PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

MARRIAGE (SAME SEX COUPLES) BILL

Seventh Sitting

Thursday 28 February 2013

(Morning)

CONTENTS

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Monday 4 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Mr Jim Hood, Mr Gary Streeter

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

Kate Emms, Alison Groves, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 28 February 2013

(Morning)

[Mr Jim Hood *in the Chair*]

Marriage (Same Sex Couples) Bill

Written evidence to be reported to the House

MB 66 David Cade
MB 67 John Guy
MB 68 Equal Rights Trust
MB 69 Mrs Janet and Mrs Sarah Wood
MB 70 Rev. Paul Burr
MB 71 Dr George Strang
MB 72 Voice for Justice UK
MB 73 Changing Attitude England
MB 74 David Burton
MB 75 Dr Augur Pearce—supplementary evidence
MB 76 R. Goldspink—supplementary evidence
MB 77 Judith Willcox
MB 78 Stuart Ramsay
MB 79 Sarah Haines

Clause 2

Marriage according to religious rites: no compulsion to solemnize etc

11.30 am

Kate Green (Stretford and Urmston) (Lab): I beg to move amendment 9, in clause 2, page 2, line 9, after 'compelled', insert

'by a couple who wish to be married'.

The Chair: With this it will be convenient to discuss amendment 24, in clause 2, page 3, line 16, at end insert—

> '"compelled" includes, but is not limited to, the following activities:
>
> (a) the imposition of any penalties (whether civil or criminal),
>
> (b) the less favourable treatment of a person by a public authority, and
>
> (c) the initiation of any legal action by way of a review,
>
> in each case as a result of the exercise by a relevant governing or relevant religious organisation of functions relating to giving any consent or to refusing to give any consent provided for in sections 2, 4, 5, or 7 of this Act.'.

Kate Green: I will be brief. We are concerned about the ability of faith organisations to manage their affairs. An important thrust of the Government's approach has been that we should not dictate to Churches and other faith organisations whether they are obliged to carry out same-sex marriages. However, amendment 9 addresses a situation in which the decision of a Church or faith institution to conduct same-sex marriages could conflict with the views of an individual minister of that Church or faith institution. It is a probing amendment to explore the Government's intentions as to whether one view or the other would prevail.

The issue arose during our oral evidence session with the Equality and Human Rights Commission. In its written evidence, the EHRC was clear that ministers and others could not be prevented from expressing a view against same-sex marriage outside the workplace and could not be forced through litigation to conduct same-sex marriages. However, in their oral evidence, Robin Allen and John Wadham raised the issue of a faith institution that decided that it wanted not only to conduct same-sex marriages, but to insist that all its ministers carried out such ceremonies.

We explored the issue in our oral evidence session on 14 February. Mr Wadham and Mr Allen asked whether it was the Government's policy intention to enable individual ministers to refuse to conduct same-sex marriages, even if the religious institution of which they were members wanted all its ministers to carry them out. If the intention is that ministers should be able to refuse to conduct same-sex marriages even though their overall religious body has decided that it wishes to conduct them, will the Minister explain why the Government take that view? Would a religious institution that disciplined an individual minister or forced them to carry out a same-sex marriage be acting in accordance with the Bill?

We do not expect the problem to arise frequently; it will perhaps arise only rarely. As we heard in oral evidence, it will never be a problem for some religious institutions. The Unitarians pointed out that all their ministers take decisions as individuals; the Unitarian Church holds no overall position. The Quakers pointed out that ministers do not celebrate marriages in their faith, as they are merely witnesses, and the ceremony is conducted by the couple.

Mr David Burrowes (Enfield, Southgate) (Con): The hon. Lady says that there is almost a collective view among the religious groups from which we heard oral evidence. However, we must note that the evidence before the Committee includes not just the partial evidence we heard in our oral evidence sessions, as the representations that have been cited come from quite a limited group. I am not sure whether the hon. Lady has sought representations from evangelical denominations, but they may well have a collective view of not wanting to get anywhere near opting into the provision.

Kate Green: I have not specifically sought the views of evangelicals, but I would have thought that neither the hon. Gentleman nor evangelicals would have a problem with my amendment. It explores whether the Minister wants individual ministers to have the freedom to make their own decision irrespective of the position of the faith group of which they are part. I hope that the hon. Gentleman, like me, looks forward to and will welcome a clear answer from the Minister so that we and those evangelical ministers will know exactly where things

stand. It would be helpful to have the Minister's views on record, and I look forward to hearing what the Government's position is.

