

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## MARRIAGE (SAME SEX COUPLES) BILL

*Second Sitting*

*Tuesday 12 February 2013*

*(Afternoon)*

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Written evidence reported to the House.

Examination of witnesses.

Adjourned till Thursday 14 February at half-past Eleven o'clock.

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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> )<br>(Lab/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<br/>of State for Women and Equalities</i> ) |   |
| † Green, Kate ( <i>Stretford and Urmston</i> ) (Lab)  | Kate Emms, Alison Groves, <i>Committee Clerks</i>   |
| † Kirby, Simon ( <i>Brighton, Kemptown</i> ) (Con)  |   |
| † Kwarteng, Kwasi ( <i>Spelthorne</i> ) (Con)   |   |
| † Loughton, Tim ( <i>East Worthing and Shoreham</i> )<br>(Con)                                    | † <b>attended the Committee</b>   |

**Witnesses**

Ben Summerskill, Chief Executive, Stonewall

Sian Payne, Director of Organisational Development, Lesbian and Gay Foundation

Paula Dooley, Gender Identity Research and Education Society

Terry Reed OBE, Gender Identity Research and Education Society

Rabbi Danny Rich, Chief Executive, Liberal Judaism

Jon Benjamin, Chief Executive, Board of Deputies of British Jews

Sarah Anticoni, Family Law Group, Board of Deputies of British Jews

Benjamin Cohen, Founder, Out4Marriage

James-J Walsh, Director of Campaigns, Out4Marriage

Colin Hart, Chairman and Campaign Director, Coalition for Marriage

Dr Sharon James, Spokesperson, Coalition for Marriage

Professor Julian Rivers, Law School, University of Bristol

## Public Bill Committee

Tuesday 12 February 2013

(Afternoon)

[MR JIM HOOD *in the Chair*]

### Marriage (Same Sex Couples) Bill

#### Written evidence to be reported to the House

MB 02 Equality and Human Rights Commission  
MB 03 Liberal Judaism

2 pm

*The Committee deliberated in private.*

#### Examination of Witnesses

*Ben Summerskill, Sian Payne, Paula Dooley and Terry Reed OBE gave evidence.*

2.2 pm

**The Chair:** We will now hear oral evidence from Stonewall, the Lesbian and Gay Foundation and the Gender Identity Research and Education Society. For the record, please would you introduce yourselves to the Committee? Before calling the first member to ask a question, I should like to remind all members that questions should be limited to matters within the scope of the Bill, and that we must stick strictly to the timing of the programme order that the Committee has agreed. I hope that I do not have to interrupt anyone mid-sentence, but I will do so if required. Can I invite you to introduce yourselves and then we will go into questions.

**Paula Dooley:** Good afternoon, I am Paula Dooley and I am a trustee with the Gender Identity Research and Education Society.

**Terry Reed:** I am Terry Reed, and also a trustee of the Gender Identity Research and Education Society—we call it GIREs for short.

**Sian Payne:** I am Sian Payne, and I am a director at the Lesbian and Gay Foundation.

**Ben Summerskill:** I am Ben Summerskill from Stonewall.

**The Chair:** Thank you and welcome.

**Q155 Kate Green** (Stretford and Urmston) (Lab): It has been said that the civil partnership legislation has already conferred pretty well all the same rights and status on same-sex couples as this legislation would do by enabling same-sex couples to enter into marriage. Can you say how important you think the opportunity to marry is to same-sex couples, and what difference it is going to make?

**Sian Payne:** I am happy to start with that one. I have two friends, Claire and Carly, and on 29 January they celebrated 12 years together. A week later, on 5 February, an hour after the House passed the Bill, Claire proposed to Carly which was a fantastic moment for both of

them. The reason it took place on that day at that time was because for the first time, they had seen the opportunity to have equality. That is what it means.

**Ben Summerskill:** May I respond to that briefly in three ways? First, we are alive to the fact that there are now an increasing number of lesbian and gay people, particularly younger ones, who want their family structures to be described in exactly the same way as everyone else's. For those who have children, that is particularly important. Secondly, many people rather hoped when civil partnerships were introduced—many of you were involved in that and we remain very grateful—that they would lead to lesbian, gay and bisexual people being treated in the public space in exactly the same way as others. We always try to rely on hard evidence, and current polling shows that 800,000 people in the British work force have witnessed physical homophobic bullying at work in the past five years; 98% of secondary school pupils who identify as gay regularly hear homophobic language; and there are 20,000 homophobic crimes still being committed in this country every year. We have come to the view that until people are treated in exactly the same way legislatively, there is a risk that those distinctions will continue to be made. Finally, some of the language we have heard in the public space in recent weeks and months comparing gay people in long-term relationships to abortionists, to bestialists and to paedophiles has rather galvanised the view of a lot of gay people that it is time that this distinction was eroded.

**Terry Reed:** Can I just add, in regard to trans people—that is what we are here this afternoon to talk specifically about—that having this distinction has been devastating to the lives of many married trans people. We would like to give more information about that later. Right now, I would also like to say that as a cisgender, heterosexual person who has been in a marriage for 52 years to the same man, I absolutely welcome—as most heterosexual people do, I believe—equality in this field. If we do not use language that is equal, people will continue to think that there is some kind of a hierarchy here. There should not be. If we want an equal society, we use equal language.

**Q156 Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): It strikes me from the evidence you have presented, and from my reading of the Bill, that it is a permissive and protecting Bill. Can you elaborate on your thoughts about that in terms of the overall scope of the Bill?

**Ben Summerskill:** We are very pleased that the Government have moved slightly from their original position and Ministers have agreed to do what we have requested, which is to make permissive and not mandatory provision for the celebration of same-sex marriages by denominations that wish to celebrate them. One of the benefits of that proposal is that, in practical terms, it almost exactly mirrors the provisions in the Equality Act 2010 that permit the celebration of civil partnership in religious premises. It means that it is possible to be clear that there are no particular impediments to doing that.

The other reason why we are delighted that the Government have introduced the Bill pretty much in the form they have is that it is often forgotten that there are some lesbian and gay people of profound religious faith—some of them are here today—who wish to

celebrate their marriages with denominations that of themselves, through prayer and through consulting their God, have decided collectively that they wish to do that. You will hear from some of those people, and it seems an important issue of religious freedom that any denomination that wishes to celebrate such a marriage should not be prevented from doing so either by Parliament or by more powerful religious denominations that disagree.

**Q157 Stephen Gilbert** (St Austell and Newquay) (LD): May I ask you to elaborate on the effect that you think this will have on lesbian and gay couples who are bringing up children at the moment, and on the instances of homophobic bullying that you alluded to, Ben? I think one of the issues we on the Committee struggle with is the balance between equality and protecting families, but one of the things that is often missed out of the debate is that there are an awful lot of lesbian and gay families with children, who are affected by the situation as it currently stands.

**Ben Summerskill:** I wondered whether anyone else wanted to speak. I was trying to be polite, but that has never done me any good in the past. It is absolutely true that it is not just children who may be growing up to be lesbian or gay, or who identify as growing up to be lesbian or gay, who fall victim to homophobic bullying. There are of course whole cohorts of children—girls who are good at games, boys who do their homework—who fall victim to it. Another group which is also affected is children with lesbian or gay parents. That is why the way in which we have historically measured the incidence of homophobic bullying in schools does not just apply to those children who are growing up gay themselves.

Half of the secondary school pupils who have identified as gay have been physically bullied in the last three years. Perhaps more worryingly, of all the young people who witness homophobic bullying at school, half of them say that their schools or their teachers do nothing about it. There is very little doubt in our mind now that until those teachers and schools are reassured that all young people should be treated in exactly the same way, and with the same respect for their future family structures, that level of bullying will not be reduced, and we are anxious about this.

**Q158 Mr Ben Bradshaw** (Exeter) (Lab): May I first ask Paula and Terry whether they are satisfied that the Bill as it stands addresses the injustices that are currently suffered by trans couples? If not, how would you like to see it changed?

**Paula Dooley:** We are absolutely delighted that Government have taken a major and brave step forward to begin to address the issue of trans marriage. I myself have now been married for 39 years. I was actually awarded an interim gender recognition certificate, but I just could not use it to end my marriage.

We do have some difficulties with the Bill. The first is on pensions, as there is a difficulty for those in an occupational pension scheme when the survivor's pension is considered. Under the Bill as currently configured, if a person within a marriage should get a GRC, then their spouse's survivor pension will be reduced, dramatically in some cases. We believe this to be fundamentally unfair, because what we seem to be seeing is that we are being shoehorned into the arrangements for gay and

lesbian folk. Do not forget that this particular couple—this mythical couple—are already married. They have already paid the entitlement for proper benefits on the GRC person's death. So it does not remove the difficult choice that the person will have, again, choosing between their spouse and gender recognition for themselves. How could anybody expect a person to do so? I certainly could not inflict it on my spouse if it affected me. I could not condemn her to a reduced pension just to get my gender recognition certificate. So that is wrong.

There are also issues related to pensions for people who did annul to get their GRCs and then formed a civil partnership. There is a structural imbalance within the Bill, between the needs of the spouse and those of the trans person applying for a gender recognition certificate. I think the intention of the Bill is to make sure that the non-trans spouse is not actually bounced into a marriage which is a legal same-sex marriage. Before the weekend I asked my spouse, who is in that position, and is one of those whose rights, apparently, are going to be protected by the Bill, "What is the difference between the same-sex legal marriage that we are now in"—let me explain, we are both the same physical sex and we are still legally married—"and, if I was awarded a GRC under this Bill, if it becomes an Act, the legal same-sex marriage that we would then be in?" So legal same-sex marriage, same-sex legal marriage—what is the difference? She spent the whole weekend thinking about that and then said, "There is no difference." But the important point is that because you are saying there is a difference, a number of complications arise.

One of the issues, which is not dealt with at all, is the difficult so-called hostile spouse issue. A number of spouses get extremely angry, and quite rightly so, when their partner decides that they are going to transition. They can withdraw completely from the annulment process, not sign forms, refuse to co-operate, they may not even be obtainable; the trans person may not even know where their spouse is. The effect of that is an effect of spousal veto on the applicant obtaining gender recognition. We do not think that is fair and we do not think that should be allowed to stand.

What we are saying would be fairer, and it has a number of advantages that would simplify the Bill, would be to award the gender recognition certificate on the basis of the application alone and not in the context of the relationship. At the present time, an interim gender recognition certificate will be awarded if there is no spousal consent for the marriage to continue. If that happened, the annulment could go ahead using the gender recognition certificate.

We do not see any difference in principle, but there are a number of benefits that arise from that. First, the problem with the spouse who was angry would not be there. There would be less pressure on people to come to a decision within the six months—believe you me, six months is not enough time to work out what to do with your relationship—so there would be less pressure on families. The application process through the gender recognition panel would be a lot easier, and families are more likely to stay together—and that is what it is all about, really; it takes the pressure off people. If you can see a difference between a legal same-sex marriage and a same-sex legal marriage, and that is significant and quantifiable, obviously the interim gender recognition certificate route should stand. But we cannot.

There are a couple of other points. The first is the fact that those people who actually gave up their marriages to get a gender recognition certificate and then formed a civil partnership were mortified at the time; they felt really hurt that they had to go through that process. They still feel hurt. Their marriages were annulled, so in effect they never really happened, but they were real marriages to those people and they had to give up their marriage certificates. Can those relationships be reinstated? Can they have a marriage certificate that goes back and shows the original date of their marriage? Please consider those people.

The last point I will mention is that many were surprised that the fast-track issue was not raised in the Bill. Let me briefly explain: the Gender Recognition Act 2004 introduced the excellent principle of a fast track for people who had transitioned long term to go through a more simplified process to get gender recognition. We feel that there are a number of trans people of long-term transition who have remained in marriages and would benefit from a similar process. If it was right in principle in 2004, surely it is right in principle now?

**Q159 Tim Loughton** (East Worthing and Shoreham) (Con): I think that the technical permutations that you have just raised show some of the unintended consequences or things that will need to be considered if this legislation goes through, but can I come back to some of the things that Ben was saying? All of us here support the civil registration legislation of 2004. It was late in coming and it was good and groundbreaking legislation. Perhaps one or two of the witnesses this morning did not share that view.

**Ben Summerskill:** I have rather lost count of people in the past few weeks who have said they fully supported civil partnerships—I know you were one of them. That was not quite my recollection.

**Q160 Tim Loughton:** I voted for it at the time, so that should be your recollection. What I want to get my head around is when we voted for it in 2004, but did not vote for marriage, we were not accused of being bigots and homophobes then. That piece of legislation was supposed to be and was seen as—I have read through the debates again—an end in itself. What has changed—I think you started to allude to some of the attitudes that may have changed between 2004 and 2013—to make this piece of legislation so necessary now?

You also referred to the serious problem of homophobic bullying and other problems which absolutely need to be addressed. As I said in my speech the other day, these are social issues and social attitudes that need to be addressed. Why will they be addressed so effectively simply as a consequence of this legislation? In fact, I think we have a bigger task to try and change people's mindsets. What I am yet to be convinced of is why this piece of legislation will help in doing that.

**Ben Summerskill:** I think we are clear that in some sense we shared your vision in 2003, 2004 and 2005. We thought that the law often does lead the way in terms of hearts and minds and I think all of you on all sorts of issues will have appreciated that. However, we are seeing hard evidence that that has not happened. You referred to people being referred to as bigots. That is an expression we would only have used for someone who compares

gay people to bestialists or polygamists. In that case, it seems quite a temperate description. In fact, we are clear that until everyone sees gay people as being equal at law, we are unlikely to see those changes in public attitudes. Those are areas since 2005 around education and the workplace where Stonewall is now doing a lot of specific and quite effective work that is accompanied by hard evidence research into the attitudes that people actually hold.

Other issues have arisen over the years. Many of you who have dealt with me and Stonewall over the years will know that assiduously we have never asked for legislative steps that we did not believe were going to right a specific mischief. We have always sought legislative steps, for example, the offence of incitement to homophobic hatred, where we believed that there was a genuine and evidenced need for that legislative change to be made.

**The Chair:** I am conscious there are a lot of questions and there may be another point or two from some of our witnesses. Paula, you indicated you wanted to make a small point.

**Paula Dooley:** A very small point, thank you very much. I must mention the terminology used in the Bill, which has two implications. First, "husband" and "wife" are the terms used. Those terms are not necessarily suitable for a trans-affected marriage. For instance, my spouse would never consider me, if we had a revised marriage certificate, as her wife. She would never consider that.

More importantly, the Bill does not seem to have considered the people who fit outside the gender binary. These people are always ignored. We have an equal marriage Bill, which is equal marriage for most, but not all. If we want equal marriage for all, we really have to consider the requirements of non-binary people, who would object completely to the terms "husband" and "wife". It is a simple adjustment, I think.

**Terry Reed:** And that would include people with inter-sex conditions, who feel very excluded by this whole process. I think they have put in written submissions, but they have not been invited to give live evidence. They represent something like 1% of the population, so it is really important that they are able to be included. The exclusivity of the terms, as Paula said, means that a lot of people are not going to be happy either with the celebration of their relationships or the certificate that goes alongside it.

