that.

**Q49 Tim Loughton:** I must declare an interest as the son of Church of England vicar who would certainly agree that there is a variation of views across the entire Church. I have two points to raise. Ben Bradshaw raised a really important one, which I want to extend. I have a vicar in my own constituency who, I am sure, would like this to happen. If after this legislation goes through, a Church of England licensed vicar performs a wedding of a same-sex couple on licensed premises, be it Quaker or otherwise, within that parish, will that marriage be

illegal after it has happened? Does it therefore effectively have to be annulled by the Church? How exactly will it happen?

**The Lord Bishop of Norwich:** I will pass that to the lawyer who might give a proper answer.

**Rev. Alexander McGregor:** The Bill, as you know, does not extend to marriages according to the rites of the Church of England. The marriage, therefore, could not take place as a lawfully effective marriage using the rites of the Church of England. The scenario you have put forward is where a clergyman or woman of the Church of England went to another denomination and did some work there. That does not seem likely to arise. The general ecclesiastical principle rules that the clergy of the Church of England can use only Church of England rites and forms of services. That is the basic position. There is a special exception to that in relation to Churches with which we have formal ecumenical relations. As far as I am aware, none of the Churches with which we have formal ecumenical relations is proposing to opt in to same-sex marriage.

**Q50 Tim Loughton:** But on civil premises—if they did it in an hotel?

**Rev. Alexander McGregor:** As far as I am aware, no clergy of the Church of England are employed by local authorities as marriage registrars.

**Q51 Tim Loughton:** At what point does it become a non-marriage? All of this could happen. A Church of England vicar could go to an hotel. There could be an organist and all the trappings of what might have happened in the Church. He performs the ceremony, and the couple say that they are married, what happens then?

**Rev. Alexander McGregor:** In hotels, they can only be civil ceremonies.

**The Lord Bishop of Norwich:** The Church of England is excluded from performing any ceremony under the law that extended civil marriages to registered premises.

**Q52 Tim Loughton:** I just want to know at what point does it become a non-marriage. It is performed by a Church of England vicar. The couple could say that they were married by a Church of England vicar, even if it were on civil hotel premises with all the trappings. What makes it a non-marriage?

**Rev. Alexander McGregor:** Only civil marriages can take place in hotels. If a clergyman of the Church of England went mad and thought that he could officiate at a marriage in a hotel, then the marriage would not have any legal effect.

**Q53 Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op):** The Archbishop of Canterbury was widely reported after his installation as restating the Church's official position, but given the lack of unanimity and the variegation in the Church to which you have referred, how do you feel that he and indeed other bishops will approach the issue in the years to come within the Church, and what scope is there for a change in position in due course if that were to be the wish of the bodies of the Church of England?

**The Lord Bishop of Norwich:** It is hard to tell, because this legislation has happened so quickly. We have not had a House of Bishops meeting or a General Synod working party of bishops to look at it. What the Archbishop said, if I have understood him correctly, was that he has to see this in the context of the worldwide communion. For us, quite apart from our own individual consciences and what we think the Church of England should do, what the Church of England does and what the Archbishop does and says is observed by a worldwide communion that he leads. It would be fair to say that for a great proportion of the Anglican communion around the world, this is not even a subject that has been discussed or thought about for understandable reasons. As for how quickly things might change, we have, at the moment, a working party being chaired by Sir Joseph Pilling looking afresh at our whole approach to issues related to human sexuality and indeed at our understanding of same-sex relationships. I think it is possible that our understanding of the status of same-sex relationships and how we treat them will change. Whether that would necessarily mean that you would then approve of same-sex marriage is another, quite different, issue. The tradition of marriage within the Christian church, which is shared with other world faiths, is so consistent over the centuries as being one man with one woman for life that I do not think that a change in understanding of same-sex relationships would necessarily lead automatically to the Church approving of same-sex marriage. However, I have to say that I am hazarding guesses here. You asked for evidence, but evidence on these things is a bit hard to come by. I can offer opinions rather than evidence; perhaps there is not a tremendous distinction between the two.

**Q54 Stuart Andrew (Pudsey) (Con):** A recurring area of concern for my constituents has been the threat of legal challenge. Are you satisfied that the quadruple lock is sufficient?

**William Fittall:** I think that we accept the Government's good intentions in terms of protecting the religious freedom of the Churches. That is obviously something that has to be done in a different way for different Churches, given that the starting point for us is different: our position in law is different from that of all other Churches. The Church in Wales, representatives of which you are going to see in a little while, is also, for historical reasons, in a different position both from us and from all other Churches. Then you have the other Churches and faiths.

In terms of safeguarding the ability of each Church and each faith to decide whether they wish to participate in same-sex marriages, certainly as far as the Church of England is concerned, we believe that the safeguarding of the position of canon law has been achieved. Clause 11 is a very wide, catch-all clause, which says that for all purposes marriage now means either mixed-sex or same-sex, and I think that there is still a drafting difficulty in clause 11(5), on the exemption for the Church of England. As I think the Government recognises, the Bill has been produced at huge speed; I do not think there is a difficulty of principle there, but there may be some further drafting to do on that.

I think overall, however, that the locks are okay. The thing that perhaps has not been said, but is a point that has been made in some of the memorandums that you

have received and which also came up in your earlier session with Ministers, is that it is important not to underestimate the risk of litigation more generally in this area, in relation to the activities not just of religious organisations but of people of faith. Like it or not, this is an area of culture wars. We have seen over the past few years how people will bring litigation. The Secretary of State for Education said quite a lot this morning about common sense and the application of reasonableness. We would agree that if everybody approached this matter with common sense all would be well; the difficulty—and this is where some of the provisions may repay further study—is that not everybody does approach it with reasonableness and common sense, and you will get people on both sides of the argument who will want to test the measure. I do not think that this is particularly about the conducting of marriage; it is more about schools issues and the performance of other public functions. We may still have some concerns around the edge there, but the basic locks in relation to the Churches and ministers of religion we think have been done well.

**Q55 Kate Green:** If a member of a married heterosexual couple undergoes gender reassignment, under this legislation they would not be required to annul their marriage, but would remain married as a same-sex couple. How will the Church regard that same-sex marriage?

**The Lord Bishop of Norwich:** I think there may be a distinction between what is legal and what is pastoral. Would you like to say what is legal and I will tell you what I think pastorally?

**Rev. Alexander McGregor:** As a matter of law, they would be whatever the Act said, which would be that they were married. That would be the legal position. The pastoral and theological implications are possibly different from that, however.

**Q56 Kate Green:** If they had had a church wedding as a heterosexual couple and that marriage continues but one member of the couple changes gender, will the marriage continue in the eyes of the Church?

**William Fittall:** It is already the case that clergy are not required to conduct the marriages of people who can already marry under existing law following a change of gender; there is a conscience clause, so that clergy are not required to marry people. That is the starting point.

**The Lord Bishop of Norwich:** The marriage would have continued. That is what you are saying.

**Kate Green:** The marriage will continue, but the clergy will not have to do anything.

**The Lord Bishop of Norwich:** I can think of only one couple that I know—I am sure there are plenty of others—who are in that position. They are members of a Church of England congregation and are treated with all the honour and respect that you would expect. I suspect that that congregation do not think too much about what their legal status is. They see them as human beings who are connected with each other and are part of that Christian community.

**Q57 Kate Green:** I suspect that the couple may think about their status in the eyes of the Church.

**The Lord Bishop of Norwich:** They probably do.

**Q58 The Minister of State, Department for Culture, Media and Sport (Hugh Robertson):** I think you have answered this question in response to Mr Andrew, but just to be absolutely clear, even accepting your unease about some of the general principles behind the Bill, are you satisfied with the protections provided in the Bill to the Church? If you are, which is what I think you said in answer to Mr Andrew, I take it from that that you would be resistant to any attempts to unpick those protections during the Bill's passage.

**William Fittall:** I think that is absolutely right. So far as the Church of England is concerned—whatever view you may have as individuals about its doctrine on marriage and, indeed, whatever view some individuals in the Church of England may have about it—that is the Church of England's doctrine, which is reflected in its canon law. Clause 1 safeguards that position, which means that the Church of England will continue to be able to marry people according to its own doctrine. I think that any erosion of that would raise serious issues indeed.

The Church of England continues to marry, on average, some 1,000 couples a week. It marries them generally after banns. They do not have to go to the civil authorities at all for any preliminaries. They can simply go to the clergy, banns are read and the member of the clergy has to send off a copy of the register at the end of the ceremony. We value the opportunity to provide that service to people. The number of Church of England weddings in fact increased in 2010, as indeed did the number of civil weddings. We want to be able to go on providing that service to people, which is why, for example, any playing around with the locks and therefore unravelling of the Church/state position would be unattractive to us, because it would mean putting the quarter of the population who choose to get married in church through further procedure and bureaucracy, from our point of view, to no good end. We value the present position and the safeguarding is hugely important.

**Q59 Mr Bradshaw:** Just going back to Chris Bryant's question, do you not accept, Bishop Graham, that the Church of England's opposition—not yours, because you have an honourable position on this—to this has been blunted by its failure to welcome, support and celebrate civil partnerships?

**The Lord Bishop of Norwich:** The Church of England had a varied view in relation to civil partnerships. There were a good many people in the Church who were very glad that civil partnerships were introduced and supported them. There was a big distinction between how we were to regard civil partnerships in relation to lay people within the Church of England and the clergy. The relative ambiguity about civil partnerships in comparison with marriage and the fact that vows did not have to be made and that it was simply a registration caused us some puzzlement in trying to work all that out, which I am quite happy to recognise. You only have to read the pastoral statement on civil partnerships to know how anguished that debate was in preparation for civil partnerships. I recognise why you ask that question, and I would love the whole of the Church of England to take the view that I take, but I recognise that that is not entirely the case.

**Q60 Stephen Williams:** Coming back to the duty of the Church of England to marry whoever wishes to be married in a parish church, would the Church actually like that duty to be removed?

*The Lord Bishop of Norwich:* No.

**Q61 Stephen Williams:** Why not?

*The Lord Bishop of Norwich:* We are in a different place from a good many other Churches in continental Europe. It is true that in England we conduct a quarter of all marriages—and, actually, a third of all first marriages, because a number of people exclude themselves, thinking that they cannot be married twice in the Church of England if they are divorced, which goes back to an earlier question. We want to be of service to those who live within our parishes.

I think that a very considerable number of people in England look to their parish church as the natural place in which to be married. To add to the complexity by which they would get married, which is what you would be talking about if they had to go to the civil registrar and then come to church afterwards, would probably not be appealing to them. It would not be appealing to us, because we recognise that the relationships that are built up with couples at the time of their marriage are very important to them.