Amendment 24, to which I believe the hon. Member for Enfield, Southgate will speak, offers examples of compulsion in the context that no individual may be compelled to carry out a same-sex marriage under the Bill. I merely want to highlight a concern—I am sure that the hon. Gentleman will want to address it—about ruling out

"legal action by way of a review".

I venture to suggest that it would be difficult to prescribe that no legal action would ever be taken by anyone. It may not successful and it may have no chance under the Bill, but I am not sure what the hon. Gentleman wishes to achieve by prohibiting individuals from having the possibility of raising a legal challenge, so I look forward to hearing what he has to say about that.

Mr Burrowes: Welcome, Mr Hood, to the second day's discussion in the marriage test. Our consideration of amendments 9 and 24 gives us the opportunity to probe and scrutinise clause 2, which is a defining measure for the Government's policy goal, so I welcome the opportunity to do that.

To continue my cricket analogy, this is a defining innings for the Sport Minister. He has taken his trusted bat out of the locker, and it is marked "religious liberty" for the purposes of clause 2. He has heard the words of his two managers, my right hon. Friends the Prime Minister and the Secretary of State for Culture, Media and Sport. The hon. Member for Stretford and Urmston said that amendment 9 was tabled to probe the Government's policy goal, but in many ways that is clear. On 11 December 2012, the Secretary of State said:

"As the Prime Minister said, we are 100% clear that if any church, synagogue or mosque does not want to conduct a gay marriage it will not—absolutely must not—be forced to hold it."

We will see whether the context of that important statement holds good today, and whether the bat of religious liberty is firm in its defence of that liberty. The Secretary of State then said:

"the chance of a successful legal challenge through domestic or European courts is negligible."

Amendment 9 was prompted by questions and learned legal opinion about that statement on behalf of the EHRC, so we need to go into detail about that.

More pertinent to amendment 9 is the Secretary of State's statement that individual ministers are "still under no compulsion" to conduct a same-sex marriage

"unless they wish to do so."

The clincher for the innings—the boundary stroke for six; the trophy stroke—was the Secretary of State's statement:

"I would never introduce a Bill that encroaches or threatens religious freedoms."—[*Official Report*, 11 December 2012; Vol. 555, c. 156-157.]

I hold on to that important statement, because I have the assurance of the Secretary of State that if there is any encroachment on or threat to religious freedoms—in fact, the EHRC has said there is already such encroachment—she would never have introduced such a Bill.

I also formally welcome Her Majesty's official Opposition to our proceedings, because this is the first time that their team has effectively turned up. I appreciate that they have pretty much all been here in numbers, but now they have turned up to fulfil their duty of probing and scrutinising the Bill in Committee. We have not previously heard any direct probing or scrutiny from official Opposition Members. We were not even sure which side the Opposition team were batting on, given that we heard the hon. Member for Rhondda effectively responding on behalf of the Government—it was confusing that the shadow Minister for Immigration was responding on behalf of the Sport Minister. However, it is helpful that we now have some scrutiny, although there is no dissent within the Labour ranks, as dissenters are not allowed, at least on this Committee.

I am also somewhat confused by a dilemma over amendment 9. Naturally we would all want to support the right and freedom of a religious organisation to maintain its doctrines. The amendment would allow religious organisations that opt in to conducting same-sex marriages effectively to compel clergymen and women in the denomination who do not agree to conduct them—that might well be the case for, say, conservative, orthodox clergy.

Hon. Members will no doubt be aware that there are those on the traditional wing—conservative ministers in liberal denominations—who fulfil an important purpose and role in their Churches. There is concern about what might happen if we were to follow through a lack of freedom for individual ministers not to go along with their denomination's opt-in. It could end with one minister being played off against another from a different denomination or, indeed, Church.

We heard what I believe was a very marginal view from Dean Jeffrey John—it was way off the official view of the Church of England—about the likelihood of the Church opting into same-sex marriage soon. Nevertheless, we need to work through that scenario. It is important that the Bill stands the test of time, so we need to consider the impact for individual ministers' conscience if their denominations decide to opt in.