**Q161 Jane Ellison** (Battersea) (Con): One of the biggest areas of concern, which is expressed to many of us in our inboxes, is the quadruple lock, the likelihood of legal challenge and all those things. What views have your organisations formed about that? Do you think the Bill gets the right balance of rights? Stonewall made a commitment not to support people who want to challenge that, should the Bill be enacted. Could you expand on that?

**Ben Summerskill:** There may not be much economic stimulus out there at the moment, unless you are a locksmith of course. We have been assisted, as you heard this morning, by a very clear opinion from Lord Pannick, Baroness Kennedy and other leading counsel that the lock is sufficient to do what the Church of

England said. I am pleased that the Church of England was able to say this morning that it does exactly what it wants it to do, even if it may seem slightly excessive.

We have been, as you say, crystal clear that we will not support under any circumstances a legal case involving a celebrant in a religious premises who chose not to take part in a same-sex marriage. I wrote, as long ago as 19 March 2012, to David Davies—the Monmouth MP—to say, “I can happily reassure you that there are no circumstances whatsoever in which Stonewall would support a case brought by a gay couple wishing to marry in a Church which did not recognise gay marriage.” Incidentally, he said that were he to receive such an undertaking, he would support the Bill. He did not keep that promise.

**Q162 Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): Paula helpfully raised some specific issues on pension provision. The Equality and Human Rights Commission raised some wider issues in their evidence about pension provision for same-sex married couples and civil partners, and widows’ benefits. We asked the Secretary of State this morning, who gave us a figure for roughly what it would cost to address those issues. Are you content to see those issues addressed at a later date, or are you disappointed that they are not addressed in the Bill?

**Paula Dooley:** What we are really saying is you have defined the concept of a protected marriage for trans people. We believe that marriage should be protected. If the entitlements have already been paid for, surely this is a cost-neutral issue for trans people. It comes down to trying to impose the relationships intended for gay and lesbian folk who now wish to get married on to trans folk who are already married. So we do not believe that there is a cost issue here at all. We believe it might be an administrative convenience issue.

**Q163 The Parliamentary Under-Secretary of State for Women and Equalities (Mrs Helen Grant):** Could I ask Paula and Terry what clause 12 and schedule 5 will mean for trans people? That is notwithstanding the important points that have been made about certificates, hostile spouses and pensions. Do trans people generally feel happy with the clause and the procedure and effect of it?

**Paula Dooley:** I am afraid I am not really sure—

**Mrs Grant:** It is clause 12: “Change of gender of married persons or civil partners”.

**Paula Dooley:** Is it in the main Bill?

**Mrs Grant:** It is. It is what we have been talking about.

**Paula Dooley:** Yes. I only have the schedule in front of me. We are generally happy with it, but we are saying that that could be so much better and so much simpler. We think it is unnecessarily complicated, and does not relieve the pressure on trans people and their families as much as it could do.

**Q164 Chris Bryant** (Rhondda) (Lab): This morning, we had the Secretary of State for Culture, Media and Sport and Equalities Minister, Maria Miller, before us. She referred to marriage as the “gold standard”, which seemed to imply that it is a bit of a shame that we

bothered inventing civil partnerships in the first place. Would you want to get rid of civil partnerships, keep them until they wither on the vine or allow them for heterosexual couples?

**Sian Payne:** I think it would be nice to have a thorough look at the system. The ideal would be if we had one for one, and had that for all. One of the issues for same-sex couples is that they have had civil partnerships but have not had access to marriage, and now you are creating access to marriage without access to civil partnerships. However, it is probably more for those individuals who might want to enter into an opposite-sex civil partnership to discuss that from an opposite-sex relationship point of view.

In terms of same-sex couples, it will play out as it will. I am not sure what the plans are for civil partnerships. As far as I am aware, they are going to remain in place. It would be a shame to continue the inequality, yet some people want that inequality to remain. I would assume that there will come a time in future when civil partnerships do not exist any more; they will become obsolete and there will be only marriage. Because a separate system has been created there will be a desire from people to retain the option. It is going to be a difficult one to see out.

**Ben Summerskill:** I think we would say on that that perhaps the gold standard is something from a simpler time, when things were not as complex as they are nowadays, both socially and economically. Our view in relation to opposite-sex civil partnerships is that we are agnostic about them, simply because supporting the equality and well-being of heterosexuals is not one of Stonewall’s charitable objectives. Our perception is that, on the whole, what with one thing and another over the centuries, heterosexuals seem to have done all right sticking up for themselves and do not need us to tell them what is good for them. It may well be that, in 30 years’ time, as you have indicated, civil partnerships will have withered on the vine, or else there may be a huge upswell of heterosexual people who want them, although I am not sure there is huge evidence of that at the moment. The Government seem to be addressing perceived mischiefs that exist today rather than speculating about what might arise in the future.

**Q165 Chris Bryant:** There is this myth that there is such a thing as common-law marriage. That does not exist, but an awful lot of people in heterosexual couples end up in a potentially abusive situation where they have no legal rights at all; one person dies or walks out or whatever, and the partner is in that position.

**Ben Summerskill:** That is absolutely true and the Law Commission has considered that very carefully. As I said, it is not our locus to comment on that. We are very strict about adhering to campaigning on exactly what we are funded to campaign on.

**Paula Dooley:** As a heterosexual person, as many in my position are, I feel that it is wrong in principle to bounce somebody out of a civil partnership to obtain gender recognition. The issue is no different in principle from the fact that the 2004 GRA required us to end our marriages. We do not believe that people already in a civil partnership should be bumped out of that relationship unless they choose that. As a heterosexual I strongly support having civil partnerships open to all.

**Q166 Stephen Williams** (Bristol West) (LD): Mr Bryant has asked what I was going to ask, broadly. Perhaps I can put the issue in another way, to Ben and Sian. Can you imagine any gay couple in a civil partnership objecting to civil partnerships being opened up to opposite-sex couples? Is there any conceivable reason why they would?

**Sian Payne:** I think it is quite difficult to speak for individuals who have civil partnerships. I would assume that anything is possible. People might argue that something that is created for same-sex couples should not be opened up to opposite-sex couples, in exactly the same way that opposite-sex couples have argued that something created for them should not be opened up to same-sex couples.

**Q167 Stephen Williams:** What I am trying to get to and trace is where the objection might come from for having complete parity of esteem all round, so that opposite-sex and same-sex couples can both have a civil marriage, and can also both have a civil partnership. It is hard to find out who actually objects to civil partnerships being opened up, so it is neither of your organisations?

**Sian Payne:** It is not something that—

**Ben Summerskill:** As I said very clearly, it is just something we will not express a view on, just as, in fairness, we would not express a view on the gender pay gap, although I am sure you can imagine what our view of that is.

**Paula Dooley:** We fully believe that heterosexuals should have the same rights as non-heterosexuals. It should be opened up.

**Q168 Mr Bradshaw:** I do not think Ben and Sian quite answered Jonathan's question about whether this Bill delivers equality on pensions. Perhaps you could do that, but my question was about the change in the rules on consummation from the consultation to the Bill. I wondered what you thought about that.

**Sian Payne:** In terms of pension, it is a disappointment. One of the positions around creating marriage equality was that it was equality. From our point of view it is a shame that that inequality continues. However, from a purely pragmatic point of view we can understand why that is as it is. We would prefer to have the concept of marriage equality rather than fight for something that is, at this stage, not really feasible. So from the pensions point of view, a disappointment but an understandable one.

**Ben Summerskill:** That is not quite our perception, and people will remember that we had quite a big fight with the then Chancellor of the Exchequer at the time of the introduction of civil partnerships. He did not want us to have public sector partner pensions at all. It cuts two ways; in terms of the public sector, our clear understanding, having dealt with this for a number of years over civil partnership, is that the discrimination on the backdating of partner pensions to between 1978 and 1988 is in fact a gender discrimination and not a sexual orientation discrimination. Therefore, it was never going to be put right by a Bill of this sort. In the private sector, we acknowledge—Ministers will be able to offer observations on this too—that the Government have never legislated retrospectively for private sector pension schemes. However, I can say that in every case that we have been involved in at Stonewall which we have taken

on for someone who had a private sector entitlement prior to 2005, we have been successful in persuading their company or their trustees to change the terms of their pension scheme. We do not see a huge mischief that would have ever been put right by this Bill, except in relation to technical issues around pensions for trans people. That is something that GIRES will offer advice on.

**Q169 Mr Bradshaw:** And consummation?

**Ben Summerskill:** I think this is a parallel argument to adultery, although of course consummation is grounds for annulment, and adultery is grounds for divorce—something that Mr Charles Moore and *The Daily Telegraph* do not seem to have quite grasped. The reality with adultery is that exactly these arguments arose at the time of the Civil Partnership Bill—how would you manage without adultery as grounds for dissolution? Happily, the proportion of civil partnerships that have been dissolved is very small, about 3%, in relation to heterosexual marriage which seems to be a bit more flimsy. The absence of availability of adultery as grounds for dissolution simply has not arisen as a problem in the past seven years.

In terms of consummation, one almost feels that one is getting to angels and pinheads in this territory. We see an appetite both for civil partnership and for marriage and the long-term commitment, with all the mutual care and understanding that that involves, but we have not seen a lot of our stakeholders saying they are deeply concerned about consummation. It may be that perhaps sex is something that heterosexual people are slightly more fixated about than homosexuals.

**Q170 Mr David Burrowes** (Enfield, Southgate) (Con): On that point—[*Laughter.*] Not so much sex but sexual fidelity has been an issue which has fixated people in terms of supporting marriage. If you were to define same-sex adultery, how would you do it?

**Ben Summerskill:** I would not do it.

**Mr Burrowes:** But the reason I want—

**Ben Summerskill:** It would be perfectly possible. The Government used the slightly weasel-worded form of words that it will be left to case law, but then the development of heterosexual adultery has been a matter of case law over hundreds of years anyway. To be pragmatic in a public policy sense, if there is no great need to develop the detail of a piece of legislation, it seems slightly pointless to get bogged down in what that detail might be. There has, of course, always been an anomaly in relation to adultery. If a woman who has been in a heterosexual marriage has had an affair with another woman, then were the husband to use that as grounds for dissolution, he has not had access to a claim of adultery, but had to resort to a claim of unreasonable behaviour.

This is one area where I can only say this is intuitive, because I prefer to rely on the hard evidence of what our stakeholders think, but all my knowledge is that where two people are committed to each other in a long-term stable relationship, the problem of adultery has not been one with which they are particularly obsessed.

**Q171 Mr Burrowes:** We are in relatively new territory. You talk about your stakeholders, but your stakeholders were not necessarily demanding same-sex marriage two years ago.

**Ben Summerskill:** At the start of the sitting we gave quite a lengthy explanation, but you were not in your seat at the time.

**Q172 Chris Bryant:** I am slightly worried by this bit about common law definitions, because if you just leave things to the common law, it could be years before anyone had any kind of legal certainty about what they would be entering into. Bizarrely, the common law definition of a brothel includes a place which is frequented by men to perform lewd, homosexual practices including dancing. That includes a lot of places where several Members might have been. That has nothing to do with sex, of necessity.

**Ben Summerskill:** This is another world to me.

**Q173 Chris Bryant:** You are coming across as more episcopal than the bishops. Is not the truth of the matter very few people use adultery now? It would be unreasonable behaviour, regardless of the theological concept of adultery.

**Ben Summerskill:** Exactly. I know that the Secretary of State was asked about that this morning. Although they are not measured, we understand that the number of cases in heterosexual divorce where adultery is cited, as opposed to unreasonable behaviour—even if in fact adultery caused that relationship to break down—is currently infinitesimal. That is why we do not see a practical benefit in getting bogged down trying to define something and creating legislation where, if one is being brutal about it, legislation is not needed.

**Q174 Stephen Doughty:** A lot of people, both after Second Reading and in Committee, have been concerned about the polling and what the public think of the Bill and its proposals. Obviously, people can quote any number of figures from their own postbag or from polls left, right and centre, but what is your understanding of the polling evidence that is out there? In particular, there seems to be an age divide in some of the polls that I have seen. There seems to be overwhelming support for the measure among the younger generation coming through, who are the next people who are going to be going forward and wanting to enter into marriage, whether they are same sex, heterosexual, trans or anything else.

**Sian Payne:** In terms of what is out there, you are right. From 2004, figures start at around 55% for people who are in support of same-sex marriage—not civil partnerships. Going through to the most recent ones in 2012 that I am aware of, you are right that there is that age divide. Support for same-sex marriage was, I think, 78% for people aged between 16 and 24, going down to 37% for those aged 65-plus. That is quite a big difference in terms of the age gap.

In some ways, it is incredibly heartening to see that we have a younger generation coming through who see equality and same-sex marriage equality as something so positive. If we go back to some of the things that Ben was saying about homophobic bullying, there is still a massive disparity. Somebody raised the issue earlier of

what difference the Bill will make. I think there is a difference between the concept of same-sex marriage, and people being supportive of that, and the reality of it. Living with that will have a massive impact on some of the young people coming through who are either children of same-sex couples or who are just able to experience it on a social level—as something that is talked about and not hidden. I think you will see a shift with the polling being in support of same-sex marriage. In future, there will hopefully be a shift so that it is about not just same-sex marriage but a recognition that same-sex couples and relationships are equal to opposite-sex ones, and all the social acceptance that comes along with that.

**Ben Summerskill:** May I make two brief points on the basis of the tracking of polling that we do in some detail? Two interesting points have arisen from that. First, the proportion of people who define themselves as people of faith is almost as high as the number who say they would support same-sex marriage in the general population. Secondly—we are completely clear about this now, because of tracking polling over a period of time—the other area where a discrepancy has sometimes been assumed to exist, but does not exist, is between metropolitan and non-metropolitan areas. Such a discrepancy is almost statistically insignificant.

It was interesting and constructive, perhaps, that in Barnstaple, where “Any Questions?” was held a couple of weeks ago, Jonathan Dimbleby asked the audience what they thought, and—rather to my surprise, it must be said—four out of five audience members said that they supported what the Government were proposing to do. Barnstaple is at the heart of middle Britain; it is not Islington or Highbury or chic Kennington.

**Q175 Simon Kirby (Brighton, Kemptown) (Con):** Ben, there has been some suggestion that gay people do not want same-sex marriage. I know you have carried out some polling recently. Can you share that with us today?

**Ben Summerskill:** We polled 2,092 lesbian, gay and bisexual adults through YouGov—that was a representative sample—and 91% of gay people over 18 supported the Government. That figure rose to 96% among gay people under 35.