The Church of England has recently done—unusually for the Church—some extensive empirical research, the Church of England's weddings project, and worked over two or three years with hundreds of couples in two dioceses as different as Bradford and Oxford. What we discovered, sometimes to the surprise of the clergy themselves, was that people did not want to be married in church because the church was beautiful. It was not aesthetics that caused them to come to the church; nine and a half out of 10 of all the couples who were married said that the most important element in their marriage was the vicar. Not pretty vicars either—you can be really ugly as a vicar in the Church of England. They had made a relationship with the priest prior to the marriage and had been prepared for their marriage, and when they came to church on the day, they knew the person who was marrying them, which is not the case in the same way with a civil registrar, and they felt that they belonged.

People's criticism of us was that we did such a brilliant job preparing people for marriages in the case of most marriages, but we were not good at following up afterwards and maintaining the relationship on our side. That was very telling for us and we have been trying to build on that, because one of the things about marriage is that it is not an automatic relationship that builds society; people who are married need to belong to their communities and be connected with others. That is one of the things that the Church can do extremely well and that is the challenge to us. We want not just to do weddings better, but to actually support marriage better. If there is a criticism of the Church of England, it is that we have been very good on wedding ceremonies but less good on supporting marriage after people are married.

**Stephen Williams:** That was a very long answer to what was meant to be a brief question.

**The Chair:** It was interesting, Mr Williams—we will come back to you if there is time.

**Q62 Chris Bryant:** It is rather charming, Mr McGregor, that you think that Anglican clergy only ever perform services according to the rites of the Church of England. I have been to All Saints, Margaret street for the installation of a new vicar or curate that has been performed in the middle of a service of benediction, which is not a rite of the Church of England and, effectively, contradicts the 39 Articles.

*The Lord Bishop of Norwich:* It must be a rite of the Church of England—I have performed it. *[Laughter.]*

**Q63 Chris Bryant:** Indeed, and long may it be so. I hope that the Church will remain a Church and not a sect, and that is why I hope that you will continue to want to have the requirement that you perform marriages and so on. I suppose my point is really that, as a former priest in the Church of England, I hope that the Church will one day be able to change its mind more completely on this matter. When asked whether the Roman Catholic Church would ever have women priests, Cardinal Martini said, "Not in this millennium," but that was in 1999.

*The Lord Bishop of Norwich:* He was right.

**Q64 Chris Bryant:** And he is not around to be Pope any more. He is shaken, not stirred. I just wonder when you think the Church of England might change its mind. This is material to the Bill because we might think that all you have to lose is your locks.

*William Fittall:* Earlier you discussed the difference between evidence and assessment and opinion. I have observed our bishops in discussion around these matters, and the other bodies of the Church of England such as the Archbishops Council, and you have to recognise the fact that, as the Bishop of Norwich has said, the Church of England is obviously divided on the ethical issues around same-sex relations; there are those who want to be more affirming of civil partnerships and those in active same-sex relations and there are many others for whom that is off limits. You have seen that debate played out publicly.

I would have to say that, in the private discussions that there have been since the Government announced their intention to introduce same-sex marriage, there has not been that same division of view. Yes, there are some people—you have heard some members of the Church of England—who have offered a minority view, but I have to say that, as I observe it at the moment, among the bishops, with the exception of one or two who have gone on their blogs to offer their private view—

**Chris Bryant:** It is not very private.

*William Fittall:* A personal view. I do not detect a strong debate among our bishops around moving to accept same-sex marriage. I think that you have to understand that if ever the Church of England were to change its doctrine, that would require a change to canon law, so there would have to be an amending canon that came through the General Synod and then had the royal licence, and in addition there would have to be a measure that went through the General Synod because it would involve a doctrinal change, which is currently rooted in the Book of Common Prayer, and that measure would also make the necessary changes to the Marriage Act. That would then make it possible for

Church of England clergy to conduct same-sex marriages. So it is possible, but I have to say that my assessment is that it is nowhere on the horizon.

**Q65 Jane Ellison:** There has been a lot of correspondence about adultery and consummation. I am interested in how you feel about the fact that there is no plan to redefine that in the ambit of the Bill. Also, a question that has suddenly occurred to me is: if in a heterosexual marriage people commit adultery or are unfaithful with somebody of the same sex as themselves, is that currently covered by the definition? In other words, is there already an inconsistency that if a woman was unfaithful to her husband with another woman, does that already not qualify as adultery?

**Rev. Alexander McGregor:** That would not amount to adultery.

**Q66 Jane Ellison:** So there is already an inconsistency.

**Rev. Alexander McGregor:** Yes. The same definition of adultery is effectively maintained, so adultery can be committed only between two people of the opposite sex.

**Q67 Tim Loughton:** It sounds as though Mr Fittall's long drawn-out process, as he describes, for the Church of England is unlikely to happen in this millennium either. Contrary to what the Culture Secretary said earlier, the Church of England has a unique position in the Bill in effectively being able to discriminate against marrying same-sex couples. If this law goes through, do you think that it will harm the image of the Church of England that it will uniquely be able to discriminate, as laid out in law?

**William Fittall:** I am not sure that I follow that it is in a unique position. It is only unique because the Church of England has canons that have the force of the law of land, it has the duty to marry and it has its own devolved legislature, so we start from a unique position in law, but in substance, what the Government set out to do is to create for us, as for all other denominations, the ability to continue to approach marriage according to our own doctrines and if, in due course, any denomination changes its view, it will be able to do so.

I do not think that we have a unique position. The only area where we have a worry that I think is unique to us is whether in due course the Strasbourg Court might take a view because we act as a public authority. As I explained earlier, you do not have to go through any separate state procedure in order to be married in a Church of England church. If there were to be litigation, the Strasbourg Court might take the view—not that it would compel the Church of England to conduct same-sex marriages; we do not think that that would happen—that such discrimination by a public authority might be contrary to Strasbourg jurisprudence. There is nothing to go on at the moment, and we flagged that risk. We think the Government have sought to do what they can in the Bill to mitigate that, but the simple fact is that if you change the law on marriage, there is a risk and we shall see what happens.

**Q68 Tim Loughton:** I understand that, but that is not my point. I do not dispute that. What do you think the effect on the image of the Church of England will be? The uniqueness of the position is as you have described.

It would be a very long drawn-out process for the Church of England to be able to change its position, other than being able to opt in as some other Churches would much more simply be able to do. Do you think that this law, if it goes through, with the Church of England in the position of automatically not being able to include same-sex marriage couples, will be damaging to the image of the Church of England in the public consciousness?

**William Fittall:** I do not see why it should be. Underlying that question is the assumption that it is a deeply unpopular position not to be in favour of same-sex marriage. If you look at the results of the Government's consultation and of the petitions that came in, and if you look at the opinion polling, this is a matter on which the country remains pretty divided. There are strong views around. People also respect faith traditions, whether they share those traditions or not, that have their own views and their own integrity.

I do not see a difficulty for the Church of England in having such a position. Indeed, I struggle a little bit to see how the law can be different unless, in the view of Parliament and Government, it should in a sense impose its view on the Churches. It is interesting what has happened in one or two Scandinavian countries, where the relationship between the Parliament and the state Church is different from how it is here. If you go back in history, Parliament legislated directly for the Church of England, because it did not have separate governance bodies of its own. But we have reached a place where we are regarded, like all other Churches and denominations, as having the ability to decide our own doctrine and to act accordingly.

**Q69 Kate Green:** Some other faiths will conduct same-sex marriages as a result of the legislation. What advice will you give teachers in Church of England schools on how they teach about the importance and nature of marriage?

**The Lord Bishop of Norwich:** We try always to respond positively to what the Secretary of State suggests in relation to the Education Act, which is to do with recognising the value of marriage. I suppose it is possible, although I was listening to what the Secretary of State for Education was saying, that a lot further down the line there might be some conflict there, which I think you were exploring. Our own view is that the promotion of marriage is part of sex and relationship education. What Church of England schools are good at doing, because the vast majority of them are community schools, is integrating the convictions of the Church of England with a recognition that the Christian opinions held in that school are not totally recognised within the whole of wider society.

There is a balance to be struck, and I think that the Secretary of State for Education was right to say that in teaching there will need to be a recognition that we have a society in which same-sex marriages—assuming the Bill goes through—are possible, and of course the teacher would also indicate why it is that within the majority of Christian traditions such marriages are not celebrated. My sense is that it is not going to be a huge part of sex and relationship education. My regret, if I am honest, is that in our schools and in most schools, marriage is not talked about very much at all. If we can reconsider how marriage is talked about within schools, that would be

valuable. It is sometimes resisted for understandable reasons. I can think of a number of our schools where the majority of children do not come from homes with married parents. It is for that reason, and nothing to do with what the Secretary of State or the Church says, that teachers are very reluctant to teach about marriage. Whatever one makes of the Bill, if we could have better teaching about marriage in our schools, and the Bill could bring that about, I would welcome it. You have explored the area with the Secretary of State, and it is an area of potential tension in the future. I recognise that, but there may be some benefits, too.

**Q70 Mr Bradshaw:** Mr Fittall, I must correct you on the opinion polling and refer you to the very helpful document prepared for the Committee by the House of Commons Library, which shows that all of the opinion polls, except those with very leading questions commissioned by the Christian Institute, show clear majorities, including majorities of people of faith, in support of equal marriage. You raised the spectre of successful litigation, but how many divorced people have successfully forced the Church of England in the courts to remarry them in their parish church against the wishes of their local priest?

**William Fittall:** I did not suggest that we had any anxiety that we would be forced to marry people. I agree that I am not aware of any litigation of that kind. I think the issue is not whether we would be compelled, and we have expressed satisfaction about that. The issue is more the ability to act, as it were, in the shoes of the state in marrying people without any separate state formality.

**Q71 The Chair:** For the record, that does not bear on the litigation as described by the questioner.

**William Fittall:** Correct.

**Q72 Jim Shannon (Strangford) (DUP):** I apologise for being late. I came straight off the plane, and I am sorry that I could not be here on time. My apologies to the deputation, too.

The opinion polls I have clearly endorse the comments made earlier in opposition to the Bill. My question on the quadruple lock is probably for Rev. Alexander McGregor. Are you reassured as a Church and as an organisation about the quadruple lock? Do you feel it gives you the necessary legal security? Does it give security and job support to those teachers who might feel ill at ease with discussing the matter? I want to hear your opinions on that.

**Rev. Alexander McGregor:** There are two different things there, because the quadruple lock is not concerned with things such as the position of teachers; it is concerned solely with the position of a Church institutionally and with ministers of the Church in relation to the carrying out of marriages. As far as that is concerned, we think the provisions in the Bill are essentially right. There are one or two very small issues at the edges about which we will talk to the Government, but yes, we think the way that is drafted is generally okay.