Let us look some years ahead, when perhaps the Church of England, through its own ordinances, opts into same-sex marriage. In the constituency of the right hon. Member for Exeter is St Leonard's church, which is of the evangelical tradition. I attended it when I was at university in Exeter, and given what I know of the churchwardens and its minister, and their track record of many years, it is likely that they would hold on to the traditional teaching under canon law as affirmed in the Book of Common Prayer—*[Interruption.]* The hon. Member for Rhondda looks quizzical.

11.45 am

Mr Ben Bradshaw (Exeter) (Lab): I will intervene instead.

Mr Burrowes: Please do, but first let me finish what I was saying.

The minister at St Leonard's may well want to hold on to the view that they should not be compelled to conduct same-sex marriages. I hope that the right hon. Gentleman will confirm at this early stage that he will be ready, in the future, to stand up on behalf of the

[Mr David Burrowes]

individual conscience and religious liberty of a minority view. I know that he has done that consistently over many years, so will he be to willing stand up for the liberty of that vicar at St Leonard's church?

Mr Bradshaw: As the hon. Gentleman expands his argument, I hope that he will explain the total contradiction between his principal opposition throughout our deliberations of the state interfering in the religious freedom of any denomination, and his desire to prevent a religion or denomination from having a policy and being able to have any discipline in implementing it. Why should the state tell the Church of England, or any other denomination, that it must do this in a certain way? Surely the Church must decide whether to have a disciplinary structure or leave it up to local parishes, as it does with divorcees. Why on earth should the state or the Government intervene in that religious freedom?

Mr Burrowes: The right hon. Gentleman was busy at the beginning of my remarks when I made it clear that there was a dilemma and an internal confusion. If he was listening—I know that he listens intently to everything I say—he would have heard me say that, in principle, one does not want the state to encroach on the freedom of a denomination to conduct its own affairs. We have to recognise, however, that we do not have a blank piece of paper. We have to reflect how things have developed, not least in relation to the Church of England. The right of individual conscience is entrenched in legislation, and we will come on to that when we deal with the question of remarrying divorcees.

It is important that we recognise the history. I know we have heard quite a lot of history, particularly from the hon. Member for Rhondda, but he will be aware, from his clerical life, of the history of dissention. I understand that when someone is giving their vows and signing up to the 39 articles to go into the Church—I am not sure whether he did this—there is this thing of the number of buttons that they do up to indicate compliance with the 39 articles, or they may cross their fingers. There is therefore already a history of dissention with adopting the whole panoply of the Church's ordinance.

Indeed, the affirmation under canon law—the seventh edition, which is the latest one from 2012—states:

> "It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church of which he is the minister, to explain to the two persons who desire to be married the Church's doctrine of marriage as herein set forth, and the need of God's grace in order that they may discharge aright their obligations as married persons."

The doctrine also states:

> "The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which the one ought to have of the other, both in prosperity and adversity.
>
> The teaching of our Lord affirmed by the Church of England is expressed and maintained in the Form of Solemnization of Matrimony contained in The Book of Common Prayer."

I am not sure what the hon. Gentleman or Dean Jeffrey John were able to do in terms of fulfilling that duty, but there is already dissention on the Church of England's doctrine of marriage and how ministers fulfil that duty on the application of every person. A quarter of all people go to a church for their wedding, and there is a duty on every minister, including Jeffrey John, to teach and explain that doctrine to those two persons on application. It lays out the purposes of marriage, which I set out in an earlier amendment and that caused some dissention and objection. We recognise that there is dissension. The Church of England is a broad Church and there is not an application of that canon law in every circumstance.

Chris Bryant (Rhondda) (Lab): Will the hon. Gentleman give way?

Mr Burrowes: I will in a moment, because I would like the hon. Gentleman to help me with some history, as we have not yet had all the history that we need.

I do not know whether the hon. Gentleman attended it, but last year the United Reformed Church—we heard its oral evidence—and the Church of England participated in a service of reconciliation, healing of memories and mutual commitment at Westminster abbey. The service marked the 350th anniversary of the great ejectment of 2,000 non-conforming Ministers following the Act of Uniformity 1662. As we know, that Act prescribed the form of public prayers, administration of sacraments, and other rites of the established Church of England, along with all the rites and ceremonies and doctrines set out in the Book of Common Prayer.