**Q176 The Chair:** Are there any more questions? Do our witnesses want to add anything?

**Ben Summerskill:** May I just say something briefly about a question that I think Ben asked this morning about conversion costs? We were slightly anxious that the response to the Government’s consultation suggested that the cost of a conversion from civil partnership to marriage might be in three figures. Clearly, if you want to go and occupy the registry office again for an hour and have the ceremony solemnised, that might be perfectly reasonable, but if all you are doing is sending in your certificate to be adjusted, to charge £120 seems unreasonable. We checked the cost of a replacement birth or marriage certificate. It is £9.95. The cost of a replacement driver’s licence is £20. As most of you will be aware, the cost of a replacement non-migratory trout and coarse rod fishing licence is £5. It seems to us that the charge for reissuing a certificate that simply requires to be filled in and put in the post should not necessarily be in three figures or above.

**Chris Bryant:** You could do it as a package

**Paula Dooley:** On the subject of polling, I do not think the polls have ever addressed the issue of, “Do you believe it is correct that people with strongly held marriage views on keeping their vows should be forced to divorce so that both parties can enjoy full civil participation?” That has not been asked and it should have been. I do not think that people out there appreciate the position that trans people are in. Do not forget we are being treated for a medical condition. The final part of the medical treatment, effectively, is being let back into society with a GRC. Many of us are now living, if you like, on the edge of society, and we would delightfully have full participation, please.

**Ben Summerskill:** And the only brief coda that we would add to the Government’s consultation is that we felt the economic impact assessment was relatively modest, given that most celebrants in weddings currently spend about £20,000. Michael Bloomberg, the Mayor of New York, who will be well known to some of you, announced last July that as a consequence of the introduction of same-sex marriage, the city of New York had benefited economically to the tune of \$259 million in 12 months. Mindful of the current economic situation and our difficulty in finding tools that might change things, Committee members might wish to bear that in mind.

**The Chair:** If Members have no further questions, we shall move to the next panel of witnesses. Thank you very much for your evidence this afternoon.

#### Examination of Witnesses

*Rabbi Danny Rich, Jon Benjamin and Sarah Anticoni gave evidence.*

2.53 pm

**The Chair:** For the record, please introduce yourselves to the Committee.

**Sarah Anticoni:** I am Sarah Anticoni from the Board of Deputies of British Jews.

**Jon Benjamin:** I am Jon Benjamin from the Board of Deputies of British Jews.

**Rabbi Danny Rich:** I am Danny Rich from Liberal Judaism.

**Q177 Mr Bradshaw:** I would like to start by asking Danny Rich a question, if I may. We have heard from a number of religious representatives who base their opposition to the Government’s proposals for equal marriage on their reading of the Bible. How and why has your reading of the Bible led you to a different conclusion?

**Rabbi Danny Rich:** I will try to give a short answer to that very difficult theological question. Essentially, we approach the Hebrew Scriptures not as though they are the word of God, directly dictated by God and written down by Moses, but as the record of our ancestors struggling to understand what God wanted them to do at the time. That means that they are a human document, which, by the way, makes them even more marvellous. If they were God’s document, we would expect them to be marvellous, so the fact that they are a human document makes them even more marvellous as far as I am

concerned. However, that does mean that their authors are the products of their environment, with all the blind spots and other things that follow. That would be the first point we would make about Scripture in general.

The second point would be that, of course, Scripture has many gaps in it. It is debateable whether Scripture understood that lesbians existed, as it were. It certainly understood that a particular activity carried out by certain men existed, and that is how we would understand some of the prohibitions that are used in that context. I can go further, if you wish—I do not know if that is a helpful answer to begin with.

**Q178 Mr Bradshaw:** What you are talking about would be revelation for a Christian theologian—basically that you interpret Scripture in different times as a result of your experience.

**Rabbi Danny Rich:** Indeed. We believe in progressive revelation. That is a very trendy title, but it essentially means that no individual or group at any one time can claim to know wholly what God requires. So our task in life is to try to be prayerful, of course, and to study our Scriptures and be respectful to them. We might say that Scripture has a voice but not a veto, if that is helpful.

**Q179 Kate Green:** What difference will the option to have a same-sex marriage make to how people in your faith feel, given that in legal terms there are very few differences between same-sex marriage and a civil partnership?

**Rabbi Danny Rich:** There is a lot of difference. One is that it does not have a religious aspect to it. What some of our members want is to have their union or relationship celebrated in the synagogue—or another building in a religious setting—by their rabbi, so they will be delighted. I suspect that for most of our other members it will be a matter of indifference, other than that they can see a justice matter here, because there are members who are not able to do something that other members can do.

**Q180 Stephen Williams:** In my constituency in Bristol, I have a liberal progressive synagogue and a more orthodox synagogue, if I can put it that way. What are the respective views of the two denominations within Judaism? If a same-sex marriage is celebrated in the synagogue in Easton in Bristol, what view will Jews who do not go to that synagogue take of that marriage—will it be recognised?

**Rabbi Danny Rich:** Well, of course, I inducted your new rabbi there only a short while ago, Rabbi Monique Mayer. The answer is that I can only speak for Liberal Judaism, which I represent, as it were, and I dare suggest—it might be that the Board of Deputies wishes to answer this—that other groups of Jews will not accept the validity of our marriages but, in a sense, that is their problem, not ours. We believe that this is the right decision for those of our members who wish it.

I cannot say that every single one of our members is supportive. When we first began looking at civil partnerships, I had just been appointed chief executive. We prepared this big PR and education campaign for our own communities, and it was a damp squib because none of them were that interested in it—most were quite relaxed about it. However, one of our synagogues took the view that it was not something that it wished to

be associated with. It may well be that one or two of our rabbis, or one or two of our communities, do not feel able to do this themselves. We have made it very clear to them that, as a national organisation, we want to be permissive to our congregation, and we do not wish to impose on any of our individual members, rabbis or congregations things that they do not feel in conscience that they can do.

However, it would appear—I say “would appear”, because we have not polled every one of them—from the indications that we are getting that the majority of our members are content that for those gay men and lesbians who wish to do this, and when there are rabbis and communities that wish to be part of it, it should be allowed to happen. However, if I carried out a same-sex marriage in Bannerman road this week, I do not expect that our neighbouring synagogue would be whooping with delight, but that is not a matter that I can comment on.

**Jon Benjamin:** The Board of Deputies is a cross-communal representative organisation for the Jewish community, so it includes as affiliates members of all the different denominations. When they are not formally affiliated, such as the ultra-orthodox, we certainly work with those parts of the community and represent them.

There are many theological differences between different parts of the community. It is not necessarily acknowledged or recognised outside the Jewish community, but there is a huge diversity of opinion on all manner of issues, certainly theological ones, so there are all sorts of differences between the way in which practices are undertaken in different synagogues. I am sure that the two synagogues in Bristol would look at all manner of things, such as the way Scriptures are read and who they are read by, and whether men and women sit together. There are so many areas of divergence, and it really is a matter of live and let live: if you decide to be a member of that club, you adhere to those rules, and the synagogue—or the other golf club down the road, or whatever it may be—will not necessarily look to interfere.

One of the things that the board tries to do is not only to keep peace, but to make sure that we have sensible conversations among the different denominations on things that impact on the community generally. In response—obviously, there is divergent opinion on this as much as on anything else—we have put in a submission, as you have probably seen, that says that we want different parts of the community to be able to do what they want, or not to be compelled to do what they do not want to do. That is the very simple consensus and acceptable position that we hope to adopt for everyone.

Obviously, the civil authorities will legally recognise a marriage, so no one from a more orthodox synagogue will say, “You’re not married,” and I think that the fact that they were not married in a ceremony that they would recognise in their own synagogue or according to their own practices would not really be a matter of great issue.

**Rabbi Danny Rich:** Live and let live must go both ways. We are not seeking to impose on members of the Jewish community or anyone else things that they do not wish to do, but we hope that the legislation will permit those members of ours who do wish to carry out what the legislation will allow them to do.

**Sarah Anticoni:** We are in a slightly anomalous position to the extent that, as with the Quakers, we have a combined religious and civil marriage service. So unlike members of other communities who have to have a civil marriage followed by a religious blessing, or the other way around, we have a combined service. By supporting the Government’s position and allowing this to take place for those who wish to opt in, with those who do not wish to not being compelled to do so, we are fortunate that the breadth of our community can be accommodated.

**Q181 Jim Shannon (Strangford) (DUP):** Thanks for coming along.

May I ask you a couple of questions? The first one relates to Liberal Judaism. I just want to get my head round the numbers that you represent. How do your numbers today compare with, for instance, 10 or 20 years ago? The second question relates to the fact that I have been in touch with some Orthodox Jews who have stated clearly that they are opposed to the redefinition of marriage. I wonder how you would reconcile your opinion, which you have presented to the Committee today, with those of the Orthodox Jews, who have a very different opinion, given what they have told me.

**Jon Benjamin:** In terms of the numbers—Rabbi Rich will put me right—I think that Liberal Judaism currently counts about 10,000 members. Obviously the census figures came out recently—not for Scotland and Northern Ireland—but there are about 260,000 to 270,000 people who admitted to being Jews in the voluntary question in the census, so that gives you an idea of the proportions.

**Q182 Jim Shannon:** So Liberal Judaism represents about 10,000 of the total.

**Jon Benjamin:** Liberal Judaism, but there are other progressive denominations within Judaism that would look favourably on the changes in the law as well.

**Q183 Jim Shannon:** And how would those numbers for Liberal Judaism compare with, say, 10 years ago. Would you have had more numbers 10 years ago?

**Rabbi Danny Rich:** I can answer on Liberal Judaism. I am delighted to say that the statistics—in fact, this was carried out independently by the Board of Deputies—show that we are growing slightly. Synagogue affiliations as a whole, except in one section of the community, are probably dropping—the board will comment on that—but ours are growing slightly. I cannot say that we have overwhelmingly converted either the whole Jewish population or indeed others, but we are seeing good growth in our communities.

**Q184 Jim Shannon:** Ten thousand out of 270,000 Jewish numbers would not be representative of all the Jewish people.

**Rabbi Danny Rich:** Let us be clear: 250,000, but half of them are not affiliated to any synagogue.

**Jim Shannon:** No, I understand that.

**Rabbi Danny Rich:** So they might equally be affiliated to ours as to any other one, but they choose not to be affiliated to anyone. I agree that we are the third largest synagogue organisation after the United Synagogue and

the Reform movement, and our sister Reform movement, which represents about 25,000 people, has indicated supported for the Government's measure. So I would say that something like a third of Jews who affiliate to synagogues are supportive, but I accept that how you cut the statistics is always a difficult one.

**Jim Shannon:** Lies, damn lies and statistics.

**The Chair:** Mr Shannon, the witnesses are more fortunate, in that they are nearer to you and can hear you, but I cannot. Please speak in the direction of the microphone.

**Q185 Jim Shannon:** Absolutely.

I referred to lies, damned lies and statistics. Orthodox Jews have stated to me their opposition to the redefinition of marriage. Can you give us some idea of how you reconcile your opinion with theirs?

**Jon Benjamin:** We have something of a mandate to speak for the Jewish community, including the majority who are Orthodox Jews. In relation to this consultation, I think submissions were made by parts of the Orthodox community, while other parts chose not to speak out. We have deliberately not adopted a view that would cause any problem or controversy within the Jewish community because there is simply no single view, so our submission and our position have been that those who wish to opt in should be able to do so and that those who choose not to should also have that freedom. If you were to go to any Orthodox synagogue—mainstream Orthodox, which is possibly a confusing term, but fairly middle of the road and not ultra-orthodox—you would find people of varying opinions who are very accepting of the proposals, even as, as Rabbi Rich said, in a liberal synagogue, you may find people who are not so comfortable. There is a vast range of opinion.

I think it is true to say—I have had this conversation with Anglicans and Catholics as well—being a relatively small community and one that enjoys a great deal of freedom and tolerance in this country, that we are not looking to say to British people generally and the social fabric that this is what has to happen in terms of marriage. There are certainly Jewish thinkers and theologians who will have a strong view about what marriage means, but we are not looking to impose our views on the wider public. As with so many things, we just want to be able to do what we want to do as a community, whether it is on kosher food or circumcision or, in this case, to conduct ourselves and our family lives as we can.

**Q186 Stuart Andrew (Pudsey) (Con):** As the law stands currently, does it uphold the principles of religious freedom?

**Jon Benjamin:** Clearly the proposed changes in the law go further, and I suppose that freedom is in the eye of the beholder. If the law changes, people will be able to do things in the future that they cannot do at the moment, so I suppose that that accords greater freedom. It has not been a major issue within the community, which is possibly why we can adopt such a “sitting on the fence” or “trying to be all things to all people” kind of view. There has been a great deal of angling for a change in the law. There are obviously Jewish lesbian,

gay and transgender groups that want to see this. If the opportunities come along, different parts of the community will embrace it or not as they choose to. I do not think that it has been a major campaigning point.

**Rabbi Danny Rich:** Religious freedom, of course, needs definition. For our members, we would see this as an advance in our religious freedom. Currently we are not permitted to do something and we do not understand why the law does not permit us to do it when, as far as we perceive, it does not have a harmful impact on anyone else. In some senses, it is a private matter that is brought into the public domain, if I may say that. I suppose, if you were really to push me to the brink and we were starting again, although we are not starting again, I would say that civil society ought to register marriages and allow religions—allow mad people and not mad people, if you consider religious people to be mad—to do whatever they like, within reason. That would be my ultimate. The state has a responsibility to register marriages, clearly for purposes of inheritance—there are all sorts of purposes that would require the state to do so—and, as you know, on the continent you get your certificate from the registering authority, which I think is the mayor in many places, and then go off and have a synagogue wedding, church wedding or any wedding you choose. But we are not there, partly because we have an established Church, which is not my issue or problem, so we are faced with a different situation. In the current situation, I would argue that what is being proposed does increase religious freedom for those who wish it.

**Jon Benjamin:** It would be a retrograde step if parts of the community were compelled to do something that they did not want to do, because clearly that would impact on their religious freedoms.

**Q187 Stuart Andrew:** So do you think that the quadruple lock is sufficient?

**Jon Benjamin:** That is a different question.

**Sarah Anticoni:** There are concerns, which we have raised in discussions with those drafting the Bill. It is quadruple, although some of the locks do not impact on our community. I think we probably have a triple lock, rather than a quadruple lock. I am afraid it is one of those things where time will tell. We are going with what is drafted and we have suggested some additional drafting on who will effectively be the supervisory governing body but, other than that, we will have to wait and see. We are reassured that to date there have not been those tests in European courts.

**Q188 Chris Bryant:** In the evidence we heard today from Lord Pannick, he wanted to give the impression of being categorical. He was effectively saying that if anybody wanted to come to him as a client, he would say, “Look, your case is hopeless. It is not going anywhere, either now or in 10 years' time.” In the six years I was a vicar in the Church of England, I married about 120 people. It seemed to me that the bit that was truly valuable to people, apart from the individual commitment, was the moment of ceremony. You are the first people who have referred at all to ceremony today. For people who enter into civil partnerships, it is very difficult to come across suitable material for ceremonies. I presume that you would use the chuppah and the breaking of the glass and all those similar things. Is that right?