Earlier we talked a bit about the position with regard to teachers in schools, and the Bill does not really go into any detail on that. The Bill simply changes the definition of marriage, and teachers will need to deal with that in a sensitive and professional way, but yes, people will be concerned about that. I think we have already said something about it in our evidence.

**The Chair:** Thank you very much. We covered those subjects earlier, Mr Shannon, and *Hansard* will help you on that.

Thank you very much indeed to this set of witnesses, to Bishop James and his colleagues. Your evidence is much appreciated and very helpful. Thank you once again.

### Examination of Witnesses

*Archbishop Peter Smith, Professor Christopher McCrudden and Charles Wookey gave evidence.*

9.40 am

**The Chair:** Colleagues, we have a lot to get through, so we will make progress.

Welcome to our next set of witnesses. Thank you very much for being here with us this morning. Could you kindly introduce yourselves for the record?

**Archbishop Peter Smith:** I am Archbishop Peter Smith, Archbishop of Southwark, on the other side of the river, and vice-president of the Bishops Conference of England and Wales. On my right is Professor Chris McCrudden of Blackstone Chambers, who is our legal adviser on the Bill. On my left is Charles Wookey, who is assistant general secretary to the conference.

**The Chair:** Thank you. Unless you want to make an opening statement, we will go straight to the questions. Are you happy with that, Archbishop?

**Archbishop Peter Smith:** I think I am. I think we need to get hold of the nitty-gritty.

**The Chair:** Nitty-gritty is good.

**Q73 Chris Bryant:** Is homosexuality incurable or curable?

**Archbishop Peter Smith:** I do not think that that is a relevant question. What we are coming here to do, my understanding was, was that having examined the Bill, there are difficulties that we foresee for the future.

**Q74 Chris Bryant:** But the 29-page paper you submitted to us makes an argument, essentially, that it is a moral disorder and that therefore same-sex marriage will undermine society. I would have thought that it goes to the very heart of the matter whether you believe that homosexuality is curable or not.

**Archbishop Peter Smith:** We have not mentioned homosexuality as such in our paper or in our public pronouncements on this. What we have been saying right from the start is that marriage, for millennia, has been between a man and a woman. It is about the complementarity of the two sexes. That is the important and fundamental issue when it comes to marriage. Men and women are different. It is not rocket science, looking around this room, to look at each other and say, "We are different" without going into all the gory details.

**Q75 Chris Bryant:** Tall people and short people are different. That does not necessarily mean that you should only have tall people marrying short people or fat people marrying thin people. Difference is neither here nor there, I would have thought.

In olden teaching, it was that homosexuality was a choice; it was something that somebody had voluntarily chosen to adopt. Then I could understand why you would say, "All right, we believe that no homosexuals

should be allowed to enter into relationships.” If you no longer believe that it is curable or that it is a matter of choice, it seems to me fundamentally cruel to deny lifelong companionship to two people just because they are of the same gender.

**Archbishop Peter Smith:** We are not complaining about lifelong commitment between two people of the same sex. The fact is, when the Act bringing about civil partnerships was passed—

**Q76 Chris Bryant:** Were you in favour of it then?

**Archbishop Peter Smith:** No, because we said that that was the thin end of the wedge and that that would end up going to marriage. There was a different way of dealing with the request from same-sex couples to have equivalent rights to those who are married—man and woman. Those rights were given, quite clearly, in that Act.

Just from personal experience, at the end of last year I was asked to go on a debate about this on Radio Wales. One of the others on the debate was a prominent Catholic homosexual. When I stated the Church’s position, I thought, “We are going to have a real ding-dong here, possibly.” But when he was asked what he thought of what I had said, he said, “I fully agree with the Archbishop.” He said, “I am fully accepted in my parish. People know who I am and what I am. I have no problem with that. I have been welcomed and respected. As a homosexual, I do not approve of this move to gay marriage.”

**Q77 Stephen Williams:** It is a reasonable assumption that same-sex marriage will become the law of the land sometime later this year. What will be the guidance that the Catholic Education Service gives to Catholic schools to teach children about marriage in this new context?

**Archbishop Peter Smith:** This is one of the real difficulties we have, not just for our own schools, but for any teacher in any school. Could I ask Professor McCrudden to go into the details of this?

**Professor McCrudden:** The question partly relates to the guidance given by the Secretary of State, so there are two separate elements to it. What are the implications for teachers of the Bill—and presumably the Act—as it currently stands? There is then the separate question of the effect of the Bill on the guidance that the Secretary of State is required to produce. Obviously Catholic schools are required to take that guidance into account. Our fear—our concern—is that clause 11 of the Bill in particular, when read together with the power given to the Secretary of State to issue guidance, essentially changes the nature of the guidance. That currently causes problems. The brief answer to your question is that the guidance to be given in Catholic schools will have to wait until we see precisely which amendments or otherwise are going to be brought in by Parliament to that particular aspect of the Bill. I can go into more detail on that if you prefer.

**Q78 Stephen Williams:** Specifically, will children attending Catholic schools be told that people—possibly parents of children in the class—are committing a sin if they enter into a same-sex civil marriage?

**Professor McCrudden:** I think I have made the point that it will partly depend on the question of the guidance, and the interpretation of the guidance, currently issued

by the Secretary of State. The question is whether that very general provision in clause 11 of the Bill materially affects the current interpretation of the guidance, because it changes the definition of marriages. Secondly, and more particularly for the future, there is the question of whether future Secretaries of State issuing the guidance will either be required to or will choose to alter the guidance.

**Q79 Mr Bradshaw:** Archbishop, you have just acknowledged that the Roman Catholic Church opposes civil partnerships, as indeed you have opposed every reform that has brought equality to lesbian and gay people in this country for the last 20 years. Why should we believe that your opposition to this is about marriage, rather than about your disapproval of lesbian and gay relationships?

**Archbishop Peter Smith:** It is clearly about the nature of marriage, because marriage is between a man and a woman, and always has been. That is the key issue, and we keep getting diverted on to questions of equality or religious freedom. The nub of the argument is who by their natural being can be married.

**Q80 Mr Bradshaw:** But wouldn’t your opposition to this on the basis of marriage be more credible, and carry more authority, if you had been supportive of civil partnerships and all the other reforms that have benefited lesbian and gay people in this country?

**Archbishop Peter Smith:** The Church’s teaching is quite clear on this, on the Church’s attitude to homosexuality. It says quite clearly in the catechism of the Church that homosexual people must be respected, and dealt with sensitively. Morally speaking, however, we say sexual relationships outside marriage—of whatever kind—are not right and they are not moral. So the Church’s teaching on this is very consistent. We are not trying to do down homosexuals; I know many homosexuals and I get on very well with them. However, at the end of the day we as bishops and as a Church have a duty to teach what Christ taught, rooted in his background of the Old Testament, and it is not for us as bishops to change that teaching.

**Q81 Mr Bradshaw:** Sorry, that was not my question. You talked about treating gay and lesbian people with respect, but you have opposed the Supply of Goods and Services Act, and you have opposed legislation that has provided equality, not for relationships, but for lesbian and gay people as individuals.

**Archbishop Peter Smith:** No, it is not.

**Q82 Mr Bradshaw:** You have. Did you support the equal age of consent?

**The Chair:** We are here today to talk about this particular Bill. I think this is important, and that the answers have been given.

**Q83 Kate Green:** May I ask you the same question I asked the representatives of the Church of England? If an opposite-sex couple marry in a Catholic church and subsequently one member of that couple undergoes gender reassignment, do they remain married in the eyes of the Catholic Church? Under this law, they will in the eyes of the law.

**Archbishop Peter Smith:** They would in the Catholic Church as well.

**Q84 Kate Green:** They would be a same-sex couple at that point.

**Archbishop Peter Smith:** Well, perhaps legally.

**Q85 Kate Green:** So you do not accept the reassignment of gender?

**Archbishop Peter Smith:** I do not accept that we can change someone's gender. There is a real difficulty when it comes to what is called gender dysphoria: somebody who is very inclined to think someone is opposite to what they are.

**Q86 Simon Kirby (Brighton, Kemptown) (Con):** Parliament redefined marriage about 177 years ago in 1836. Was it right to do so, and if so, why is it not right to do so today?

**Archbishop Peter Smith:** I am not quite sure which Act you are referring to.

**Q87 Simon Kirby:** I think you will find that it is the Act that gave Catholics the right to marry in their own church.

**Archbishop Peter Smith:** But it did not say that two people of the same sex could marry. The point is that various aspects of the marital relationship have changed over the years. Donkeys' years ago, very often a woman was regarded as the chattel of the man, and that was wrong as we look back now with a more enlightened view. Never at any stage, until now, has it ever been suggested that marriage can be between other than a man and a woman. That is the key issue. It is the consequences of that that we want to talk about with this Bill.

**Q88 Jonathan Reynolds:** The list of countries that already have same-sex marriage includes not only societies that we might think of as typically being very progressive, such as Scandinavia, the Netherlands or Belgium, but Spain and Mexico, which have significant Catholic populations. What is your assessment of how same-sex marriage has operated in those countries, and can you identify any problems in those countries with how the law has operated?

**Archbishop Peter Smith:** It is still not entirely clear and it varies from country to country, but I am told that there have been considerable difficulties over this in Canada in regard to teachers and people who have said in their personal blogs that they oppose the very notion and principle of same-sex marriage, and they have been disciplined. I have not got concrete evidence from the few countries that have brought this in.

**Professor McCrudden:** The common issue is that all those countries have sought to protect the religious freedom of particular Churches. Each country has dealt with it in a somewhat different way, because of the different traditions in those countries. The issue, if I could guide the Committee a little, is whether the protections that the Government intend to introduce will work in the domestic context. In that, it is quite difficult to have a comparative experience that is particularly useful, because each country deals with it in a somewhat different way.

**Q89 Jim Shannon:** Thank you very much for coming along, gentlemen. I support wholeheartedly your assertion that marriage should be between one man and one woman. I respect that. Archbishop, you clearly stated that marriage is between a man and a woman, as the Bible teaches. Do you feel that the majority of your Church supports that?

May I ask you a further question? If the legal definition of marriage changes, the law will require that children learn about gay marriage as part of sex education. Do you feel that there should be an exemption for Roman Catholic schools and for faith schools?

**Archbishop Peter Smith:** In answer to your first question, yes, I think that the vast majority of Catholics accept the teachings of the Church. If they could not on this and other very serious matters, they would probably leave the Church, as some do. What was your second question?