As has been pointed out, that was when the requirement was put on statute that all holders of office in the Government or the Church had to subscribe to the doctrines in the Book of Common Prayer. As a result, more than 2,000 clergymen refused to take the Oath and were expelled from the Church of England in what became known as the great ejectment of 1662. The important point is that there are ministers inside and especially outside the established Church who recognise the concept of non-conformity. However, a substantial section of English society was excluded from public affairs for a century and a half, which was plainly unacceptable. Much of that spirit of non-conformity and respect for dissent is what the dissenters party in this Committee seeks to hold on to. Conscientious objection is something that we need to probe carefully today.

Chris Bryant *rose—*

The Chair: Order. Before the hon. Gentleman intervenes, may I say that I hope we can stay on the amendment before us? The contribution that I have heard from the hon. Member for Enfield, Southgate so far is near to one in a stand part debate, rather than being relevant to the amendment.

Chris Bryant: The problem with 1662 is that the King basically did not get his way in Parliament. He wanted to allow greater freedom, but the elected representatives of the people decided that they did not want to allow that kind of freedom. However, whether we should go back to 1662 now is a bit irrelevant.

The hon. Gentleman just does not understand the processes within the Church of England. If the Church decides to go forward with same-sex marriages, it will

have to bring forward a Measure that will lay down how much uniformity it wants to insist on within the Church, exactly as it did over the remarriage of divorcees. That would then go through the parliamentary process.

Mr Burrowes: I will take your point, Mr Hood, and I do not want to go back too far in history. Indeed, I want to get to 1965 and the relevance of the respect given in statute to the right of individual conscience for Anglican clergy, which is very relevant.

John Wadham's evidence on behalf of the EHRC forms the basis of the amendment. Some caution is needed here, because the commission champions equality in its various strands, but one must question how vigorously it has championed the strand of belief, although I will leave that for another debate. I know that my hon. Friend the Member for Strangford has raised the issue of how much it backed the case for the traditional Christian view.

We have to consider Robin Allen's view very carefully. The Committee was able to challenge him on his opinion, which he put very clearly. We have heard a leading opinion that the state will be acting unlawfully by interfering with the freedom of religious organisations to enforce their religious doctrines within their particular organisations.

The issue is not whether I am confused or conflicted, or whether I am being contradictory—many Committee members are not bothered about what I think—but what is in the Bill, which matters greatly, how contradictory that is and whether that will lead to an early challenge. Whether such a challenge would be negligible is also an issue.

Robin Allen QC says that there is likely to be a challenge on this point, which contradicts what has been said. The most important contradiction is in the Minister and the Secretary of State saying that challenges are negligible. When one says, broadly and boldly, that there will be no encroachment on religious liberty, one is saying that in respect of all areas of religious liberty, and not only in terms of people opting in and out, and the liberty of churches and individuals to say that they do not want to conduct a same-sex marriage—it goes across the board. That also applies to the liberty of religious organisations to determine their own affairs, because effectively the Secretary of State has said that all religious liberty, of whatever form and however it displays and manifests itself, is protected and is not threatened.

Some may say that that is a narrow point, but I think that it is important, because it exposes an important issue about whether the Government can properly, in the Bill, take account of the statutes that form the basis of our assurance for individual liberty of conscience for Anglican ministers. Can the Government really, hand on heart, say that they are able to resist encroachments on liberty?

The response from John Wadham to the question in the oral evidence session comparing the conscientious objection of members of a religion with that of Ms Ladele was:

"I do not think that those are parallel circumstances. A registrar's responsibility, as a public official, is to deliver a service to the wider public. As for a member of a Church or a religion, the responsibility of that person is to follow the doctrine of the Church or religious organisation. Those are two different things. We are saying that it is for the religious organisation to be allowed to police those circumstances"

—that is the basis of amendment 9—

"That is not on a parallel with the Ladele point."—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 14 February 2013; c. 135, Q343.]

Going back to my historical point about ejection and non-conformity, he effectively accepts the potential for theological opinion on same-sex marriage to become dogma.

It is important to welcome the intentions in the Bill through amendments to the Equality Act 2010 to ensure that any minister of an opt-in Church has the freedom to opt out of officiating at a same-sex wedding without penalty, since he is not supposedly a public official, although we will go into the public nature of the act at the marriage service at a later stage, and we will hear again the careful, crafted words of the right hon. Member for Blackburn (Mr Straw) during the passage of the Equality Bill about the public nature of the marriage function. Since a person in an opt-out Church is not supposedly a public official, the conscientious objector who personally refuses to conduct same-sex weddings should be protected, quite properly, from compulsion by law.