**Rabbi Danny Rich:** The answer is yes. If you read my introductory note, which I am sure you and all Members did, you will have seen that we produced a covenant about the liturgy for such circumstances. We created a liturgy. We are probably, although we cannot prove it, the first synagogal organisation in the world to produce such a liturgy. We are trying to get ourselves ahead of the game, but you are absolutely right; that was the distinction I tried to make between civil partnerships and marriage. Marriage is about having God, and their rabbi and community, involved for those who want it. It is very different from a civil partnership, and we have sought to reflect that in our liturgy and, as you rightly say, in some of the symbols that we would wish to use.

**Q189 Chris Bryant:** In fact, when civil partnerships were going through, some of us tried to get the Government to allow ceremonies as part of the civil partnership; it is, in theory at least, not allowed, although most registrars will allow something. It is one of the things that I hope will change significantly.

You referred to live and let live, which is a great principle. You could say that it is one of the fundamental principles, in a way, of the Bill as a permissive Bill. I wonder how you manage that, because one Jewish friend of mine told his family that he was gay, and his sister, who in the terms that you have used would describe herself as ultra-orthodox, has now performed a funeral service for him. She no longer believes that he is alive. How do you ensure that you have that principle, if you are going to cover such a broad set of opinions, from yours to that extreme?

**Rabbi Danny Rich:** One can always take extreme examples to try to create a scare. I did not get an opportunity to answer the previous question, which was similar. Those Jews who want this type of ceremony will not be knocking on the doors of synagogues and rabbis that reject them. The answer is to go to synagogues and rabbis that want you. I do not quite understand why that is not the response in every case. If your church does not want you, does not recognise you or has an issue with you and you cannot resolve it through your theology, your vicar or your liturgy, there are plenty of other churches you can go to where that is possible.

Similarly, it is very tragic when families are divided. We do not want that, over any of these issues, but they will be, because people have strong views and people in families can have strong views. None of us here would support the idea that if your brother is gay, you have mourning prayers and somehow discount them. We can only hope that eventually the community will learn. At one time, when Jews married non-Jews people sat shiva for their child. I think that is not very common in many of our mainstream communities. We learn to live with new situations. These extreme cases are often used to create moral panics and scares.

One of the fears in our community was that we would suddenly be swamped by every gay Jew wanting a ceremony—it would be delightful if they would, and everyone else who wants to convert likewise—but in reality it was not going to be true and it was not true. Once we went to civil partnerships, a number of the people who had civil partnerships came to us and had ceremonies, but they did not overwhelm the rabbis. Would that any rabbi were overwhelmed with pastoral

demands. They were not, and that was the reality. I think the reality here would be that those who want them will find synagogues and perhaps churches and other places where they can be made to feel comfortable. That seems to me right and proper. The state should not be preventing people from doing what they find comfortable, and what the local rabbi and local community think is right in their own context.

**Q190 Kwasi Kwarteng (Spelthorne) (Con):** I am very grateful for your full answer but I would like to get back to the question that was posed earlier with regard to the legal basis of the Bill. We have had Lord Pannick's view, but we know that lawyers are very litigious and other lawyers will give other views. How comfortable are you that you will not be faced by any legal challenge, given what is written in the Bill?

**Rabbi Danny Rich:** I am not a lawyer, of course, and I can go to two lawyers and, certainly if they are Jewish, they will give me three different opinions. You have lawyers sitting to my left who may be able to answer that question. My own organisation is not fearful of that. We believe that if there are rabbis and communities that feel unable to take up this legislation, we will find a way to get those congregants to go to different rabbis and different synagogues. We do it now. We have ceremonies that involve a Jew and a non-Jew. One of our rabbis is opposed to that. We have a perfectly reasonable agreement with him that he refers couples to one of our other rabbis.

It seems to me that with a bit of common sense and people who are not over-litigious, and want to prove something against a church—I accept it may well be a church or a synagogue—we certainly in our organisation will find a way to deal with those people. A small number of our members do not find this very comfortable. Our task must be to try and respect their opinion and make them feel as comfortable as possible, but not to deny others on the basis that they feel comfortable about something that others feel is legitimate. That is the only answer I can give you, but the lawyers on my left might want to give you a different answer.

**Jon Benjamin:** The capacity to refer someone, or a couple, to a part of the community—they probably would know this anyway—will help to deal with the problem. I am encouraged if Lord Pannick this morning said that any claim would be next to hopeless. As someone who used to be a litigation lawyer, I am aware that the mere fact of a vexatious or nuisance claim could cause a lot of problems for some of our institutions. Even if they were ultimately likely to win, they would still have to instruct lawyers and incur expense and so forth. If there is the capacity to find a part of the community that would be accommodating to you, and for people to understand that if you are talking about an Orthodox synagogue where there are certain practices such as men and women sitting separately—very traditional Judaism in that respect—it is quite likely that someone who is gay will possibly embrace that mode of Judaism and would want to have some kind of recognition of their relationship in that kind of synagogue, but quite possibly would be more liberal progressive in outlook and would find a home in a different part of the community. There are different gradations of the community as well; there is also reform liberal progressive, so I think the chances are they would find a home.

In terms of the technicalities of the triple or quadruple lock, as Sarah Anticoni said, we will just have to see. We cannot be sure, and our concern would simply be that there are not nuisance claims thrown against synagogues or synagogue movements that they would have to investigate and defend, even if ultimately they were not successful.

**Q191 Mr Burrowes:** In terms of Jewish schools, what impact do you think the Bill may have on some of the schools in my patch, such as Wolfson Hillel, which is linked to the United Synagogue? There may well be a view that they will only recognise the traditional view of marriage between a man and a woman and that is what they would want to teach as well. How do you think that would be impacted by the Bill?

**Rabbi Danny Rich:** Faith schools also have religious authority to which they can defer when determining who is or is not of the faith. Several years ago—Lord Pannick was involved—there was a case involving the Jewish Free School, and I gave evidence. Again, it was another incidence when although there were some inter-communal difficulties, the Board of Deputies managed to play what was hopefully a positive part in helping the court understand the different traditions within the community without taking sides. But depending on how the question is phrased and which religious authority is making the determination—

**Q192 Mr Burrowes:** We are not talking about JFS, we are talking about a quite traditional Jewish primary school in Southgate.

**Jon Benjamin:** A child's parents do not necessarily have to be married to determine the religious status of the child.

**Q193 Mr Burrowes:** In terms of the teaching of children at school, do you think that the Bill will impact on the freedom of teachers in that Jewish school in Southgate?

**Sarah Anticoni:** Perhaps I could answer that. I am a governor of a faith primary school. I think that the answer is that the curriculum will always be reviewed on a regular basis but in line with the ethos of the school. I think that the recognition of the reality of other ways of forming friendships is something that will have to be addressed. Whether or not the school—as Jon mentioned—was under the auspices of the religious authority and whether, in their community, those marriages would in fact be carried out may or may not be the case, but the spectrum of possibilities, certainly at secondary school, would be covered.

**Rabbi Danny Rich:** We are involved with schools that have a number of different movements across communal schools, so there clearly are differences in some of those. I think that the difference is that, of course, teachers can teach that there are a wide range of practices, but it does not mean that they have to support them. That is an important distinction.

I defer to my lawyers again, but teachers must have some protection. They clearly have obligations to teach about a wide range, so in the schools that are Reform, Liberal and Masorti, for example, they teach across a wide range of what Judaism represents, but the teacher him or herself may be a Masorti Jew, a Reform Jew, a Liberal Jew or something entirely different. Indeed, on

matters of Jewish status, they may have to say that Liberal Judaism takes a different view about who is a Jew. If they are then asked by a parent, a child or somebody else, “Are you a Liberal Jew who believes in that?” the answer may well be no and we would not have a problem with that provided that our view were fairly represented. There is a distinction between what teachers have to teach, which can be wide ranging, and their own personal views, which they are entitled to express.

**Q194 Mr Burrowes:** You mentioned earlier the concerns you have been addressing to officials in relation to the Bill. As we are the Committee who are looking at the Bill, could you amplify some of those concerns in terms of drafting?

**Sarah Anticoni:** It was a very specific issue relating to drafting, which has been submitted, but it related to the definition of “relevant governing authority”. I go back to the answer I gave about how Jewish marriages are slightly different from other religions, other than Quakers; we have a combined ceremony, so when one wishes to marry in accordance with the Jewish faith but as part of a civil marriage as well, you register under the auspices of the relevant governing authority; currently there are three. We are using now as a good opportunity to clarify them into five, because there are different strands. When we originally had the exception to the Marriage Acts, we are talking about 19th century marital legislation—1836 onwards—so with it now being 2013 we thought that clarity was probably a good thing. Certainly, in terms of chain of command, it would assist in that if there were challenges—subject to Lord Pannick's view; it would be clear under whose auspices the particular marriage would have taken place.

Currently, most marriages are under the auspices of the Chief Rabbi of the United Hebrew Congregation and there is also the west London synagogue, now known for purposes going forward as the Movement for Reform Judaism. Then, as Rabbi Rich points out, the liberal community and Liberal Judaism will have a separate entity and it will be under their auspices.

**Q195 Mr Burrowes:** What is the view of the Chief Rabbi?

**Jon Benjamin:** I think he may have made public comments, but I cannot speak for him.

**Q196 Mr Burrowes:** It would be good to hear them.

**Jon Benjamin:** It may indeed. I do not recall what they were, so it would be unfair to represent or misrepresent his views.

**Rabbi Danny Rich:** I think he made a statement that marriage was between a man and a woman, did he not?

**Jon Benjamin:** A fairly unsurprising view.

**Q197 Mr Bradshaw:** Can I ask Sarah and Jon a couple of points? Returning to the issue of the fear of litigation, has there been a successful challenge in Spain or any other European Union country on a synagogue forcing—there have not been any?

**Sarah Anticoni:** Not so far as we are aware. The trouble is the reliance upon no other precedents; as a lawyer one never feels particularly reassured by that. But it is quite right that there has been same-sex marriage

for years in Holland and other European countries, and there have not been successful challenges against those religious authorities.

**Q198 Mr Bradshaw:** My second question was, given that we just heard that Liberal Judaism is the only growing part of Jewish religious practice in this country, as representatives of the board are you not worried that you will lose more members to his lot by your opposition to same-sex marriage?

**Benjamin Cohen:** We are not opposing it, as I said. Liberal Judaism is part of the Board of Deputies of British Jews. Another rapidly growing part of the community is the ultra-orthodox community, who tend to have many more children than Liberal or any other type of Jews. The Board of Deputies encompasses all these parts of the community, so it is not a challenge to us. We have embraced the practices that every different denomination within the community wants to pursue, including those of the Liberals, the Masorti, the Reform and the Orthodox.

**Q199 Stephen Williams:** One of my earlier questions was about British practices and the international situation. Rabbi Rich, you said that you were developing what you thought was the world's first liturgy ceremony for same-sex marriages. Does that mean there is nowhere else in the world where a Jewish man marrying another Jewish man—

**Rabbi Danny Rich:** I said that we did so as an organisation. We are part of the World Union for Progressive Judaism, which is in fact the largest synagogal organisation in the world, representing about 1.8 million people, most of whom are within the United States. We have a very large sister organisation in the States, and different things happen in the States. There is a lot more autonomy for synagogues, a lot less control over marriages. There are synagogues that are doing them, but they have not produced a national liturgy for that purpose. That is the point I was making.

**Q200 Stephen Williams:** Are a large number of same-sex marriages celebrated in synagogues in the States?

**Rabbi Danny Rich:** I would suspect so. The truth is that I am responsible only for Ireland and—

**Q201 Stephen Williams:** What I am trying to get at is whether a same-sex marriage in a British synagogue would be a world first, or are you following precedent elsewhere?

**Rabbi Danny Rich:** The problem is that the legal question is slightly different, because I think that in the States you get married by your local state, and then have a synagogue—when I carried out a marriage in the States, I simply had to sign a bit of paper when I got there, so the answer is that I do not know.

**Jon Benjamin:** It was Las Vegas, then?

**Rabbi Danny Rich:** No, it was not. It was the Sonoma Valley; even better.

**Q202 Stephen Williams:** Perhaps I can ask it another way. Is there acceptance and recognition among Jewish communities elsewhere, outside this country, of same-sex marriage?

**Rabbi Danny Rich:** Yes.

**Q203 Stephen Gilbert:** I am probably missing something obvious here. I am trying to understand the process, in terms of governing structure—how a mainstream part of the faith would potentially go through a process that led to them opting into the legislation. Could Sarah or Jon briefly talk me through that? I then have a short question for Rabbi Rich as well.

**Sarah Anticoni:** Without leading you through the specific drafting, which would be somewhat dull, it is done by effectively dividing the community into different ecclesiastical authorities that would supervise religious and civil marriage. Those within Liberal Judaism who wish to carry it out have already indicated that they would wish to do so; they would opt in, and they would carry out such marriages. Other parts of the community that have indicated that they do not wish to do so at the current time would not, and therefore would not be forced to carry out such marriages. But the legislation would be sufficiently flexible that if their positions changed at any stage—I think we have all seen that positions within a broad Church can change from time to time over a period of years and as society develops—there could be movement. Different communities could opt in, if necessary.

**Jon Benjamin:** That structure essentially carries on what has gone before. It has just been redefined for 2013.

**Q204 Stephen Gilbert:** That is helpful, because although I understand the point Rabbi Rich makes about the pick-and-mix approach from a consumer's perspective—if you do not like the synagogue or they do not like you, then do not go there, go somewhere else—what assessment have you made of protections for members of staff? That is, not only celebrants and rabbis, who are in the Bill, but other members of paid staff from different synagogues, who might not be so easily able to go somewhere else, because that is where the job is. I am keen to ensure that they are protected, too. Is your assessment that the Bill protects their religious conscience?

**Rabbi Danny Rich:** In practical terms, the people who are involved with our synagogue marriages are the rabbi and the marriage secretary, both of whom are members of our synagogue, so we do not see a problem. In theory, I suppose that a rabbi's PA could be asked to do something. I cannot answer the legal question, but I cannot imagine that one of our synagogues would seek to force one of its employees to do something that in their conscience they did not want to do. That is the nature of our organisation. By the way, some of our synagogues employ Orthodox members of staff, who require additional time off that we do not count as Jewish holidays, for example, and, in all of our history that I know of, we have had no case of a member of staff having to take action on that basis. That is all I can say on that.

**Sarah Anticoni:** Answering legally, I would imagine that if you currently carried out the role of secretary of a synagogue with a registrar's function and did not wish to carry out same-sex marriages, but were in a synagogue where they were to be celebrated, it would be an individual decision. I do not see, as a body, that that is an overall concern. We certainly have not taken particular soundings from the registrars.