**Q90 Jim Shannon:** My second question was about the teaching. If the legal definition of marriage in law is changed, children will be required to learn about gay marriage as part of sex education. Do you feel that there should be an exemption for Roman Catholic or faith schools?

**Archbishop Peter Smith:** Again, I ask Professor McCrudden to speak on this.

**Professor McCrudden:** We are back to the same question about the guidance. I will answer the question in this way, at a bit greater length. Section 403 of the Education Act 1996—I am sorry to be technical about this—says that the Secretary of State has a duty to give guidance, which must be taken into account by schools, including Catholic schools, on the nature of marriage and its importance for family life and the bringing up of children. Clause 11 of the Bill says:

“In the law of England and Wales”—

this obvious includes section 403—

“marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples.”

In other words, the nature of marriage in section 403 must be read subject to this new provision. Clause 11 effectively amends section 403. That interpretation is strengthened by clause 11(2). That means that the duty on the Secretary of State to issue guidance is effectively—although not in terms—amended to require the Secretary of State to issue guidance on the nature of marriage between opposite-sex and same-sex couples.

If the guidance simply said that it is a question of schools descriptively telling pupils that the law has changed, that of course causes no problems. The problem is that the guidance is specifically to be set in the context of a moral discussion about these issues—those are the terms of the Education Act 1996. In particular, it is a question of the importance of marriage, which clearly brings a normative question into play. Given that there is an effective amendment to section 403, the question arises about whether that will cause a problem in practice in schools. Your question implies that you have identified that it does.

We will be suggesting two different kinds of amendment to safeguard the position. First, an amendment to ensure that the current guidance is interpreted in particular schools to reflect the importance of the ethos of that school. Secondly, an amendment to ensure that section 403

cannot be interpreted to give the Secretary of State the power to impose a particular meaning of marriage, in terms of what is required, if that is contrary to the ethos of the school.

**Q91 Stuart Andrew:** May I ask you the same question I asked the representatives of the Church of England? Are you satisfied that the quadruple lock in the Bill will prevent a successful legal challenge that would compel religious organisations to conduct same-sex marriages?

**Professor McCrudden:** The brief answer is no.

**Q92 Stuart Andrew:** Why?

**Professor McCrudden:** The answer is no, but the reasoning for that answer is quite complicated—hence the 29-page memo that was commented on earlier—so you must bear with me.

The problem arises as a result of clause 2(1), which, as you are aware, states: “A person”—including a religious institution—

“may not be compelled to... undertake an opt-in activity, or... refrain from undertaking an opt-in activity.”

The question is whether there is a risk to the Catholic church, which I understand will not exercise a power to opt in, and whether that decision not to opt in is reviewable in any respect. I remind you that the impact assessment that was produced by the Department for Culture, Media and Sport states:

“There will be protections for religious bodies who do not want to perform same-sex marriages, not just from successful legal claims, but from the threat of litigation.”

The question is whether there is a credible—not certain—challenge that can be mounted to the decision by the Church not to opt in. The answer is, yes there is. I can go into some considerable detail on the reason why, but the short answer is, no we are not satisfied.

**Q93 Stephen Doughty:** Despite what you have just said, I remain significantly unconvinced. My fundamental concern goes back to the fundamental principles of the Bill. The Bill is laid out as a permissive measure to allow for civil marriage and for those religious organisations that want to conduct marriages to do so—it is not mandatory, it is not forcing you to do it, so why is the Church, the Catholic Church in particular, spending so much time worrying about it? That is a question that a lot of people would ask. It is a question that a lot of people ask me: “Why are you spending so much time worrying about it? It doesn’t affect you.”

**Archbishop Peter Smith:** Well, it will affect us. That is precisely what Professor McCrudden is saying. The way the Bill is worded in certain clauses, it is open to legal challenge.

**Q94 Stephen Gilbert:** Where has there been successful legal challenge in European countries that have same-sex marriage so far?

**Professor McCrudden:** There are two ways of answering that. One is, rather blandly and not very helpfully, that this is a very recent phenomenon.

**Stephen Gilbert:** Ten years in Catholic Spain.

**Professor McCrudden:** The more substantive answer is that different countries organise their relationship with the Churches in different ways. The question is whether—in terms of this Bill, in this context, in domestic courts in particular—there is a substantial risk. I am very

happy to go into this in considerable detail, as I hope the Committee will, but in terms of the legal advice provided, the answer is that the position is not secure. In other words, why is the Church concerned? The Church is concerned because there is a possibility of review in the domestic courts. I am not for the moment talking about the European courts, though that is a separate question we can get on to. The question is whether there is significant risk in the domestic courts of decisions by the Church not to opt in being reviewable. The answer is yes.

**Q95 Stephen Gilbert:** So the answer is that, in the 10 years that Spain has had same-sex marriage, and other countries in Europe have had same-sex marriage, there has not been a successful legal case suing the Catholic Church to offer same-sex marriage. On the domestic issue, to pick up Professor McCrudden’s point, has the Catholic Church in the United Kingdom ever been forced to offer marriage to divorcees against its will by a domestic legal action?

**Professor McCrudden:** The answer again is—

**Stephen Gilbert:** Is no.

**Professor McCrudden:** Is no, but irrelevant. If I may explain why, legally, the question is different—we are concerned to try to help the Committee on the details—it is because under the Human Rights Act there is specific protection, rightly, for non-discrimination. Under article 14, read with article 8 and particularly with article 12, which has been interpreted by the Court of Human Rights and is therefore applicable in the British context under the Human Rights Act, there is particular protection on the grounds of sexual orientation. The reason why that is the case is because of the importance that the Court attaches, particularly, to discrimination on the grounds of sexual orientation. We have no problem with that. It does, however, create a significant difference in terms of risk, in terms of challenges based on discrimination on sexual orientation, from what it does on other grounds.

**The Chair:** I was going to ask Siobhain McDonagh to ask her question now, but Stephen Doughty is giving me such grief, he must come in right now.

**Q96 Stephen Doughty:** Thank you, Mr Streeter, it is on this point in particular.

I wonder what you made of the noble Lord Pannick’s evidence to the Committee. He said very clearly:

“For the European Court of Human Rights to compel a religious body or its adherents to conduct a religious marriage of a same sex couple would require a legal miracle much greater than the parting of the Red Sea”.

He gave a clear position there, and I wonder what you made of his arguments.

**Professor McCrudden:** We are addressing a different question.

**Stephen Doughty:** No, he refers to the legal position here and—

**Professor McCrudden:** With respect, first of all, I have not read Lord Pannick’s evidence to the Committee, and I suspect he has not read ours, because it only came

to you last night. I have to say that I have enormous respect for Lord Pannick, and I have acted with him and we are in the same chambers, so this is an intra-Blackstone debate that is coming about. The point is not for the moment with regard to clause 2(2), but with regard to clause 2(1). Lord Pannick's evidence relates to whether or not you can be compelled under clause 2(2). The issue we are raising is whether or not there is a way in which the Church, in deciding not to opt in, is challengeable. It is quite clear that the Government have considered this issue and sought to address the problem with regard to 2(2).

To give a particular example, you have seen there is an exception for non-discrimination—an amendment to section 29 of the Equality Act 2010, with regard to clause 2(2). There is not an amendment with regard to 2(1). Why? The assumption has to be that the Government have decided that the exercise of the option under clause 2(1) is not a public function. That is, in our view, a questionable assumption and we have set out, again in some detail, the reason why it is a questionable assumption. I can go into the reasons for that in a moment.

**Q97 The Chair:** Did you say you submitted this evidence to the Committee last night?

**Professor McCrudden:** Yes.

**The Chair:** Excellent. We obviously need to study that carefully.

**Q98 Siobhain McDonagh (Mitcham and Morden) (Lab):** Your Grace, I am sorry, but I cannot let the comment go that Catholics who support gay marriage or gay people, or oppose the Church's teaching on abortion or divorce, would probably leave the Church. I think all those things, and I am never going to leave the Church. I am a practising Catholic, and I have to say to you that there are vast numbers of people, certainly in parishes all round south London, who share my particular view.

I am concerned that you have presented today a view of the Church to many people who will not be cognisant of the Catholic Church that is different from how it operates. Catholic schools have always been able to explain their view on abortion, divorce and all sorts of things at the same time as carrying out their responsibilities to young people in teaching sex education and in moral teachings. There is no dilemma about that. We all understand it, but it has been done with kindness and courtesy. What disappoints me is the way that we are falling into legalese to show the Church in a very unkind and uncaring way.

**Professor McCrudden:** Of course, that is correct. The reason why we are before the Committee regards the problems that the Bill may cause. I am afraid to slip into legalese again, but one of the questions is the effect of the Bill on the guidance. That does not relate to abortion and those other questions; it relates specifically to marriage. That is why it is different.

**Q99 Jane Ellison:** I have a lot of sympathy with the previous point, having been brought up as a Catholic.

Society has moved on in its attitudes to the level of discrimination we accept in the provision of services and so on. Obviously a lot of people have expressed

concerns to MPs that people will not be allowed to exercise their consciences, as they see it. What are your comments about that? What would you expect of someone who provides a public service? The example has been given of a Catholic hotelier who already does civil partnerships. Would you expect them to accept the law of the land? Generally, what is your view about whether people in that position should reflect society's new norms about discrimination?

**Archbishop Peter Smith:** Obviously we must all accept what the law says, in the sense that will be the legal position if, as may well be the case, this Bill goes through. It redefines marriage. We accept that that will be the law of the land. It does not mean that we approve of it, and I will have some very fierce reasons for not accepting it in moral terms. I will ask Professor McCrudden to comment on this, but we are concerned about the possible difficulties with freedom of expression.

**Professor McCrudden:** There are several issues that arise with regard to Ms Ellison's question. One is that the point about reflecting the norms of society means that public authorities are also likely to want the norms of society to be reflected. One of our concerns is with regard, for example, to section 149 of the Equality Act. Taking the interpretation that you have just put forward—that the Church should get its act together and reflect changes in mores—that may well be a position that public authorities will also take.

The problem is that section 149 of the Equality Act, in terms of the public sector equality duty, means that they may well try to penalise the Church for deciding not to opt in. That has particularly important implications with regard, for example, to relationships between public authorities and the Church over grants and contracts. One of the concerns that we have is not just about individual freedom of expression—although we have concerns there as well in terms of the Public Order Act 1986 and incitement to hatred provisions—but more generally about relations between the Church institutionally and public authorities, given the problems that section 149 will now seem to create.

**Q100 Jane Ellison:** Reversing a question that is often put to us, what would be your view if a Catholic who takes your view on this applied for and got a job as, say, a public registrar after the legislation was passed and then said, "It's against my conscience"?