**Jon Benjamin:** In our response to the consultation, we specifically say that they would be internal matters. Although it obviously comes down to individual views, it may be a synagogue within a movement that is uncomfortable—perhaps a number of its congregants have voiced a concern. We looked at the issue, in drafting terms, of devolving down or devolving up—pushing up—the decision and whether it should be movement-wide or denomination-wide, but that is ultimately where we came down to, because they would be setting the kind of policy that they would like to apply, normally very much in tandem and consultation with their members and their member congregations. Beyond that, whether it is individual synagogues or even individual members of staff, those should be internal matters. Obviously, it is in no one’s interest to see people prosecuted, disciplined or losing their jobs. I do not think that employers will want to take that kind of view. They would be as understanding as they possibly could be.

**The Chair:** Any other questions? Is there anything our witnesses would like to say that they feel would be of help to the Committee?

I sincerely thank you for your evidence today. I am sure that the Committee will make good use of it in its deliberations. Thank you for coming. I am afraid that we now come to the end of the session. Our next panel is available. Our evidence will come from Out of Marriage. *[Interruption.]* Out4Marriage—a Freudian slip.

#### Examination of Witnesses

*Benjamin Cohen and James-J Walsh gave evidence.*

3.34 pm

**Q205 The Chair:** Welcome gentlemen. For the record, would you please introduce yourselves to the Committee?

**Benjamin Cohen:** I am Benjamin Cohen. I started the Out4Marriage campaign. I am also the publisher of *Pink News*, a gay and lesbian publication. I want to say before James introduces himself that we are just volunteers. We are not a professional organisation. We are just a group of LGBT people who one day want to get married.

**James-J Walsh:** I am James-J Walsh. I am the director of campaigns for Out4Marriage by night, and by day I work in the voluntary sector in another role.

**Q206 Kate Green:** Given that there is little legal difference between civil partnership and same-sex marriage, what do you see as the importance of legislation to allow same-sex couples to marry?

**Benjamin Cohen:** I think the gist of the last evidence you had pinpoints it: being able to have a religious marriage. Not everyone wishes to have a civil partnership. Also, it is about equality and about freedom. If the state has already said that it is okay for two people of the same sex to be in a relationship together, to live together, to be in a sexual relationship together—that they are equal and should have the same rights—they should have the same rights to get married. Also, I think personally that when we think about children being bullied in school, it is not possible to say to the people doing the bullying, “Gay people are the same as straight people”, if they do not have ultimately have the same rights to have the same relationship structures.

One of the first people to make an Out4Marriage video, when we started as a campaign, when people recorded videos on YouTube, were my grandparents. My grandparents support same-sex marriage because they would like me, one day, to be able to get married to my boyfriend in exactly the same structure and with the same status as they had, and my parents had.

**James-J Walsh:** There are also some technical aspects that relate to marriage internationally. If I decided to have a civil partnership and then decided to move to Portugal, where same-sex marriages are legal, my civil partnership would not be recognised there. So there are some international differences that we need to be aware of, as well, in playing this out.

**Benjamin Cohen:** As has also been illustrated, the issue of transgender people and the fact that their marriages are taken away and they are forced to have civil partnership if they go through gender reassignment is something that the Civil Partnership Act 2004 did not really consider.

The other thing is that society has moved on a lot since the introduction of civil partnerships. Many people were happy when they were introduced and referred to them as gay marriages, but they were not marriage. The word “marriage” is really important. If and when me and my boyfriend decide to get married, I am not going to bend down on one knee and say, “Please will you be my partner” or “my civil partner”. Doing that would sound like opening a firm of accountants or lawyers. I do not want to have a partner; I want to have a husband, and that is what I would ask.

**Q207 Stuart Andrew:** Are you happy with the Bill as it is at the moment or do you think that this discussion that we have had about civil partnerships being extended to heterosexual couples needs to be debated further?

**James-J Walsh:** Out4Marriage believes this Bill is not about LGBT rights, primarily. It is about religious freedom. If we are in a state that believes that you can be of religion or without religion, then civil partnerships need to be thought about clearly, because some people in this world do not want to have a religious marriage ceremony. We do not represent them, but the ethic—the principle—sticks for us, that as a group, if there is one set of rules for the LGBT community, where they can have the non-religious commitment—

**Benjamin Cohen:** Or they choose not to get married and call it a marriage.

Actually, it would be a bit perverse if gay people suddenly got more rights than straight people—or maybe it would be quite a nice compensation for the fact we have been discriminated against for hundreds or thousands of years—and then suddenly had more rights. But it would seem a bit odd if same-sex couples can choose between a civil partnership and a marriage, given that civil partnerships were created as a legal fudge because people were not convinced that it would go through Parliament if it was called a marriage—although it really was a marriage, it just was not called that and did not have the same rights.

While we have not been campaigning for civil partnerships, if they were to be retained I can understand. Most LGBT can understand that some heterosexual people may wish to have them. In some countries,

among the straight community—not among the gay community—civil partnerships and their equivalents are becoming more popular than marriage.

**Q208 Mr Bradshaw:** Can I commend both of you for using the word “freedom” in your opening sentences, which is a refreshing change from the way that this debate is often framed?

Mr Walsh, you talked about rights in other countries. Am I not right in saying that that depends on that other country’s law and jurisdiction? Do you actually have evidence that shows that if I were in a same-sex marriage my husband and I would enjoy more rights in another country that we currently do or would in a civil partnership?

A question to both of you on the issue that we have asked other witnesses about; how do you feel about the change in the consummation provisions in the Bill as it stands?

**James-J Walsh:** Coming back to the question specifically asked to me, and I know that Ben has also indicated that he would like to reply to that too, it is my understanding that in terms of those countries that have already legalised same-sex marriage, a person who has then emigrated to Portugal, for instance, enjoys full legal marriage entitlement. Portugal is very strange in that it does not recognise civil partnerships, but does recognise same-sex marriage so there is a difference and we would have greater rights internationally.

**Benjamin Cohen:** Israel, a country which does not allow same-sex marriage to be performed within the country, does recognise it if it is performed outside. However, it does not recognise civil partnership, and there are many Jewish couples who might want to emigrate to Israel and make aliyah, but their marital status is not recognised if they have come from here. That is simply because they cannot translate the words “civil partnership”. Couples from Israel, or British couples that wish to go and move there and have the tax status and other statuses there, have to go to Canada or other countries that offer same-sex marriage because that country will recognise it. There is quite strong evidence, and it seems logical that if a country such as France has same-sex marriage—and it is likely that they will introduce it—they also have civil pacts that have fewer rights than a same-sex marriage will have, so I do not know how they would approach a British civil partnership. Would they consider them to be a same-sex marriage, or would they instead consider them to be a civil pact with considerably less rights than a same-sex marriage?

**James-J Walsh:** Consummation—the heterosexual community seems obsessed with the way that we consummate our marriages. Consummation is different for every LGBT couple. There is no need to be sexually active or inactive in a relationship and I do not think we should be legislating for that. From my point of view, when we have weddings that are carried out last-minute because someone is on their deathbed, they are not consummated, so we do have some sort of precedent in law. The whole issue in itself needs to be put to one side, because I think what people do in the privacy of their own bedroom is their own business.

**Q209 Mr Bradshaw:** Does that mean you prefer the Bill as it originally stood, or in its changed form, post-consultation on this issue?

**James-J Walsh:** As an organisation we have not come to a viewpoint on that one.

**Benjamin Cohen:** To be honest, I am not sure why everyone is so obsessed with it—

**Mr Bradshaw:** It will not stop them talking about it up there.

**Benjamin Cohen:** No of course, but I think, for example, there are indications that Church of England clergy could potentially enter into a same-sex marriage as long as it was celibate. What happens to them? If you had to consummate the marriage they would not be able to be married.

**Q210 Mr Burrowes:** In terms of freedom and issues around freedom of conscience, regarding *Pink News*, Ben, do you think your forum should be free to allow for the fomenting of hostility, hatred and accusations of homophobia towards people like me who believe marriage is between a man and a woman and that there is a distinctive value of it?

**Benjamin Cohen:** Sorry, could you repeat that? It cut up.

**Mr Burrowes:** In terms of people like me, who share my view, should people be free just to—

**Benjamin Cohen:** To disagree with someone who opposes their right to get married?

**Q211 Mr Burrowes:** No, please disagree, but on *Pink News*, as an example, there has been a fomenting of hostility, hatred and abuse.

**Benjamin Cohen:** People are entitled to respond to what an MP says in their own way, but I do not think that is what we are encouraging.

**Q212 Mr Burrowes:** No, I would not say you are. Do you think there are any ways that need to be additional to the Bill to protect the freedom of conscience for people to uphold their views?

**Benjamin Cohen:** I think that people are able to say, and I cannot see anything in the Bill that says that you or anyone would have to agree to people having same-sex marriage. People talk a lot about their marriage being redefined. It is not redefining marriages that already exist. I live next door to a Catholic church. If I get married as a result of the Bill, that does not actually affect the people who go and celebrate in that church; it does not affect what the priest, who lives opposite me, has to do; it does not affect anyone else, really, other than other same-sex couples.

There is still the freedom—I think people have absolute liberty—to disagree with the Bill and to have their own views on homosexuality or anything else, because we live in a tolerant, liberal society where people can have different views. I am Jewish. Some of my friends are very orthodox Jews. They would disagree with me driving on a Saturday, but that does not stop them being friends with me, and my disagreeing with their view that you cannot drive on a Saturday does not stop me having respect for them.

**Q213 Mr Burrowes:** I appreciate that, but you can distinguish between people’s views in relation to homosexuality and their views in relation to marriage.

**Benjamin Cohen:** What do you mean?

**Mr Burrowes:** In that someone's upholding a traditional view of marriage may not mean that they are homophobic or that they have views against homosexuality. You accept that there are distinctions?

**Benjamin Cohen:** Those views presumably would mean that one would believe in freedom, such as the freedom for people to decide whether or not to get married, or for religious ministers to be able to perform marriages. I do not understand how one can say, "As it happens, I am not homophobic and have nothing against homosexuals but they can't get married," because that really means, "Well, I like them and they can do whatever they want but they can't have the same rights that I have." Jewish people used to have fewer rights; black people used to have fewer rights; all sorts of people used to have fewer rights, because of who they were and for things they could not help. To try to argue, "I am not homophobic but I do not believe that you should be able to have the right to do something," is something I cannot quite understand.

**Q214 Mr Burrowes:** So you would say that I am homophobic.

**Benjamin Cohen:** I am not saying you are. I am not going to have an argument with you now about whether or not you are.

**Q215 Mr Burrowes:** More to the point, in terms of the motivation behind the Bill, do you see issues of acceptance—a state of understanding in relation to homosexual relationships—as a primary reason, or do you see the issue of establishing legal rights as a prime reason?

**Benjamin Cohen:** I think it is about rights. It is also about making sure that people in same-sex relationships are equal in society. Of course, you stood for election on a Conservative party equality manifesto that promised to consult on that, which is perhaps one reason why some LGBT people might have voted Conservative. I think that the Bill is doing both of the things that you say. It is trying to address rights, but it is also, I would hope, trying to foster a different sort of society, where a young person growing up today, who is discovering that they are gay, will realise that they will grow up and be able to have exactly the same rights and life as their parents or grandparents, rather than having suddenly to go down a different path, that of civil partnerships.

**James-J Walsh:** From my point of view we need to be very clear that this is about rights and about balancing rights, and that there is a way that someone who has a traditional view of marriage can disagree with same-sex marriage that allows for everyone to be happy. It is the way in which that person disagrees that is often the cause of thoughts of homophobia. If you were to present yourself in the incitement to hatred way of disagreeing with same-sex marriage, yes, you would be homophobic. If you were to say, "My religious convictions mean that I cannot accept same-sex marriage, but peace be with you," that is perfectly acceptable to us.

**Benjamin Cohen:** I have very strong religious beliefs that it is wrong to eat bacon and pork, but I do not stop my boyfriend doing that because he is not Jewish. Having your own religious beliefs is something separate. Most gay people would have respect for people who have religious reasons, such as what scripture says, but

this issue is also about civil rights, and about civil as well as religious marriage, and the state's role is slightly different from religion's role.

**Q216 Stephen Williams:** When you were putting together your campaign, Out4Marriage—I recorded a video for it in the early days—did you have ground rules? To follow on from what David Burrowes was asking, did you set yourself ground rules for what the tone of the campaign would be? Was it to be a positive campaign or a negative campaign?

**James-J Walsh:** We only ever really wanted a positive campaign. It works better politically and on social media, which is our main function, and it works better as key messaging out there, so actually it was the "I'm coming 'Out4Marriage'", which was our slogan, if you like, that we chose because it is actually a positive and accepting statement, rather than "I hate X because he doesn't like me because I'm gay." That just does not work.

**Benjamin Cohen:** We really did just want something positive. The reason we started it was, if I am honest, I do not think that up until the time we started that last year there were really any positive campaigns. What we were seeing were very negative campaigns led by religious organisations and other organisations that campaigned against marriage. What we were not hearing was normal people—well, MPs; I would consider you to be normal as well—but people like my grandparents. Also, celebrities: we have had all sorts of celebs and business leaders recording videos for us. It was just to show that this is a positive thing and it positively impacts on society, and that society is better if everyone has the same rights and everyone is able to enter into stable relationships.

**Q217 Stephen Williams:** What sort of feedback have you received from the public, gay or otherwise?

**James-J Walsh:** It depends. The most liked video of a non-celebrity is two mums from down in Deptford, near where I am living, and they speak about their gay-couple friends that they know. Their kids go to school together. It is a beautiful video. They are both heterosexual women. They are talking about, actually, that they do not understand, as a heterosexual couple who have never really been involved in the gay world, why their two friends who are great dads to their adopted kids cannot have the same rights as them and why they cannot, when they tell their kids about growing up in a family structure, describe it in the same kind of way. That is actually our most shared video, followed by Ben's grandparents as well.

Actually, the argument around the age difference and the perception around it being for younger persons—that younger people tend to be more accepting towards same-sex marriage: I tend to disagree. Older people as well, once you have the conversation with them and you talk about the tradition and the value of marriage—things that they actually perceive as being a positive and good institution—they really come round to that point of view, and that is quite nice as well.

**Benjamin Cohen:** Especially if they would like their grandchildren to get married while they are still alive and not have to wait 20 or 30 years for the law to be changed.

**Q218 Stephen Williams:** Finally, our next set of witnesses is from the Coalition for Marriage. No doubt, you studied its campaign tactics. Were there any you thought that you could successfully have deployed, or were there campaign tactics that you specifically rejected and that they have deployed?

**Benjamin Cohen:** There were factors also about money. Out4Marriage is just a group of individuals who have used social media and used being able to get stories in the newspaper—videos with Hugh Grant and Richard Branson have got us quite a lot of media coverage—but that is all we have had. We have had no money put into this. So yes, if we had had tens of thousands of pounds to throw at leaflet campaigns all around the country, for people to write to their MPs, to have polls, to have a petition on a website, and hundreds of thousands of people signing up, some because they are encouraged to at school: what the Catholic Education Service has started—it is not something to laugh at.

So there are instances, but it is a different argument. We are in a different position, and it is one of the reasons why the LGBT community's lobbying has not been quite so loud: we are in the very fortunate position that the Government are actually doing a lot of this for us. This is happening because the coalition Government wished to do this. It now has support across the House. So it is a very different position. We are merely cheerleaders, saying, "We think this is good." We do think there are some things that could be, maybe, a bit different, but we broadly agree with it, and that is obviously very different from organisations that are specifically campaigning against something that the Government have already said they wish to do.

**James-J Walsh:** It is also worth noting that actually in a straight race down between "Yes to traditional marriage," or "Yes to same-sex marriage," we were never going to win in numbers terms. It would never have happened. The infrastructure around the LGBT community is nowhere near as developed as that around the religious community. We have about 300 LGBT organisations in the UK, and most of them operate on less than £10,000 a year. There are a couple of large charities—Stonewall is the biggest—but they do not bring in anywhere near the same amount of cash as even a handful of the Catholic charities, for instance.

One thing that has been heartening throughout this campaign is the change of position of the Catholics on family values and LGBT parenting. We had a statement from the Catholics last week, or the week before last, in which they stated that they see LGBT parents as a positive thing. That came after they closed down their adoption centres because they had to support LGBT adoptees. That shows that this sort of issue does progress, and it progresses in the religious community as well. Give it time, and I am sure that more of the mainstream religions will opt in.

**Benjamin Cohen:** We have had bishops, canons, deans and lots of Church of England vicars recording videos, helping us and supporting us. I think that the tide is turning, in a religious sense.

**Q219 Jim Shannon:** Earlier in your submission, you said that this is about balancing rights. I just want to get your opinion on the quadruple lock. The Government say that they will make sure that religious organisations that do not agree with same-sex marriage will not be

obliged to marry couples of the same gender. The same problem has occurred—you have probably heard this from other Members—in relation to teachers and registrars. Again, the issue for many of them is that they feel that their beliefs may suffer as a result of the change of legislation. I am keen to get your opinion. Do you support the protections for those people and organisations?

**The Chair:** Before you answer, we have received some intelligence. There is going to be a vote at 4 o'clock, so if you could take two minutes to answer the question, it would be appreciated.

**Benjamin Cohen:** Broadly, we do support it. There are some concerns about individual Church of England ministers who want to perform same-sex marriages, but are not able to do it. But broadly, we support it.

**James-J Walsh:** Definitely, it is our position that no religious minister should be forced to perform a same-sex marriage. I do not think anyone would want to have someone celebrating their marriage who is forced into doing it. That seems a very violent way of celebrating a union. So I think that it is all hot air and smoke, to be honest.

**Q220 Jim Shannon:** And, in your opinion, does the same apply to teachers and registrars?

**James-J Walsh:** Teachers need to be professional in the way that they approach teaching. I went to a very religious school. At the age of 17, I was pulled out of my class, taken to the headmaster's office and told that I was a disappointment because in the yearbook I wrote the words, "So what if I am?" as the headline at the top of my page. I got marched to the headmaster's office, and they were going to expel me. They were thinking about it. This was back in 2000. I think that teachers need to be very wary when they take on a loco parentis role. They need to be careful about the ways in which they approach things. They should not be forced to say, "I believe in same-sex marriage," if they do not, but they need to be mindful that we support the rights of all individuals in the world.

**Benjamin Cohen:** Bear in mind that some of the children there may be the children of same-sex couples, so you do not want them to question the validity of their parents' relationship. This is civil marriage, so registrars should be performing it.

**Q221 Jim Shannon:** So if a school or a local authority were to pressure teachers or registrars to do something that they do not agree with, you would object to that.

**Benjamin Cohen:** Do you mean civil registrars?

**Jim Shannon:** Yes.

**Benjamin Cohen:** That is slightly different, because civil marriage is slightly different to religious marriage.

**The Chair:** We are getting close to 4 o'clock. Are there any other questions from Committee members? If there are no more questions, I thank you for giving evidence.

3.59 pm

*Sitting suspended for a Division in the House.*

### Examination of Witnesses

*Colin Hart and Dr Sharon James gave evidence.*

4.16 pm

**The Chair:** We will now hear oral evidence from Coalition for Marriage. For the record, will you please introduce yourselves?

**Dr James:** We are from Coalition for Marriage. We are grateful to the Committee for this opportunity to present some of our concerns. We are obviously aware of the fact that the Second Reading debate has been concluded, so that is done, but we wish to focus on what we fear could be some of the unintended consequences of the legislation as it stands, and we would like to offer some constructive proposals. I am Sharon James from the Coalition for Marriage and a volunteer spokesperson.

**Colin Hart:** I am Colin Hart, the campaign director for the Coalition for Marriage.

**Q222 Stephen Williams:** You may have heard me, if you were in the earlier session, ask the Out4Marriage campaign about the tone of their campaign and whether they wished it to be positive or negative. How would you describe the tone of your own campaign?

**Dr James:** We just have one aim. We have an online petition, and people up and down the country have signed that petition saying that they would like the current legal definition of marriage to be retained. We have really tried to steer away from other stuff, as it were. We have one aim. That means that we are representing people of faith and people of no faith. We have gay people supporting our campaign. We are not a religious group. We have really tried to keep religion and other issues out of it. People want us to talk about those issues, but we do not want to talk about them, because it is just about the legal definition of marriage, and we represent all kinds of people.

**Q223 Stephen Williams:** I wonder whether you have any regrets about some of your campaign tactics—for instance, the distribution of leaflets in some MPs' constituencies with photographs of them on those leaflets. My colleague, Annette Brooke, would be one example. Sarah Newton, a coalition colleague in Truro, would be another. I understand they were both extremely upset by the tactics that you used, which implied that they were against same-sex marriage. They both voted for the Bill. I believe Mrs Brooke has asked you for an apology and none has been forthcoming. Would you like to take this opportunity to apologise on the record? It will be in *Hansard*.

**Colin Hart:** Well, of course people are entitled to ask people to write to their MP. I think that that is legitimate. If newspapers carry a picture of an MP, that does not mean that the MP endorses the article that accompanies that picture. If you look at the leaflet, we are very clear that it is from Coalition for Marriage, not from the MP. If people do not read it carefully enough, I cannot be responsible for that. Of course, as you say, those MPs voted for the Bill. That is up to them. All we were trying to do was to get people to contact their MP to state their views. It is a free country. People can do that.

**Q224 Stephen Williams:** So you do not regret that particular tactic?

**Colin Hart:** No.

**Dr James:** We are very pleased to have the opportunity to let people know the arguments. We have heard from lots of people up and down the country who have said, "We had no idea of what was going on." They felt that they had not been told what was going on and they were glad, whether they agreed with the campaign or not, to think, "Hey, this is actually going on. It's raising the issue."

**Colin Hart:** To be fair, if you are in favour of the Bill and you get that leaflet through your door, you can write to your MP to say, "I am in favour of it." We were very clear that all we were doing was giving the name of the MP and how to contact the MP. MPs' pictures are used every week in the local newspaper. It does not mean to say that the MP endorses the actual article in the newspaper. That was not our intention at all.

**Q225 Kate Green:** Why is it important to protect a legal definition of marriage in its current form? I can understand some of the arguments made by some faith groups, although not all people of faith are opposed to the legislation, but I cannot understand what the objection is from a legal point of view. Perhaps you could explain it to me.

**Dr James:** It is not just the legal definition.

**Q226 Kate Green:** You said a moment ago that it was.

**Dr James:** It is mainly the legal decision, but it is what lies behind it. We simply represent people up and down the country who genuinely in their conscience, religious or not, believe that marriage as marriage is the union of a man and a woman. Whether it has a civil or a religious ceremony to begin with is irrelevant.

**Colin Hart:** Coming to the issue of the law, civil partnerships are legally equal. Every right in marriage is given to same sex couples in civil partnerships, but it does not change the law of marriage. For example, I listened to the Roman Catholic presentation this morning. There is a law that says that pupils should be taught about the importance of marriage. If you have civil partnerships, that does not change that law. But if you change the definition of marriage, then every time the word "marriage" is used, that imports a new meaning, potentially presenting issues of conscience for those who never had it before. They could say that civil partnerships were something different. They have the same legal rights, but they are something different. But if they are the same thing and the definition of marriage changes, then it presents some issues of conscience.

**Q227 Kate Green:** But the definition has changed in a number of ways over the years. What is different this time?

**Colin Hart:** It has always been that there are two sexes, and marriage is the union of the sexes.

**Q228 Kate Green:** Yes, that is another thing that is changing, but why is this characteristic any different from changes, for example, to recognise rape within marriage?

**Dr James:** There have always been changes in the way that marriage has been regulated and modified. Nobody argues with that. There has been that level of natural

evolution, clearly, but none of it has ever changed the fundamental understanding of societies across cultures and times that it is bigger than the two people concerned and that it is a building block linking generations. The fact that some married couples do not or cannot have children has not affected that fundamental social understanding of marriage as a building block, creating wider family networks to do with kinship, genealogy and those bigger issues outside the couple.

**Colin Hart:** There have been legal protections put in place, for example, the issue of consent. A thousand years ago, the kidnapping of brides was a major issue. We had banns and a whole range of things introduced to establish real consent, but that did not change the nature of marriage. It was just a safeguard, similarly with the law of rape that you talked about.

**Q229 Chris Bryant:** Did you support civil partnerships?

**Colin Hart:** I supported a PACS-like scheme that they have in France, where house sharers would have some rights. Where I grew up, the lady next door gave up her well-paid job in the City to care for her elderly father. I hardly saw him, but she was saddled with inheritance tax when her elderly father, whom she had given up her job to nurse, died. I had two great-aunts in Brighton. One of them died and the other did not inherit the tenancy, so she had to leave. So I supported the extension of civil partnerships to house sharers in family relationships—two sisters living together, that sort of thing. I was also concerned, however, that civil partnerships might lead to what we have today. A number of people had those concerns. A number of things were said in the debates to try to allay concerns, but as we have seen, this is what has happened.

**Q230 Chris Bryant:** So you were in favour of the wrecking amendment to the Civil Partnerships Bill. When civil partnerships were being advanced solely for same-sex couples to be able to express their love for one another, the wrecking amendment would have turned it into a tax avoidance measure.

**Colin Hart:** I do not think it is tax avoidance for that lady who gave up her job to look after her elderly father. I was genuinely in favour of that.

**Q231 Chris Bryant:** I remember that many of those who voted then for that wrecking amendment either voted against Second Reading or against Third Reading. It was clearly seen as an attempt to try and prevent civil partnerships being for an exclusive relationship between one person and another.

**Colin Hart:** But why should the Government not provide for that sort of house sharing situation?

**Q232 Chris Bryant:** Let me ask you a different question: why should the state prevent two people from getting married just because they are the same gender?

**Colin Hart:** All the legal rights of marriage are already available through civil partnerships.

**Q233 Mr Bradshaw:** Sorry, Mr Hart; your organisation, the Christian Institute, campaigned against civil partnerships. That is a matter of record, which we are

all capable of checking, thank you very much. You also campaigned against the repeal of section 28 and against every single extension of equality rights to lesbian and gay people in this country. Why on earth should we believe that your opposition to equal marriage has got anything to do with marriage, given that record? It is about homophobia, pure and simple.

**Colin Hart:** If you check the record, you will see that I was in favour of a PACS-like scheme at the time that civil partnerships were debated.

**Q234 Mr Bradshaw:** Your organisation campaigned, and spent a great deal of money campaigning, against civil partnership. How can you possibly try to weasel out of that now with this irrelevance that you are talking about?

**Colin Hart:** I am here on behalf of the Coalition for Marriage, and the fact is that a lot of supporters of marriage would agree with civil partnerships. Some would not, but that is up to them. The people who support the Coalition for Marriage all agree that the definition of marriage should stay the same as it is.

**Chris Bryant:** Can I—

**The Chair:** I do not want to get an argument going here. It is questions for witnesses, and other Members want to ask questions.

**Q235 Tim Loughton:** Can I ask you what you think is the point of marriage? Perhaps you could explain a bit more the impact you think that extending marriage to same-sex couples will have on heterosexually married couples, and why it is not necessarily just a one-way deal that is on offer here.

**Dr James:** I would argue that historically when you look at the reasons societies have been involved in marriages from the very earliest days, it has been to do with linking natural parents with their own children. Aside from any scriptural stuff, way back in about 1900 BC you have got a King of Mesopotamia—huge great long legal code, a third of it about marriage. The fundamental point of it, he says, was: I made the father stand by their children. I made the children stand by their fathers. It is just, across cultures, that recognition that there is something to do with that male-female bond and legitimising the children. Frankly, if parents do not look after a child, somebody else has to pick up the tab. We could perhaps speak at length about who picks up the tab when that does not happen, but that is not the point of this afternoon.

Marriage, in a sense, has already been redefined. I would regret that, because I believe it has been redefined down into being just about the individual satisfaction of the two people involved. Sociologically, historically and anthropologically it is bigger than that, and it is more than the couple involved; it is to do with the genealogy behind them, the genealogy coming after them and their place within that. That is really what unites the different supporters of Coalition for Marriage. Some of them are people of strong faith, but many of them are not. Many of them, frankly, are people who have little interest in faith, but they do have an interest in communal stability and well-being.

For many of our supporters, the consequence of redefining marriage would have impacts on children and on society, but they are also deeply concerned that it would have an impact on freedom of conscience. In a sense, that is what we would like to focus on this afternoon. We are hearing from people who say, “I do not dare say what I believe about marriage any more.” A senior NHS executive came up to me two weeks ago and said, “I would love to sign your petition and I would love to support your campaign, but I will lose my job if I do.” We are hearing from people like that regularly.

We are hearing from people who are anxious about even going into teaching, because they fear that whatever the Government are saying about protection, as equality law develops, those protections will be knocked down. We have had expert advice from John Bowers QC saying that the protection as it stands is inadequate and there is not enough protection in the Bill for teachers. At a stage where we are chronically short of gifted teachers, particularly in inner-city schools, if young people are saying to us, “We are, frankly, afraid to go into teaching because we believe in man-woman marriage and will likely find our jobs under threat,” we can ill afford that kind of loss to society. We are having experienced teachers saying to us, “Frankly, we will probably just retire early and get out of this before our position is threatened.”

Nobody wants to go back to the old intolerance, which we have heard about passionately this afternoon, and we would abhor that. But we are representing people who are genuinely afraid of a new, chilling kind of intolerance whereby they will not be allowed to stand for what they believe in. It is all very well to smile, but we do not want to go back to the old days, and I think there are many people of good faith on both sides of the argument who do not want to enter a new day of people fearing this kind of intolerance.

**Q236 Jonathan Reynolds:** Two questions. First, specifically to follow that point, can you explain why you believe a change in marriage would produce a different situation for a teacher, compared with how they have to deal with an issue like abortion at present in the classroom? They may have a strong moral objection to that.