**Archbishop Peter Smith:** Again, that is another thing that we are bringing up that could be a difficulty.

**Professor McCrudden:** Very much so. I should at this point say that, as you know, I have been advising—

**Q101 Jane Ellison:** To clarify, I am asking whether you regard it as reasonable for somebody to knowingly seek a conflict with a job they are applying for.

**Professor McCrudden:** I need to put in a caveat here. First, as well as representing the Church, I have also been involved in representing Miss Ladele. The Committee should know that because obviously I am representing the Church here but it does have implications. I have cleared this with my clients, but nevertheless the Committee should know this.

There are two different questions. The first is whether existing registrars should be able to gain an exemption, and as you know the Ladele case was of that kind in the

civil partnership context. As you also know, the European Court of Human Rights has recently held against Miss Ladele in that, despite the fact that—this is relevant for the Committee’s considerations—the Court of Appeal had decided, and the Court of Human Rights accepted, that it would have no effect whatever on the delivery of the service. Therefore, one question relates to existing registrars. The second, and the thrust of your question, relates to new registrars who are coming into place.

**Jane Ellison:** Or into any similar position.

**Professor McCrudden:** Exactly so. We will be suggesting to the Committee, as we have in our memorandum, that amendments be introduced to cope with both of those provisions. Essentially then, the answer to your question is that we regard that as a difficulty for registrars.

**The Chair:** Thank you. We have three questions left; Ben Bradshaw, Jonathan Reynolds and then Chris Bryant.

**Q102 Mr Bradshaw:** Archbishop, you referred earlier to marriage being an institution that went back millennia, exclusively between a man and a woman. Have you studied the tradition of same-sex unions going back millennia, including those conducted by the early Church?

**Archbishop Peter Smith:** As far as I am aware, in Church history that has never been the case.

**Q103 Jonathan Reynolds:** One of the themes that seems to be coming out of the evidence sessions that we have held this morning, has been how we will address some of the anomalies that might be created by the Bill. Therefore, what would be your view on any amendments that changed the legal definition of adultery or non-consummation of a marriage as grounds for divorce? Accordingly, what would be your view on any amendment that extended civil partnerships to heterosexual couples?

**Professor McCrudden:** I am not sure how the issues are addressed to the Church in particular.

**Q104 The Parliamentary Under-Secretary of State for Women and Equalities (Mrs Helen Grant):** Archbishop Smith, in relation to the transgender provisions in the Bill and to pick up a point made earlier by the hon. Member for Stretford and Urmston, you indicated that the person changing gender would be legally married but questioned whether it would be possible to do that. Can you tell me whether that person and that couple would still be treated as part of the Catholic community and welcomed with dignity and respect?

**Archbishop Peter Smith:** They would certainly be part of the Catholic community, but we would not approve—the Church teaches clearly that you cannot change gender. I know that that is not the current mores out in secular society. As a priest or bishop, if somebody came along and said that they had changed their gender, I would have to say to them from the Church’s point of view, “You cannot get married.”

**The Chair:** But your point earlier was that you would none the less welcome them with respect and dignity.

**Archbishop Peter Smith:** Absolutely. Always.

**Q105 The Lord Commissioner of Her Majesty’s Treasury (Mr Desmond Swayne):** I was interested to hear you state explicitly earlier that marriage is always between a man and a woman, and just now, you answered the

right hon. Member for Exeter. I can certainly recall being taught at school that three Roman emperors married other men, but why did the Theodosian penal code of 340 AD explicitly ban same-sex marriage on pain of death if it had not been happening at all?

**Archbishop Peter Smith:** I have no idea. I am not familiar with that topic.

**The Chair:** It is a brilliant question, but it has nothing to do with the Bill.

**Q106 Chris Bryant:** I am sorry, but I am afraid I disagree with how you are chairing this, Mr Streeter.

Bishop, it seems slightly odd that you have been asked about adultery but said that the Church has no position on adultery, and you have no view on the historic teaching of the patristic fathers. In your evidence, you personally said that you have moral objections to the Bill, but you have not yet articulated them. Would you like to do so?

**Archbishop Peter Smith:** This is what I cannot understand. We have said right from the start that historically, marriage has always been between a man and a woman, for obvious reasons. A man and a woman have complementary genders. They are designed to come together in a loving partnership. Their love for each other issues, in ordinary circumstances, in the production of new life. It is that context—that loving relationship for life of husband and wife, mother and father—that all the social reports of recent years say is the best environment in which to bring up children. A psychologist will say that we as children need that complementary relationship looking after us.

**Q107 Chris Bryant:** So as a moral argument, then, the marriage of the Prince of Wales while his wife’s partner is still alive—both of them being divorcees—is immoral?

**Archbishop Peter Smith:** What we would say is that once somebody is validly married, they cannot marry again validly during the lifetime of their spouse.

**Chris Bryant:** So it is immoral?

**The Chair:** Thank you very much, Archbishop, and your team, for your answers. That concludes our session for now. We are very grateful to you for coming, and we appreciate your answers.

We will suspend the hearing for 10 minutes for a pit-stop. We will start again at 10.29 sharp.

10.19 am

*Sitting suspended.*

#### Examination of Witnesses

*Rt Rev. John Davies, John Shirley and Charles Anderson gave evidence.*

10.29 am

**Q108 The Chair:** We resume our deliberations by welcoming another set of expert witnesses. I invite you to introduce yourselves for the record.

**Rt Rev. John Davies:** Thank you, Chair. Good morning.

I am the Right Reverend John Davies, the Bishop of Swansea and Brecon in the Church in Wales. My role on the Bench of Bishops in Wales is to have something to say on matters relating to Church and society. On my right is John Shirley, the provincial secretary of the Church in Wales, and on my left is Charles Anderson, the head of legal services of the Church in Wales.

**Q109 The Chair:** Thank you. With your permission, we will move straight to our questions.

**Rt Rev. John Davies:** Chairman, I hate to disagree with you right at the beginning, but I wonder whether it might be helpful if I said just a little about the reason why the Church in Wales has been invited to participate, just in case there is any confusion.

One of the things that has not always been recognised is that in relation to the law of marriage, when the Church in Wales was disestablished in the 1920s, the Church's common law duty to marry was retained. So from that perspective the Church in Wales is in the same position as the Church of England. We have a duty to marry parishioners regardless of any religious affinity. That is in the briefing paper that we sent in, but I wanted to make it clear.

**The Chair:** Thank you very much indeed.

**Q110 Chris Bryant:** They are not just expert witnesses, they are Welsh expert witnesses, which makes them far more expert. I merely point out that in 1885, Mabon, the first Labour MP for the Rhondda—in fact, there have only ever been Labour MPs—argued for the disestablishment of the Church in Wales, but he recognised that we should still have the important legislation that has been provided for.

When the first version of the Bill was published there seemed to be a briefing that the Bill would make it virtually impossible for the Church in Wales ever to change its mind on the matter, and it seems as if you want to keep the door at least a little bit open.

**Rt Rev. John Davies:** Yes. There are two caricatures of the Church as a whole, one of which is that it exists to give the elderly something to do for an hour on a Sunday. The second is, "Here come the Christians. They must be against something." That runs entirely counter, as I understand it at any rate, to the ethic of the gospel, which is that the Church exists to bring fullness of life to as many people as possible, rooted and grounded in the kind of love made evident in the life and ministry of the Lord Jesus. That is the business we are in. In terms of our mixed-up relationship with the law of marriage, that does not always appear very evident.

From the perspective of the Church in Wales and its ability to change, because of its disestablished nature but nevertheless our duty to marry, had the Bill, as originally presented, been passed without any provision for the Church in Wales, it would have required a separate Act of Parliament to alter the Church in Wales's position on same-sex marriage. Is that clear to members of the Committee? An analogous situation arose in relation to the changes introduced in 2010 on the location in which people could be married. Fortunately, Lord Rowe-Beddoe and Alun Michael MP were able to put a Bill through Parliament that changed the position from our perspective.

The Church of England's position is that it can pass measures in General Synod that become—subject to parliamentary approval—the law of the land. That is not the situation in relation to decisions of the governing body of the Church in Wales. We might have said, "Yes, we will marry people of the same sex," but we would not have been able to do so without an Act of Parliament changing the Bill as originally published.

**Q111 Chris Bryant:** The Churches opposed the abolition of slavery in the early 19th century and then moved on. When do you think the Church in Wales might perform its first same-sex marriage?

**Rt Rev. John Davies:** I am not gifted with the ability to read crystal balls or tea leaves, but the procedure is that the governing body of the Church in Wales would have to debate same-sex relationships, and it has not yet had the opportunity to do that in relation to this measure. The Bench of Bishops in Wales, although we are small in number, has not had an opportunity to produce a detailed statement on the provisions of the Bill. What we have been able to do is make our concerns on the procedure known to Government officials. We are extremely grateful for the very hard work put in by those officials, together with Mr Shirley, Mr Anderson and others just before Christmas, to produce what is now clause 8 in the Bill, which takes account of our rather difficult and strange position. I am afraid I cannot give you an absolute answer.

**Q112 Stephen Williams:** Mr Bryant gave you his context. I was brought up in Abercynon in south Wales and went to Moriah English Baptist Church; which means, for the benefit of others, that services were conducted predominantly in English rather than that the people who attended them were English. At that point there were many chapels in all south Wales villages, but sadly that is no longer the case. In many cases, ironically, the Church in Wales building is the only operational religious premises in each village; in Abercynon, that would be St Donat's. How many marriages in Wales are now conducted in Church in Wales churches?

**Rt Rev. John Davies:** I think it is about 3,500.

**Q113 Stephen Williams:** As a proportion of all marriages?

**John Shirley:** As a proportion, it is just under 30%. The last year for which we have statistics from the Office for National Statistics for the total number of marriages in Wales is 2009, when there were 12,500, of which 3,500 were conducted in Church in Wales churches. There were another 1,300 in religious premises of other denominations.

**Q114 Stephen Williams:** To get a like-for-like comparison with what the Church of England said earlier, is that first marriages or all marriages?

**John Shirley:** That would be all marriages.

**Q115 Stephen Doughty:** You mentioned clause 8. I wanted to test with you whether you feel that the clause is strong enough. There is a risk inherent in it, I guess, that a Lord Chancellor could refuse to issue the order even if the Church changed its mind. Do you think the clause is sufficient or does it need to be amended or strengthened in any way?

**Rt Rev. John Davies:** Charles Anderson will say something about that. We would probably prefer the clause to say “shall”, so that there would be a requirement for the Lord Chancellor to make the necessary order bringing into effect a scheme that presumably would have been approved in advance by our governing body and the Bench of Bishops. It may be a slip of the pen, but we would prefer “shall”.