**Colin Hart:** Both of us are teachers in comprehensive schools. As a teacher, you deal with controversial issues very carefully. Of course, if a young person asks a teacher, “What does the law on marriage say?”, you would tell them, if the law changed. We are not talking about that. What we are talking about is the fact that sexual orientation is an equality head. It is a characteristic that is protected by law. If marriage is redefined, it would be used, we fear—John Bowers confirms that the public sector equality duty is very strong—that some local authorities could use it to say, “Not only do you have a duty merely to explain objectively what the law says; you must promote.” The advice that we have received is that that could happen.

**Dr James:** I was in a public meeting two weeks ago, and somebody got up and passionately said, “If any teacher cannot wholeheartedly endorse gay marriage, they have no place in our classrooms at all. They should be sacked.” That statement was greeted with cheers.

**Q237 Siobhain McDonagh (Mitcham and Morden) (Lab):** People say all sorts of things. It does not make them legally correct. I have constituents who tell me that they cannot remove the snow from outside their house because if somebody falls over, they will be legally liable. It is nonsense. People say all sorts of things.

**Dr James:** My point was simply that with that much passion and feeling—it was sincere passion and feeling, and I take on board that person’s sincere belief, but people who have that sincere belief are precisely the kind of people whom these young teachers fear will launch malicious accusations against them that could lead an overzealous local authority to accuse them of homophobia or whatever it might be. Nobody is saying that it is reasonable, but unreasonable things happen.

We would like it on the Bill—at the top, right there. At the moment, the Bill is all about religious ministers and their protection. Most people in this country are not that fussed about religious ministers and their protection, but they are worried about public sector workers, teachers, foster parents and so forth. We would like protections written on the face of the Bill so that such ridiculous, unnecessary and false situations could not arise and people will be protected, particularly younger people. We have many young supporters. They deserve that kind of protection for their future careers.

**Q238 Siobhain McDonagh:** We have thousands of faith schools in our country that do a fantastic job. In most of those schools, most of the time, teachers teach students sex education while still giving their view on whether they are pro or anti-abortion or pro or anti-divorce. At no point does that become an issue of not being allowed to be anti-abortion or anti-divorce. If people express their views in a reasonable manner, there is no issue. I am sure that most of us around this table have been to such schools.

**The Chair:** I am keen not to have a debate. This is an evidence session for questions and answers. I will ask Mr Reynolds for his second question.

**Q239 Jonathan Reynolds:** On a slightly different issue, many of the objectors who contacted their MPs, perhaps in response to your campaign, specifically highlighted a concern that through litigation, churches would be forced to open up their ceremonies to same-sex marriage. The expert legal opinion that we received this morning completely discounted that in the eyes of many of us. Are you now satisfied that the so-called quadruple lock in the Bill is adequate?

**Colin Hart:** No. I think there is instability in the law, particularly in relation to the Church of England, which Aidan O’Neill has referred to. I think the issue, though, is not the domestic law; the issue is what Europe will do. The QCs whom we have consulted have a pretty good track record on beating the Government. One of them won a case involving prisoners’ votes, and another established gays’ right to be in the military. The Government do not always get it right, and some QCs do not always get it right when they argue. The fact is that this will be litigated on, one way or another. Already the lawyers are arguing, and it will happen if this Bill is passed.

**Dr James:** Can I just say again that the concern of Coalition for Marriage is much deeper and wider than ministers of religion and places of worship? We are

hearing from little charities up and down the country providing marriage counselling services, such as pre-marital counselling, marital counselling and family support work. A lot of those are run by people who do it out of love, voluntarily, out of their free time, but many of them are people of faith, who say that they could not affirm the new definition of marriage. They are saying to us, "We will just stop doing this kind of thing, rather than run the risk of being challenged".

Our concern is that when you look at community cohesion, it runs on a lot of voluntary stuff that is done by people not for pay, but for love. We are having people of good faith who believe that marriage is between a man and a woman, saying, "We will probably be challenged if we can't go with the new definition, and we would rather just stop doing it." It is an unintended consequence. Nobody here would want that to happen. You are all people of good will, but it is a bit like child protection. We have both been in teaching, and with all the zealous child protection stuff, people end up having to have six or seven different police checks for six or seven voluntary activities. What is the effect? I know, and you know, that people have just given up doing voluntary stuff in some cases, because they think, "I cannot face another police check." There are unintended consequences. Legislation can lead to people stopping doing things that society benefits from them doing.

**Q240 Jane Ellison:** Just coming back to the facts, are you aware of any successful challenges in the European Court in countries that have had same-sex marriage for some years?

**Colin Hart:** One thing I would say is that you have to compare like with like. We do not have a particularly good record in this country of dealing with conflicts of rights. We have a winner-takes-all approach. That is not true in other countries. We do not have laws that offer reasonable accommodation.

**Q241 Jane Ellison:** That was not my question, to be fair.

**Colin Hart:** No, but it is important that those conflicts are avoided in other countries, precisely because they have laws that we do not have. They have laws on reasonable accommodation. For example, if you have your registrar in Holland who does not want to do the same-sex ceremony, they do not have to. The Supreme Court of the Netherlands has just said that. Under the Civil Rights Act in 1974 in America, federal law has reasonable accommodation. We do not have that law. That avoids conflict. It means ways of solving problems in the workplace. We do not have that.

**Dr James:** In Canada, there have been cases of litigation brought against, for example, a homeless charity operating on a faith basis that could not affirm the new definition of marriage. I have not had the up-to-date result of that but I think it went out of business or is going out of business. In Canada, there have cases of litigation against people who have not been able to accept the new definition of marriage.

**Q242 Jane Ellison:** Another question occurred to me while you were giving some of your earlier evidence. Do you think that within your campaign there are people who are entirely unreconciled to the idea that homosexual people should be equal in today's society?

**Dr James:** How would we know? The only thing they come to us to do is—mainly—sign the petition that they want to keep marriage as it is. We are not responsible for their individual views on anything. They cross political parties, and that is nothing to do with us. They can be whatever political party they want. They can be whatever religion they want.

**Q243 Jane Ellison:** Some people who have written to me have certainly expressed that view. The other thing, if I can just put it to you, is that constantly the argument is made that there is no free speech. As a Member of Parliament—I think for all of us—the past few weeks have been testimony that people feel they can say whatever they want, quite rightly, in this country, and there has been no whingeing from MPs or anything else. People have expressed a view. The papers have been full of it. I do not know how you can even advance the notion that all debate is being closed down on these issues.

**Colin Hart:** That is a great thing, is it not? It is great to have that freedom, and you have a free vote, but people who work in the public sector will not get a free vote. I think of one case that we had: people have been collecting petitions with their friends, and when one lady collected among the mums outside school, the head came out and said, "You can't collect for Coalition for Marriage. It breaks our equality policy." Arthur McGeorge, a bus driver in County Durham, asked some of his friends at work to sign. Somebody objected and he was disciplined. He was worried that he might lose his job. That is the reality of what could go on in some places. It is not going on here, but it could go on.

**Dr James:** Of course it is good that there has been debate and people have contacted their MPs. Of course it is outrageous that people have contacted you using intemperate or bad language. That is never acceptable, but that is not the responsibility of any campaign group. People on both sides might have intemperate people supporting them for some reason, but as we have said, the public have not had a chance to vote on this. Our supporters are surprised. Three days before the election campaign, Mr Cameron said on Sky TV that he had no plans to redefine marriage. They are saying, "We didn't vote on this." Could we at least not wait and vote on this at the next election, or have a referendum? That is people on both sides of the argument, saying that to us, saying, "We aren't getting a chance to vote on this."

I think that there is an issue of free speech. I go back to the fact that that things have happened already, before this legislation comes in, that concern us. I was speaking at a conference last summer, along with speakers such as Phillip Blond et al., and they had a whole range of different philosophical and other views, but they—or we—did believe in man-woman marriage. As you probably know, we were banned first of all from the Law Society and, secondly, from the Queen Elizabeth centre, both citing diversity policy as the cause of the banning.

You will be familiar with the case of Adrian Smith, which we are concerned about. Adrian Smith was demoted from his job and got a 40% pay cut simply for saying on his private Facebook page that he believed in man-woman marriage, or that gay marriage in church was a step too far. A lawyer has said that he did nothing wrong, yet he has not received his earnings back; he has not received that job back. Again, our supporters are saying, "That sort of thing could happen to us if we were in the public sector."

That is why I come back to the constructive suggestion. We are not just here, if you like, to express concerns. We would like written into the Bill some positive protection—safety assurances—for those people who are genuinely worried when they look at cases such as Adrian Smith's; they would like their jobs and positions to be protected. I do not think that that is too much to ask for, because—I say this sincerely—none of us wants discrimination, and we do not want a new kind of wrongful discrimination.

**The Chair:** Before I call the next Member, a few other Members want to ask questions. The questions should be as brief as possible and the answers straight to the point.

**Q244 Stephen Gilbert:** That is not what your representatives in St Austell High street were asking people to sign a petition for on Saturday. They were still not accepting that Second Reading had happened with almost two thirds of Members of Parliament supporting it. They were not raising issues of additional protections for workers—they were coming to the issue about redefinition of marriage. I think that we should lift the veil on this. While you are not responsible for the views of everyone who signs your petitions, can both of you give me a yes or no answer: do you think that lesbian and gay people should be able to get married in this country?

**Dr James:** No, I do not think that they should get married. That is the whole point of our campaign. Lesbian and gay people have civil rights, through civil partnerships. We absolutely believe in equality of treatment—

**Stephen Gilbert:** Dr James, no was fine. Mr Hart.

**Colin Hart:** Obviously, I want the current definition of marriage to stay. The Bill is not over yet, the Bill is not yet an Act, but there are issues. There has been a vote in the Commons, but it is many months ahead. There are arguments about protections.

**Q245 Stephen Gilbert:** No was fine. You have both indicated—and I think we all accept—that there are significant benefits from marriage, in terms of stability, health and happiness for all the couples in that institution. Why do you two want to exclude a proportion of our society from having access to those benefits that you are willing to take as a privilege for yourselves.

**Colin Hart:** The studies have been on opposite-sex marriage, so I do not know about the studies on same-sex unions. The studies about the effects on children involve a mum and a dad, so you would have to compare like with like. If a union is wanted, that is already available through civil partnerships.

**Dr James:** For our supporters, this is really a matter of principle. Many of our supporters are absolutely clear that gay and lesbian couples have rights through civil partnerships. Our supporters do not believe that marriage can, should or will be between same-sex couples, simply because they believe that the definition of marriage is the complementary union of a man and woman. Just as two genders are different—men are different from women—they say that it is not discrimination to treat two different things differently. I know that that is a

difference of opinion that we have. We will go away from this room with differences of opinion, but I would simply ask whether we cannot at least accept the fact that this very large number of people in this country who genuinely have our view of marriage should not be attacked in a new way, and their view should be respected as well.

**The Chair:** I think this will have to be the last question. We have two minutes left.

**Q246 Jim Shannon:** Thank you very much for the petition you ran, the number of people who got to respond to that—I was very, very pleased with that. Many people in the Committee today, and many outside, have said, "This is a permissive measure, therefore don't worry about it." However, the fact is that many of us feel that it is a coercive measure. Could you give us some indication of some of the examples of coercive measures that have already taken place, without this legislation coming in, which will affect those in positions in public life, such as teachers, and people in churches as well? What do you see as positive protection that may ensure that Churches and people in those positions are not disadvantaged?

**Colin Hart:** The issue is that there has been no attempt to look at individuals, and that is what our call has been today. There has been a lot of focus on weddings and on church buildings. We would say, "Look at individuals. There are a variety of ways of doing that." Edward Leigh proposed one way, creating a characteristic of beliefs about marriage. Whether you are for gay marriage or against it, those views could be protected, so it would be even-handed. Another way would just be to make it clear, beyond doubt, that belief about marriage is a belief that falls to be protected. That does not mean that you win, because in this country we do not even get to a balancing of rights when it comes to marriage, because marriage loses, as is clear in the case of Lillian Ladele.

There are already cases, like that of Adrian Smith, going on now before this law has changed. He did not get his job back. The case would have cost him £30,000. He won £98 in compensation. He was advised by two Queen's counsel that he would not have won the employment tribunal.

**The Chair:** Order. I am afraid that there we have to brings things to an end. The allocated time is now over. I thank you very much for giving your evidence today.

### Examination of Witness

*Professor Julian Rivers gave evidence.*

4.46 pm

**The Chair:** For the record, Professor Julian Rivers, can you just tell us a bit about yourself?

**Professor Rivers:** Yes. I am an academic at the university of Bristol. I have been teaching legal theory and public law at the university of Bristol for 20 years and I have written quite extensively on the legal regulation of religious organisations and questions of religious liberty, religious equality and human rights generally.

**Q247 Mr Burrowes:** We have heard others talk about a religious view of marriage. Do you think there is a proper social view of marriage as a social institution? How do you see that meaning defined and what is its purpose?

**Professor Rivers:** We are seeing a conflict between two fundamentally different social views of marriage, and it reflects a debate that has been going on for at least 150 years. It is just that, right now, we are in the middle of a head-on collision between those two views. The institution of marriage has changed quite considerably down the centuries, but the older view, in its essence, tries to construct an understanding of marriage that is responsive to biological fact—what it takes to be true about the natural world. Of course, that process of construction has been going on for over 1,000 years.

What we see arriving in about the mid-19th century is what we could call a romantic view of marriage, where marriage is fundamentally about the expression of love of two people for each other. That is a view, then, which in some sense floats more freely above what is taken to be the natural givens of biological reproduction and of gender difference.

That debate has been going on for an awfully long time. The difficulty is that towards the end of the 20th century, for some very interesting cultural reasons, we found ourselves in a position in which the idea that ethics is grounded in nature becomes less and less plausible, and the idea that our ethics are fundamentally an expression of individual will and construction—our individual autonomy—becomes more and more plausible. In every society within the western world, we are seeing societies reaching a tipping point at which, suddenly, the older traditional view of marriage comes to seem unacceptably limited, and potentially even oppressive.

The romantic view of marriage, in which marriage is fundamentally about an expression of love of two people for each other and commitment for each other, comes to seem normal and appropriate. Once that tipping point happens, all the language of discrimination and equality cuts in. If we take the considerably older and more biological view of marriage, it is not discriminatory for two people of the same sex not to be able to get married; they just cannot get married. It is not what marriage is. Their relationship is something different. It might be perfectly good, valuable and valid, but it is not a marriage. There is a category error being made there. Once societies tip over into accepting the romantic view of marriage, the argument for discrimination is obvious; of course it is discriminatory to exclude two people of the same sex from such a view of marriage. Of course two people of the same sex may love each other and can commit to each other. We are just right in the middle of that tipping point in the UK. Other countries will hit that at different points; some have been there already. No doubt, many others will come to that. The fundamental question that we need to face is how do we live with our difference? How do we live with the fact that we have these two conceptions of marriage knocking around our culture? Are we going to try and simply enforce one to the exclusion of the other or are we going to try to make space for both?

My own view is that neither will go away. We cannot assume that in a generation's time, nobody will hold the slightly older, more biologically rooted view of marriage, often associated with most of the major religious traditions.