**Charles Anderson:** I think so. I would not have very much to add to what the Bishop just said. The word “shall” would be appreciated, but we feel otherwise that the clause should take care of matters.

**Q116 Mrs Grant:** With the exception of the “may” or “shall” question, are you quite satisfied with the procedure set out in clause 8? If those issues were dealt with, are you quite happy that the clause would allow the Church in Wales to conduct same-sex marriages if it chose to do so in the future?

**Rt Rev. John Davies:** If it chose to do so, after the debate, discussion and decision of the governing body; but I think that we would want to be very clear about the nature of the life of the Church. As I indicated earlier, the Church is not simply about giving elderly people something to do for an hour on a Sunday; it is a broad church, if you will pardon the repetition, and contains people who can interpret scripture, doctrine and tradition with great integrity but in a variety of different ways. Having said that, if the governing body were to decide that the Church in Wales would conduct same-sex marriages, there will obviously be people who, because of their interpretation of scripture, would still have a difficulty with that. As with the legal position in relation to the remarriage of divorcees, we would want to be satisfied that those who held conscientious objections or had difficulties with what would be, for some, a radical change, were protected from challenge or from being coerced into conducting same-sex marriages. On that basis and if those safeguards were in the scheme, I cannot say that we would do it, but we would be in less difficulty. Does that help?

**Mrs Grant:** Yes, it does. Thank you.

**Q117 Kate Green:** Under the legislation, same-sex couples will have the choice of marriage or civil partnership, but for opposite-sex couples, only marriage. This morning, the Secretary of State said that marriage is the gold standard. Does the Church in Wales agree?

**Rt Rev. John Davies:** I cannot speak on behalf of the entire Church, but for myself, without being too anecdotal, I can tell you that I always begin—Bishops do not conduct many marriage services, but when I do—by making the point, in welcoming people, that the Church and society recognise all manner of loving relationships and would want to affirm people in all manner of loving relationships. But, certainly in the present state of the law, the marriage between a man and a woman would be what you called the gold standard. It might be an ideal to which all might want to aspire, but to which not everybody can; nobody can achieve every ideal to which they seek to aspire, but I think I probably agree with you—

**Kate Green:** With the Secretary of State—not necessarily with me.

**Rt Rev. John Davies:** I apologise. I probably want to agree with her that it is certainly an extremely high standard that should be aspired to.

**Q118 Stephen Gilbert:** Can I take you back to the point that you were just talking about, which is protection for people who may take a different view? If we think about people who work for the Church in Wales, do you think that the Bill as it stands offers them sufficient protections that they will not be compelled to do something that they are strongly not happy with?

**Rt Rev. John Davies:** I shall pass that question either to Charles Anderson or to John.

**Charles Anderson:** It is difficult to look ahead to something, which at the moment hypothetical, and say that it will or will not cover a situation that has yet to arise. The legislation as at present drafted tries to address a number of possibilities. We are aware of concerns that have been addressed in our organisations that there could be possible difficulties, but the Church in Wales as a body has always tried to find a way of accommodating people who have particular problems with any particular set of circumstances.

**Q119 Mr Bradshaw:** Bishop, do you think that the clarity of the Churches’ message on marriage—yours, the Anglicans, and the Roman Catholics we heard from earlier—has been blunted by their opposition to civil partnerships? What is your Church’s position on civil partnerships?

**Rt Rev. John Davies:** In relation to civil partnerships, the Bench of Bishops issued a statement in December 2005 that we revised in March last year. It is quite brief and I will read a couple of sentences from it for you:

“The Bishops of the Church in Wales cannot and do not wish to prevent what the law allows for Church members, both lay and clerical.”

That is in relation to civil partnerships and as far as we are concerned, that would be our position.

**Q120 Mr Bradshaw:** But do you allow them in church? Do you have them in church yet?

**Rt Rev. John Davies:** No.

**Q121 Mr Bradshaw:** Is that your intention, or are you waiting for the Pilling report as well?

**Rt Rev. John Davies:** Are we waiting for?

**Q122 Mr Bradshaw:** The Pilling report. Are you involved in the Pilling report that was referred to earlier?

**John Shirley:** No, the Pilling report is Church of England. No decision has been taken as to whether to allow registration of civil partnerships in churches. That, too, would need to come to the governing body of the Church in Wales for a decision.

**Q123 Mr Bradshaw:** Is it being discussed?

**John Shirley:** It has not been discussed yet in the governing body, but a lot of preparatory work is taking place behind the scenes with our doctrine commission on issues of human sexuality generally.

**Rt Rev. John Davies:** Our view on it, Mr Bradshaw, would be that a civil partnership is a civil ceremony, and that just as a civil marriage cannot take place in a religious setting, it would be a non sequitur to allow another civil ceremony to take place in a religious setting.

**Q124 Jim Shannon:** You mentioned that the Church affirms itself to loving relationships and that is good news. Can you tell me and the Committee what the opinions of your parishioners are in relation to same-sex marriage and the redefinition of marriage? Are your parishioners unhappy with the proposed changes, or do they feel that they should go through? As somebody who does not come from Wales, I am keen to hear your opinion in relation to that.

**Rt Rev. John Davies:** First, I should say that we have not conducted any survey of Church members, so again one cannot speak in terms of any particular statistics. All I can say personally is that since the debate in Parliament on Second Reading of the Bill, I have received two e-mails from people in my own diocese asking me if I would “clarify my position”. I received one e-mail from someone who takes a rather more conservative view. I will not exactly tell you what they suggest should happen. The sense I get from that is that the opposition might not be as widespread as some might think it.

**Q125 Stephen Doughty:** As one of the parishioners, I think I can say that I am in favour of it, but obviously I fully respect that the Church has to come to its own decision in due course, and that will require a great deal of thought and prayer and reflection. It seems from the comments that you have all made that you see the Bill overall as a permissive and protective piece of legislation that is not compelling you or the Church to do anything that you would not wish to do. Do you feel that some of the other organisations that submitted evidence or have spoken today may be taking slightly the wrong tack?

**Rt Rev. John Davies:** You really would not expect me to answer that. We place our own position before you, rather than commenting on anybody else.

**Q126 Stephen Doughty:** But would I be correct in characterising your position as seeing the Bill as a permissive Bill that has the right protections?

**Rt Rev. John Davies:** Somebody already mentioned slavery. If one takes the Church’s attitude towards that in the 19th century, or if one takes the attitude of the Church towards divorce in the mid-20th century, things have moved on a great deal. In one of the caricatures that I put before the Committee at the beginning, I said, “Here come the Christians, they must be against something.” Constantly, we are interpreting scripture. Constantly we are keeping under review the traditions of the Church alluded to earlier. Goodness knows what happened in fourth-century Rome, I do not know. What the Patristic fathers said is again something that is being reinterpreted. It goes without saying that one of the greatest reinterpreters of the law was Jesus himself, who placed women on a much higher pedestal than the Torah did, and went out of his way to mix with those others considered beyond the pale or unclean. The Church in Wales wants to be helpful in progressing a discussion, but does not want itself painted into a corner when it has to do something it does not feel appropriate at a particular moment in time.

**Q127 The Chair:** Mr Shirley, do you want to come in there?

**John Shirley:** The Bill has developed a long way in the past six weeks. At the time of the Minister’s statement in December, there seemed to be significant unclarity about the position of the Church in Wales, so an awful lot of energy has gone into making sure that the Bill contains the procedures that we wish to see there to enable the Church in Wales to make its own decisions. Our focus has been very much on that in the past few weeks rather than on the principles underlying the Bill itself.

**Jane Ellison:** I envy your inbox with only the three e-mails.

**Rt Rev. John Davies:** Mind you, I have been in Bruges for four days.

**Q128 Jane Ellison:** I have been quite surprised by the level of concentration on inconsistencies or apparent inconsistencies around the definition of adultery and consummation. A lot of people corresponding with me seem very bothered about these issues. Do you have any comment to make about that?

**Rt Rev. John Davies:** I am not entirely sure that I do. Without wishing to bypass the question, we are getting into a very technical area. In terms of the reforms of divorce law, the level of evidence that used to be required for adultery—the man with the trilby leaping out of the cupboard with a camera—that all changed. Quite how you deal with specific matters of proof is detail that I would not wish to go into unless anyone else wishes to.

**Jane Ellison:** That answers the question, thank you.

**The Chair:** I am very happy with that answer.

**Q129 Jonathan Reynolds:** In the interests of consistency, I would like to ask a question that has been asked of previous witnesses this morning. On the issue of the possibility that civil partnerships could be extended to heterosexual couples, there seemed to be no objections from either the Catholic bishops or the Church of England. Is there a view that you would like to express?

**Rt Rev. John Davies:** My own personal view is that I cannot see a problem with it.

**Q130 Jim Shannon:** I was wondering about your e-mail. I had 1,700 people who contacted me who are against the redefinition of marriage and only 17 for. People have taken their time to express that viewpoint and I wish to express that here. Has the Church looked at all at the quadruple lock and have you sought legal opinion on whether it is substantial enough? If so, do you feel that it protects the Church from either domestic or European court decisions that may go against it?

**Rt Rev. John Davies:** I heard the end of the evidence being given by the Roman Catholic Church. The view that they seemed to be expressing was that they did not think there was sufficient protection. The Government have indicated that they will draft legislation to ensure that there is a “negligible” chance of a successful legal challenge. One anxiety that we might have in that regard is that because of the common law duty to marry, our

role might be interpreted not as that of a private members club, if I can call it that—a separate private organisation—but as perhaps an arm of the state in relation to marriage. Therefore, we would want to accept the Government's assurances that the protections are sufficient. Whether we are convinced about the nature of those assurances and their strength, I am afraid that I am not in a position to give you a definite yes or no, but we would want to ensure that those protections were sufficient.

**Q131 Chris Bryant:** I have a technical question. As much as I love the Church in Wales, I had not come across the governing body of the Church in Wales.

**Rt Rev. John Davies:** You are very lucky.

**Chris Bryant:** I do not even have to go to Synod either.

**Rt Rev. John Davies:** If this is on camera, I am in trouble.

**Chris Bryant:** Another bishop earlier today thought that blogging was a private matter.

**Rt Rev. John Davies:** I am not that naive.

**Q132 Chris Bryant:** The Bill explicitly refers to the governing body, and I am not sure that the governing body is referred to anywhere else in statute. You have just changed the number of people who attend. As politicians, we are used to counting the vote, and we know who is on our side and who is not—we have whipping arrangements and all the rest of it. If you were internally allowed to change your rules, the Lord Chancellor might want to say, "Hang on, I don't think you have gone through the process properly." My question is how is the governing body—its statute and all the rest of it—governed? I do not think it is in statute law, is it?

**Rt Rev. John Davies:** It would have been set up under the Welsh Church legislation of disestablishment, but effectively, under the Welsh Church Act 1914, the Church governs its own affairs, so in terms of the size of the governing body and its make-up, the Church in Wales—or the governing body—decides its own size.

One thing that it might be helpful for members of the Committee to know is that the weighting of the membership of the governing body is that lay people are in a majority of two thirds, and clergy, one third. In terms of the kind of change that we might envisage the governing body having to consider, this sort of legislation—if I can call it that—that would go through the governing body would follow the same procedure as the Church of England and indeed, Parliament. There would be a Bill, First Reading, a debate on its principles, its details, and so on.

**Q133 Chris Bryant:** Does that mean a two-thirds majority in all three houses?

**Rt Rev. John Davies:** Yes, it does.

**Q134 Chris Bryant:** You cannot change the number of members of the houses.

**Rt Rev. John Davies:** You can never get away from the weighting—one third, two thirds, clerics, lay.

**The Chair:** We have two questions left for this set of witnesses. David Burrowes and finally, Kate Green.

**Q135 Mr Burrowes:** Apologies if this issue has been raised this morning when I was not here, but do you see any impact on teachers in Church schools in Wales in relation to same-sex marriage?

**Rt Rev. John Davies:** In relation to Church schools in Wales, there are a significant number. The legal position, as I understand it, is that in terms of the teaching delivered in those schools—particularly in relation to religious education, which would encompass a broad spectrum these days—it has to be delivered in accordance with the trust deeds of particular schools, and those trust deeds would say that the teaching should be in accordance with the doctrines and tenets of the denomination. If there were no change—if I can go back to the Minister's mention of a gold standard—I think that one would say that in terms of marriage at the present time, "This is the way in which it is taught." Were there to be a change and were the governing body to change, I think that, as is probably the case now, teaching in terms of human relationships would be dealt with across the board sensitively and kindly, as I think you said earlier. Does that answer your question?

**Q136 Mr Burrowes:** I am not sure. I was asking whether it will be an issue in Church schools.

**Rt Rev. John Davies:** I am sure it would be an issue. Quite a bit might depend on the particular views of a parish priest in a particular parish where there might be a Church school.

**Q137 Mr Burrowes:** In terms of Church members, the Church itself might occupy buildings that are not wholly owned by the Church itself. It might be under the governance or ownership of a local authority as a public building. In such circumstances, in those activities, do you see any impact on any public sector equality duty arising from the Bill?

**Rt Rev. John Davies:** I am tempted to quote Father Ted and say that that would be an ecumenical question. It is a legal question.

**The Chair:** A succinct answer from you, Mr Anderson.

**Charles Anderson:** I think I can only say that we are aware of concerns that have been expressed around this subject and certain other areas. We are sympathetic to those concerns. If the legislation was clarified to make it easier to handle those, it would be helpful.

**Q138 Kate Green:** Can I turn to adultery? I am one of the atheists on the Committee, but I think I am right to say that adultery is forbidden under the ten commandments.

Given that the legislation, and indeed the position now, is that adultery can take place only between two people of opposite sex, but this will create one more anomaly in relation to same-sex marriages when the legislation is enacted, what would the attitude of the Church in Wales be if the concept of adultery were simply removed from law altogether and ceased to be seen as grounds for divorce?

**Rt Rev. John Davies:** And ceased to be grounds for divorce? I do not think we would be happy with that. The sanctity of a married union is something that is fractured, ruptured and broken by an act of adultery. That does not mean to say it is unforgivable.

**Tim Loughton:** On a point of order, Mr Streeter. May we ask Rev. Davies where his church is and what time the services are?

**Rt Rev. John Davies:** I will ask my secretary to send you my diary.

**The Chair:** Copy it to all members of the Committee. Thank you very much for your excellent evidence, which was both informative and entertaining.

**Rt Rev. John Davies:** Can I thank you for your invitation?

#### Examination of Witnesses

*Lord Pannick QC and Baroness Kennedy of the Shaws QC gave evidence.*

10.57 am

**Q139 The Chair:** We now have 27 minutes of pure gold with our two final witnesses of the morning. Although you are well known, please introduce yourselves for the record.

**Baroness Kennedy of The Shaws:** I am Helena Kennedy. I am a Queen's counsel practising at the Bar. I have a practice in the area of human rights. I am a member of the House of Lords and the principal of Mansfield college, Oxford.

**Lord Pannick:** I am David Pannick, Queen's counsel. I am a practising barrister in public law. I am a Cross Bencher in the House of Lords.

**The Chair:** Thank you. The first question will be from Chris Bryant.

**Q140 Chris Bryant:** I have a very simple question. Some people have alleged that the European Court of Human Rights—some people have inadvertently called it the European Court and got themselves in a terrible mess with the European Union and all the rest of it—would immediately, if the Bill goes through as is, want to determine that people could sue the Church of England, or the Roman Catholic Church or others, to force them to perform a same-sex marriage. You have written to us, and I have read that advice, but would you like to read it into the record, as it were?

**Baroness Kennedy of The Shaws:** David could probably do it more effectively than I could, in that my areas of human rights are much more directed towards criminal law. However, I really take a strong view that the margin of appreciation would be used. When you look at the case law that does exist on respecting religion and article 9 on faith, I just do not believe that the Court would in any way entertain any kind of challenge to this legislation.

I know that previous witnesses have taken issue with that view and have said, "This is the position just now. Who is to say that it won't change?" but that is the nature of law. You cannot guarantee that circumstances in 20 or 40 years' time are not going to involve an evolution of law. At this moment in time, however, it is absolutely clear that the idea there should be some kind of opt-in would have the support of the Court in that it is an appropriate balance to be struck between the respective rights. In my view, that would certainly be the position just now.

**Lord Pannick:** I agree. If I had a client who came to me and said, "I want to bring a case of this sort," I would tell them in clear terms that it was absolutely hopeless, and it will be hopeless in 10 years' time as well. Let me briefly explain why. It would be hopeless because the complaint could not be that I am unable, as a member of a same-sex couple, to get married in England and Wales, because I would under this Bill be able to get married, with all the benefits and advantages that marriage brings. What I would not be able to do, and therefore what I would have to be complaining about, is that I could not have a religious marriage and that I could not have a marriage according to the rites of my religion, which has chosen not to opt in. It is completely inconceivable that the European Court would tell a religious body how to conduct a religious practice in circumstances where there is no detriment to the individual other than a religious detriment. Of course, the Court may interfere in relation to matters that have a religious dimension, and we can all think of them—contraception, abortion, whatever—but this is a context where the complaint is "I cannot get a religious advantage," and that is something that the Court, for all its jurisprudence, refuses to enter into for very obvious reasons.

**Q141 Chris Bryant:** But a civil partnership would only be available to a same-sex couple. Do you think it should be extended to opposite-sex or heterosexual couples? Might there be a challenge there?

**Baroness Kennedy of The Shaws:** There might be a challenge there. I actually take the view that it should be available to same-sex couples and heterosexual couples. I have no problem with that.

**Lord Pannick:** As a matter of policy, I can see the advantages in extending civil partnership to opposite-sex couples. I would be doubtful that a complaint would succeed in Strasbourg even on the basis that an opposite-sex couple cannot enter into a civil partnership. The Government would say, and I think would succeed in the argument, that civil partnerships were created in order to address a particular problem at a particular time.

**Q142 Mr Burrowes:** Let us go beyond the Church ceremony to people's expression of their faith in schools, the workplace and other areas. In your wide experience of human rights and religious liberty, and in terms of the manifestation of faith issue that has been raised in recent court judgments, do you see any implications flowing from the Bill?

**Lord Pannick:** I think the Bill raises very different issues. As you obviously know, there are difficult cases where issues have to be addressed as to the extent to which someone's wish to exercise their right to manifest their religion may conflict with other public policy concerns. The only context in the Bill where that may arise would be in the context of the registrar. As you know, Ms Ladele, the registrar, failed in her complaint in the Court of Appeal and failed in the European Court when she said that she had a religious objection to being involved in registering a civil partnership. Were a future Ms Ladele to say, "I am a marriage registrar and I have a religious objection to being involved in a same-sex marriage," she would fail for the same reason. The reason she would fail is because if you want to perform the public function of being a marriage registrar,

you really cannot say that you are not prepared to marry people who are marrying according to the law of the land in a civil marriage ceremony. It is nothing to do with a religious function.

**Q143 Mr Burrowes:** What about the situation for registrars in nonconformist Churches who have received a licence to conduct marriages? Do you see any issues in the case of a local authority with an equality duty, which might seek to take away that licence from a registrar who does not want to perform same-sex marriages?

**Lord Pannick:** Is the context that he or she is not prepared to perform a religious marriage? If it is a religious marriage, I would take the view that the local authority would have no power whatever to penalise the individual for refusing to participate in the religious marriage ceremony of a same-sex couple.

**Q144 Stephen Doughty:** Lord Pannick, I read your submission with great interest. I do not know if you were here earlier, but your chamber colleague, Professor McCrudden, who had not read your submission, raised a number of serious legal objections.

**Lord Pannick:** I was not. I am afraid I do not have that advantage.

**Q145 Stephen Doughty:** I wonder what you make of those who are attempting to use legal arguments to oppose the Bill, in particular the arguments put forward by the Catholic Church. He went into some detail, and I am not in a position to question some of it. What did you make of the arguments?

**Lord Pannick:** I read the Catholic bishops' submission this morning, and I respectfully take issue with them. I think the points they raise are not based on real legal concerns. There may well be policy objections to this Bill, and I am not commenting on that. What I do say is that there is no legal basis for the concern that the Bill if enacted would cause difficulties, other than for the marriage registrar, in the circumstances that I mentioned. I cannot see that it is realistic to think that the legal difficulties they raise are going to occur. As I understand it, they are concerned about the human rights implications—they are concerned that the person, particularly in the Church of England, who performs the marriage is performing a public function, and therefore the Human Rights Act 1998 would apply. I think that is extremely unlikely, in so far as they are performing a religious function.

In any event, for the reasons I have already given, it is not a breach of human rights for a person to refuse a religious marriage on religious grounds, so I do not agree with their concerns. I do not think they say that a court would uphold their concerns. They are expressing fears, but one could always devise fears in this area. Perhaps flippantly, I have said that the possibility of a court upholding these concerns is on a level with the Red sea parting. I am afraid that it is not a realistic concern about something that is going to occur in real life.

**Baroness Kennedy of The Shaws:** I want people to know that this has of course been a source of great debate in the circles of human rights lawyers. This may be surprising, but it actually is what they are talking about in the pubs on Fleet street—and in the wine bars.