That will still be there, as of course will be the newer view—I stress that it is not just 10 years old, but a century and a half old—and the romantic view of marriage in which it refers to any two people. Our difficulty is constructing a legal regime that handles that fundamental tension, that difference, fairly.

**Mr Burrowes:** In terms of—

**The Chair:** Order. Before Mr Burrowes follows up his question, may I appeal for shorter answers, so that we can have more questions?

**Q248 Mr Burrowes:** I invite headlines. What are the defining characteristics that have permeated law to the point where we are at? You say there are two views, but what are the characteristics that have defined the institution of marriage?

**Professor Rivers:** The law has tried hitherto to track the more biological conception of marriage. In that sense, that is why it has, for more than 1,000 years, insisted that a marriage can only take place between a man and a woman. It has been a settled part of the common law, and the romantic view of marriage has been allowed to flourish extra-legally through cohabitation primarily by people who rejected marriage and then more recently in civil partnership as a regulated form of a more romantic notion of marriage.

**Q249 Chris Bryant:** I am sorry, but I do find that analysis hopelessly flawed and historically completely inaccurate. The 1662 prayer book provides three reasons for marriage, one of which might be your romantic thing of people being able to share a mutual society in adversity or in prosperity. Before that is your procreation, and the second one is to prevent fornication and to provide for a more secure society. Have you ever read the judgment of the Massachusetts supreme court in 2003 in relation to same-sex marriages? It makes it clear that there is a long history of people getting married for a lot of different complex reasons, many of which were to do with money and property rights. I just do not see that binary division. It seems that you have created this, to be able to argue against same-sex marriage.

**Professor Rivers:** No, I do not agree with that. I did not mean to imply that the longer-standing, more biological view excluded the romantic dimension, but it insisted that several things were tied together to form a marriage. Obviously, the prayer book is a classic statement that tied together the three purposes that you identified, which includes the notion of romantic love.

**Q250 Chris Bryant:** But until 1753 and Hardwicke's Marriage Act, there was no provision, other than that a clergyman of the Church of England had to take the service. There was no other reason that a marriage could be voided.

**Professor Rivers:** That is not strictly correct, because it was only in the 16th century that the requirement of ecclesiastical solemnisation became normal within what was then the Catholic—the universal—Church. If you go back even earlier, it was simply by mutual consent that you could get married, but it was mutual consent between people of the opposite sex.

**Q251 Chris Bryant:** I do not see how that creates your binary definition—that one thing is romantic love and relationships, and if you think that that is all that marriage is about, it is bound to lead to this; and that another version of marriage is about procreation, and therefore you could not possibly entertain the idea of same-sex marriage, and that is when you end up with: why on earth would we allow Prince Charles to marry Camilla?

**Professor Rivers:** When I talk about the older conception of marriage as being, to use this label, “biological”, that was a shorthand for saying that it attempted to be responsive to what it took to be natural facts about human kind—namely, the division into two sexes and the involvement of both sexes in the procreation of further human beings. That concept of union is ultimately responsive to biological union, in that it takes two people of opposite sex to produce another human being. It is biological in that broader sense, not in the sense that every single marriage obviously has issue in children.

**Q252 Chris Bryant:** A large number of the civil partnerships that I have seen have family responsibilities. They either have actual children—whether surrogated or however they managed it—or adopted children, so I would have thought that the care of children as a social good and as a strengthening of society was a third part of the value of marriage for everyone.

**Professor Rivers:** With respect, that misses my point. My point is that the meaning of marriage is socially constructed. We can define marriage in a number of different ways, and the question is how we go about doing that. We can go about doing it in a way that attempts to track biological reality—I am simply recording, as a matter of fact, that that has been the typical approach for centuries, if not millennia—or we can focus particularly on one dimension of a relationship, which is the romantic attachment, and we can make that the essence of marriage. We could make other things the essence of marriage. We could make it, and many cultures do, securing the inheritance of property. We could make marriage into fundamentally a property-based institution.

**Chris Bryant:** But we might want to do all these things, and that might point to why same-sex marriage adds to the greater goodness of the whole of society and cannot detract from the marriage of heterosexuals.

**The Chair:** May I intervene in this conversation or debate between the witness and Mr Bryant? Several other Members wish to ask questions. I again appeal for brevity in questions and particularly in answers.

**Q253 Tim Loughton:** You are putting forward a fascinating argument, and your note was well argued. I want to ask you a question about the note that you produced. You said,

“Marriage affirms the equal value of men and women”—that was a constant theme through the note—and that “the logic of equal recognition and radical choice means that the boundaries of any new definition will be far more vulnerable. Challenges to its exclusivity, its permanence and even its sexual nature will be unavoidable.”

Because of that, you think that marriage will “unravel”. Will you elaborate on that? What do you think the result will be of going down the path of this Bill?

**Professor Rivers:** Obviously, we are into crystal ball gazing, which is a dangerous exercise. I am simply trying to follow through the logic of what I see as the underlying conception of marriage, which is one based on romantic love and commitment, driven by a sense of individual choice: I decide to affirm my love for an individual and commit myself to that individual.

I suppose that it is a fairly simple point that love knows no norms. If you take seriously the notion that romantic love is at the heart of marriage, romantic love is fickle, as we all know. It changes, and so might, too, the nature of the commitment that we have for each other. Romantic love is not necessarily limited to one person. If you follow through the logic of romantic love, I think that ultimately you end up with the removal of marriage as a legal institution. So it is not logically clear to me that marriage should be regulated by law at all on that sort of basis.

Interestingly, if you look at Soviet conceptions of marriage in the early 20th century, that was precisely the logic they followed. Marriage was not legally regulated because it was seen as a purely affective romantic relationship between two individuals. So yes, there are lots of steps to be gone through, and I was engaged briefly in some crystal ball gazing, but I think it is a genuine possibility, which we should take seriously, that what we are seeing in a number of western states right now is not simply one step that will then solve everything and everyone will be happy; it is simply the first in a series of steps towards the ultimate deregulation or de-juridification of marriage in its entirety.

**Q254 Stephen Gilbert:** If I am following the logic of what you are saying, Professor Rivers, you are suggesting that because lots of lesbian and gay people may want to join the institution of marriage, that institution may ultimately no longer exist.

**Professor Rivers:** Obviously not immediately, but the arguments used to support the extension of marriage to two people of the same sex are equally applicable in other contexts as well, and will, sooner or later, be used in those contexts. The concern, if I can put it like that—no, I will stop there.

**Q255 Stephen Gilbert:** Of course, Professor Rivers, you are entitled to your view, and it is crystal ball gazing as well, but that is the first time that I have heard the suggestion that, because lots of people want to join the club, it may stop existing. You said that marriage is a socially constructed concept. You were very clear that that is right, and you have also said that it has changed quite considerably down the centuries. You posited this binary notion, which I think Mr Bryant had some pertinent questions on. Where is the threat to marriage from two people of the same sex who love each other wanting to experience the benefits that those of opposite sexes have in an institution that everyone acknowledges brings real benefits? What is the threat?

**Professor Rivers:** I thought I had answered that in terms of the potential developments that might occur, following on over the next generation or so. That is one threat. The other threat is to religious organisations and

people who wish to maintain a different view of marriage not being able to do so, when in good conscience they should be entitled to their views and protected in law. That is actually a much more important thing to focus on in terms of the Bill in front of us.

**Q256 Stephen Gilbert:** One final, quick question: in your biological definition of marriage, what would you say to those heterosexual couples who are infertile, or who marry later in life, perhaps past the point where they are able to have children, or to those children who have been adopted by a heterosexual married couple and grow up in their family? Are those marriages not valid under that interpretation of the binary system that you posited earlier?

**Professor Rivers:** The answer from within that more traditional account of marriage would be that the fact that not every single instance displays every characteristic of the definition does not deny the status of the paradigm as a central case. You posit as your central case of marriage the one in which a man and a woman join together and produce children, and you then have a series of debates about the extent to which social forms that are more or less like that fall within the boundaries of your definition. Of course, that debate is one of the ways in which the law of marriage changes. For example, questions on whether adoption is permitted or not is a point on which societies differ. At a certain point, they accept adoption, and when they accept it, they do so because it looks like your paradigm or your central case. You should not be thinking in terms of, “You’re either in or out.” It does not work like that.

**Q257 Mr Bradshaw:** Sorry, it is my fault, I am confused, but can we get this absolutely clear—you are opposed to same-sex marriage?

**Professor Rivers:** I think that it is a risky development. My position is that a combination of civil partnership and marriage that reflects the difference between a same-sex partnership and another-sex marriage is more appropriate and guards against some of the risks that I have identified.

**Q258 Mr Bradshaw:** But at the beginning, you also said that this whole debate had come out of changes in the 19th century around definitions of romantic love, so did you not lose the battle 200 years ago? You also acknowledge that there will be different conceptions of marriage now and for the foreseeable future. That is surely a “live and let live” philosophy, as we have heard earlier, rather than an objection to it.

**Professor Rivers:** I do not think the battle has been lost; the battle will carry on. We are just seeing one more round in it, if you describe it as a battle. When the romantic notion of relationships developed, there was, of course, considerable opposition to same-sex relations. We know that. What has happened is a combination of society becoming more relaxed about same-sex relations, coupled with a romantic notion of marriage. When those two come together, the proposal that there should be same-sex marriage seems obvious.

**Q259 Mr Burrowes:** You say in your essay:

“The fact of difference has to be acknowledged and valued if we are to secure equality.”

You talk about marriage securing the equal value of men and women. How do you make that point?

**Professor Rivers:** I make that point by reflecting on whether marriage might be distinctive as a social institution in being one of the few cases where the difference between men and women is both acknowledged and turned into a form of co-operation, rather than either being acknowledged and resulting in separation or not being acknowledged at all. Marriage is unique as a social institution, because it expresses the co-operation of a man and a woman.

**Q260 Stephen Williams:** Just for the record, Julian and I know each other for various constituency reasons in Bristol. We may come to this from different perspectives, but we can still be friends afterwards.

Your essay, which I have read—your daughter urged me to read it, so I have; you can feed that back to her—puts two arguments against same-sex marriage. One is the slightly puzzling one that it might undervalue the equal value of men and women that is afforded by marriage, but I want to ask you about the second one, on which you say:

“Marriage promotes the welfare of children”.

Normally we hear about the procreation of children. Do you accept that the welfare of children can be met in a variety of parental relationships? There can be gay dads and lesbian mothers. There are half-brothers, half-sisters and stepfathers. Family relationships are complicated in modern society, but the welfare of children might actually be strengthened by same-sex marriage.

**Professor Rivers:** Again, it is important to note the nature of that argument. There is a simplistic argument around the impact of same-sex parenting on children. I accept in the paper that the evidence is probably in favour of there being no detrimental impact on children whatsoever of being brought up in same-sex families. There is one little note of caution that I would sound there, but it is in the paper.

My main concern is about what the purely romantic view of marriage does to children in other-sex marriages—the vast majority. There I would highlight the impact of divorce on children. We know that divorce is incredibly traumatic for children. Divorce, to my mind, is one of the results of the taking hold of a more romantic view of marriage. Once you fall out of love with each other, there is no reason to stay together, and that is detrimental to children. In the paper, I worry about the potential development and strengthening of this purely romantic view of marriage, which might have that impact on children.

**Q261 Simon Kirby:** I have to say that I am slightly perplexed by the argument, which seems to me to be a very black and white view. Should marriage not be a far more multicoloured thing? It means many different things to many different people. My marriage is very special, but that does not mean that it should be the same as everyone else’s. Does not the Bill, to use your words, make space for both views? Is it not possible for those who wish to take part to opt in and for those religious groups that want to retain their view of what marriage represents not to do so? I do not understand your argument; it confuses me.

**Professor Rivers:** Thank you for raising the question of the opt-in in the Bill. I stress that my prime area of expertise is in religious organisations and religious liberty, and I had hoped to be able to address some of those protections for religious organisations in the scope of the Bill.

The opt-in is one element of the lock. It is important and, broadly speaking, correct. The fundamental question I had about the opt-in was the exclusion of civil partnerships from it. It seems to me to be unprincipled and potentially not compliant with the European convention to allow an opt-in for same-sex marriage but not to allow an opt-in for civil partnerships. However, that is only one of many ways in which I fear that this Bill is not fully European convention-compliant.

**Q262 Jane Ellison:** I was going to ask a question that was not to do with that area, so do you want to expand on any aspects of that? Do you feel that allowing those religious organisations to opt in makes the Bill stronger, in as much as it is not a blanket ban on religious organisations? Given what you have been saying about the development of different views, we have heard evidence from some religious groups whose view has developed to say that they wish to carry out same-sex marriages. I am really struggling, in an unacademic way, to understand how, given the long-term decline in people getting married, allowing more people to get married is going to contribute to that decline. That is a question and an observation.

**Professor Rivers:** I did not quite catch the purpose of your first question.

**Jane Ellison:** First, do you think the Bill is strengthened by allowing some religious organisations to opt in, rather than imposing a blanket ban on all religious organisations from doing same-sex marriage? Secondly, how does the fact that some religious organisations wish to opt in fit with your view of the historical context and definition of marriage?

**Professor Rivers:** I think it is simply a matter of principle that religious organisations ought to be able to opt in. I do not think it is any more complicated than that. On the question of why some religions choose to do so, religions change over time and modify their views on what constitutes marriage. We should not think of religions as monolithic blocks. They are, of course, incredibly diverse and fluid things. The Bill quite rightly

allows religious organisations that reconcile their view of marriage to opt in. I have no issue with that.

**Q263 Kwasi Kwarteng:** How watertight is this Bill with regard to potential challenges in the courts concerning human rights and particularly the religious angle?

**Professor Rivers:** I think it is almost perfectly watertight. There are a few points I will list in respect of the core function of marrying people, but I do not buy the argument that the exemption for the Church of England is at risk from being overturned in Strasbourg. I think the Strasbourg case law is reasonably robust that established Churches enjoy freedom of religion rights under article 9, so if the state should choose to exempt an established Church from carrying out certain forms of marriage for reasons of religious doctrine and practice, I would be very surprised if that was overturned in Strasbourg. Nothing is impossible, but that is close to impossible.

There are a few minor worries around a drafting point in clause 1. Section 17 of the Marriage Act 1949 contains the possibility of marriage in a church or chapel in which banns may be published under the authority of a superintendent registrar's certificate. It would be worth clarifying that superintendent registrars should not issue certificates for the solemnisation of marriages in churches or chapels when the church or chapel is not prepared to solemnise those marriages. That is a minor point to do with proposed new section 26(1)(e) of the 1949 Act, which is inserted by clause 3.

I am also slightly surprised that the Government have decided to deal with the issue of the Church in Wales through delegated legislative powers granted to the Lord Chancellor. The reason I am slightly surprised is because—

**The Chair:** Order. I am afraid that brings us to the end of the time allotted to the Committee to ask questions of our witnesses. I thank you on behalf of the Committee.

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

5.15 pm

*Adjourned till Thursday 14 February at half-past Eleven o'clock.*