All I can tell you is that by and large the general view is that this is about an unease with a policy issue, rather than a very serious legal debate of substance. Most people feel that in the drafting of this Bill real protections have been created for religion, and for those who would find it conscientiously objectionable to participate and be involved in such a marriage ceremony.

**Lord Pannick:** There are a number of protections written into the Bill, as you know. I would find it very difficult, if asked, to draft anything that would improve on the legal protections contained in the Bill. Policy issues are an entirely different question.

**Q146 Jane Ellison:** Just a quick question on Mr Doughty's point: as I understood Professor McCrudden's argument, he thought that the nature of the Catholic Church not opting in might be challengeable as discriminatory. I think that was the broad thrust of it all. It is quite complex.

**Lord Pannick:** Again, my answer would be that the reply to any complainant who is a member of the Catholic Church, and who says that they wish to enter into a same-sex marriage but are not able to do so under Catholic doctrine, would be that they are perfectly entitled under current English law to have a marriage. What they are not entitled to is a marriage under Catholic doctrine, but that is purely a religious matter. No court is going to interfere with the way in which the Catholic Church organises its own doctrine when there are no adverse implications for the individual, other than religious implications.

**Baroness Kennedy of The Shaws:** David articulates it better than anybody, but we are not saying that there will be no attempts to mount legal actions—I suspect there will. However, the view is solidly held that these would not be successful. If you were giving advice behind the closed doors of your chambers, you would say: "You are not likely to win. In fact, you are very unlikely to win."

**Q147 Jim Shannon:** Lord Pannick, I am intrigued by your analogy; you said that this would require a legal miracle much greater than the parting the Red Sea to allow the children of Israel to cross from Egypt. Moses, with the divine intervention of God, of course could part the Red Sea. I am ever mindful of the phrase, "Doctors differ and patients die." Lawyers have different opinions as well, but hopefully nobody dies as a result of the decisions that lawyers make.

The Chairman is looking at me, so I want to make sure that I get a question in. I was at a meeting last week at which three human rights lawyers gave an opinion. There were questions from the floor. This was the day after the Bill's Second Reading in the House of Commons. Two of the lawyers gave a different opinion from yours. You will be aware of Aidan O'Neill, QC; he is very eminent. He has given a different opinion as well. With respect, why should we believe your opinion, as against the opinion of all those other people who say something completely different?

**Lord Pannick:** I can only give you my opinion. You must make a judgment on the quality of the arguments that you have heard. I have looked at Aidan O'Neill's opinion. He raises a number of possibilities as to the success of legal action. I do not think that even he

suggests that any of these possibilities would result in adverse legal decisions. I have attempted in the notes I sent to the Committee to explain why, in my opinion, none of those concerns is justified. As Helena said, I like to think—and so does she—that the views we are expressing are the mainstream views of lawyers.

Miracles can happen—I am not suggesting to you that it is logically impossible—but from all my experience over many years of arguing human rights cases, the points that have been raised are absolute certain losses. You would get nowhere in a domestic court or the European Court. You would get nowhere in the domestic courts because the Bill sets out with absolute clarity a number of protections. You would get nowhere in the European Court for the reasons I have explained. It is up to you whether you accept that. I entirely understand that others have expressed different views, but I can only respond to what I understand to be the reasons why they have given those opinions. For my part, I find them wholly unconvincing.

**Baroness Kennedy of The Shaws:** I would also say to you, Mr Shannon, that the courts are not known for miracles. All I can tell you is that where I have had miracles, they usually involved juries and not judges.

**Q148 Tim Loughton:** I entirely agree with the distinction you make about why a religious detriment could be a defence for holding that ceremony within a church. The confusion and the grey area comes where a Church collides with a public sector, as it were. If we had time, I would want to explore two of those European Court judgments—the case of the registrar and the case of the Relate counsellor—which illustrate this. If one takes the example of a Church that uses a school or town hall for its services—as many do if they do not have their own churches. If that Church clearly advertises itself as one that does not hold same-sex marriages, what would the legal position be of the council, the school or whatever it might be, in saying: “You can no longer use those public premises for your church activities, because you do not agree with same-sex marriage under the public sector equality duty”?

**Lord Pannick:** If the council or the school were to be so ill-advised as to seek to penalise the religious body only because it was acting in accordance with the law of the land and declining to solemnise same-sex marriages on its premises, and was acting in accordance with rites that I suggest will be upheld by the European Court of Human Rights under article 9 on religious beliefs and manifestation of beliefs, I have no doubt whatever that any court would say that the school or local authority was acting unlawfully in so penalising a religious body.

**Baroness Kennedy of The Shaws:** I agree entirely.

**Q149 Tim Loughton:** Let me give an example that I raised earlier with the Education Secretary, which he did not answer: say a teacher is teaching religious education or sex education, and is challenged by a child who says, “Miss, what do you think about same-sex marriage?” and the teacher cannot say, “It’s entirely legitimate, in my view; it’s on a par with heterosexual marriage.” What would the status of that teacher be? Would he or she have a defence, or would they lay themselves open to disciplinary action by the school?

**Lord Pannick:** Again, I would be very surprised indeed if a teacher could be disciplined for informing a pupil of an appropriate age, in a balanced manner, in proper language, of the moral issues that they consider to arise from same-sex marriage. No doubt the teacher would want to explain, if the child was of an appropriate age, that the law allows for same-sex marriage, but that many religions think that it is inappropriate and therefore refuse to allow same-sex marriages. It is inconceivable in my view that a teacher could lawfully be disciplined for taking such action. Obviously, it depends on the context and on the language used. We are assuming a balanced presentation of issues, including real moral objections and religious objections to same-sex marriage. I cannot see that the teacher would lack legal protection. Indeed, at the moment your question assumes, if I may respectfully say so, that this Bill will change that position, but it will not. The teacher already has protection. If he or she does not, then something should be done about it. They do have protection now, and they will not have less protection under the Bill.

**Baroness Kennedy of The Shaws:** You would expect Catholic churches and Catholic schools to teach Catholic doctrine. You really would have to look at the circumstances, and it would only be, I imagine, circumstances where a teacher was really in some way driving a very unbalanced view and proselytising in some way that really did not present the issues fairly.

**Lord Pannick:** Section 403(1) of the Education Act 1996 says that where sex education is given, it should be given “in such a manner as to encourage...due regard to moral considerations and the value of family life.”

That is what the teacher would be doing in a balanced way. He or she would explain the religious views of this matter.

**Q150 Stephen Williams:** You have both been crystal clear on religious rights to marriage. Can we return now to civil ceremonies? Do you agree that the Bill as drafted will perpetuate an anomaly, whereby opposite-sex couples are denied access to a civil partnership? Might the Bill be better if that anomaly was removed?

**Baroness Kennedy of The Shaws:** I do think that there is an anomaly, and that it would be good if it were removed.

**Lord Pannick:** As a matter of policy, I see the strengths of the argument put forward by Helena Kennedy. Of course civil partnerships are relationships specifically created for same-sex couples and were never intended for opposite-sex couples. The question of policy is whether once we move to same-sex marriage that continues to make any sense. I think it is not a legal question, but a question of policy.

**The Chair:** We have five minutes left. The final question goes to Chris Bryant, so before that, David Burrowes.

**Q151 Mr Burrowes:** To go back to the issue of schools, if a teacher were to elevate one kind of marriage over another, is that not likely to amount to indirect or direct discrimination?

**Lord Pannick:** The teacher would not be discriminating, in the sense of providing any benefit or facility or service; he or she would be expressing a view. If that view were based on religious doctrine, and the teacher were to explain to the pupils—particularly in a religious school, such as a Catholic school—that the Catholic or

Jewish doctrine, whichever it was, believes that marriage is, for religious reasons, something between two persons of opposite sex, I cannot myself see that any disciplinary action could properly be taken, as long as the teacher provides that information in a proper educational context. No doubt the teacher would want to explain to the pupil that others take a different view and that the law of the land allows same-sex marriage. I do not accept the premise of the question—that the teacher could lawfully and properly be disciplined for telling pupils what the religious view is.

**Baroness Kennedy of The Shaws:** I would defend any teacher's right to say, "I am a Christian, my practice is this, and this is my belief and view, but the law allows for a different position," and to explain the alternatives available to people. It is always about how that is done.

**Lord Pannick:** This problem arises at the moment, does it not, if the teacher is talking to their pupils about abortion, contraception, or many other issues? These dilemmas are faced and teachers are not, as far as I know, disciplined. If they are, and local authorities act wrongly, the rights of the teacher have been vindicated.

**Q152 Mr Burrowes:** The Equality and Human Rights Commission says that it already arises in terms of sexual orientation, and its view is that it may be unlawful direct discrimination on the grounds of sexual orientation if someone distinguishes on those grounds in a personal, social and health education class.

**Lord Pannick:** I am very doubtful. If the matter is explained—that there is a law and there is a religious view—I would be very surprised if this causes problems.

**The Chair:** A final question from Chris Bryant.

**Q153 Chris Bryant:** Which I did not want to ask, but I have been told that I am to ask another question. I want to check another anomaly and check that my understanding of the law is correct. At the moment, as I

understand it, a same-sex couple who go for a civil partnership, whether in a registry office or a registered hotel or wherever, can use religious imagery, whereas a heterosexual couple getting married in a civil ceremony in a registry office or hotel—exactly the same places—are not allowed to. The registrar will tell the heterosexual couple that they cannot have "Stairway to Heaven" because although it is not generally reckoned to be a hymn it none the less refers to heaven; they cannot have "Angels", because again, although it is not generally reckoned to be a hymn—it might be a hymn to love, I suppose—it refers to angelic presences; they are not allowed "Jerusalem". Basically, "Jerusalem"—[*Interruption.*] I did not have any of those; we had "Moon River". I am right that, in law, there is an anomaly at the moment, and that will not change in the future. Same-sex couples will still be allowed to have religious references in civil partnerships but straight couples will not.

**Baroness Kennedy of The Shaws:** Chris, I had no idea that that kind of musical discrimination was taking place. I will now make it my life's work to campaign for change.

**Q154 Chris Bryant:** Because we cannot keep "Jerusalem" just for the gays, can we?

**Baroness Kennedy of The Shaws:** Absolutely not. Why should we?

**Lord Pannick:** There is nothing I can usefully contribute to this. You have stumped me.

**Chris Bryant:** You spoke on it in the Lords.

**The Chair:** Thank you very much indeed to our two expert witnesses. We have finished our morning session.

*Ordered,* That further consideration be now adjourned.—(*Mr Swayne.*)

11.24 am

*Adjourned till this day at Two o'clock.*