The Bill maintains conscientious objection for individual ministers, not just organisations, although it has to be said that other comments by Ministers, and responses in the explanatory notes, focus on religious protection in terms of organisations and not individuals. Nevertheless, Ministers do wish to protect individual ministers' conscience.

My problem with amendment 9 is that there seems to be a lack of awareness of the current legal position regarding marrying divorcees in church. Section 8(2) of the Matrimonial Causes Act 1965 provides a conscience clause in respect of re-marrying divorcees in church, and hon. Members will recognise the language interposed into the Bill:

"No clergyman…shall be compelled—

(a) to solemnise the marriage of any person whose former marriage has been dissolved and whose former spouse is still living; or

(b) to permit the marriage of such a person to be solemnised in the church or chapel of which he is the minister."

Section 5A of the Marriage Act 1949 confers a similar protection on clergy, like in the case of Bannister *v.* Thompson, when Canon Thompson objected to solemnising marriages that would formerly have been void by reason of prohibited degrees. Section 5B of the 1949 Act extends the protection to clergy who reasonably believe that one of the parties to a marriage has had a sex change under the Gender Recognition Act 2004. That history still forms the law of the land for protecting the conscience of individual ministers.

Parliament had properly understood the need for a concession for the consciences of individual clergy that is separate from that for a religious organisation that objects to performing religious rites that have state recognition. The assumption of clerical compliance with their religious organisation does not hold water. Individual clergy can, as we know, be at variance with the Church's pastoral approach to divorcees and thus refuse to solemnise a re-marriage in a church.

[Mr Burrowes]

We might well ask—this is why I am somewhat cautious about the championing of religious liberty by the EHRC in this instance—where the EHRC has been in championing the issue of encroachment on religious freedom in relation to the rights of divorcees to marry in church. I am not sure whether there is any evidence, when divorcees have wanted to marry in their parish church, of the minister being able to rely on the 1965 Act and say, "No, my conscience will not allow it." Has the EHRC identified any such cause of action and tried to prevent such encroachment on religious freedom?

The position of the EHRC and that of the hon. Member for Stretford and Urmston, who moved amendment 9, contradicts the position of previous legislation and the Bill—*[Interruption.]*

12 noon

The Chair: Order. I am sorry to interrupt the hon. Gentleman, but I cannot hear him because of a conversation between Opposition Front Benchers.

Mr Burrowes: Thank you, Mr Hood.

The amendment, which is helpful, exposes a clear chink in the armour—a flaw in the Government's "religious liberty" bat. There is a real problem. If the amendment became part of the Bill, the claimed protections of the Bill would show marked disparity with protections elsewhere in the law. It has never been the clergy's responsibility to follow the doctrine of the Church or of religious organisations unless it rises to the status of settled dogma. Amendment 9 would, down the line, expose individual clergy, who are not classified as public officials, to legally permissible sanctions from their religious organisations—perhaps that is a liberty that should be allowed—for refusing to solemnise same-sex marriages.

Some may say, "Bring it on. That's the way it is. They are going to have to comply with the orders of their denomination", but that would reinforce the idea that the Bill is about promoting the legitimacy of same-sex marriage at all costs. The Minister's and the Secretary of State's intention to balance equality for all with religious liberty is not a reality.

It is important to look at the serious prospect that legislating for same-sex marriage and opt-ins for religious organisations, which is at the heart of amendment 9, could lead to an incursion on the religious freedom of individual ministers. Strasbourg would offer no remedy for that. It is important that we understand what recourse there could be for an individual minister to seek remedy if the amendment was passed. Some may say that needs to be sorted out in their own denomination, and that they need to work it out themselves. However, they may not be able to rely on that. There may be cases where they are directly challenged and would need to seek some remedy.

Ian Leigh recently wrote in *The Oxford Journal of Law and Religion*:

"Religious organisations can therefore petition as non-governmental organisations but cannot be respondents directly. That distinction can be seen in an admissibility decision of the European Commission in which it held to be manifestly ill-founded a complaint that a prohibition concerning the form of liturgy to be used in the Church of Sweden violated Article 9."

While the Government hold on to the qualified but important protection of religious liberty in article 9, one must also recognise the practicality of the issue on the ground. That will draw me—shortly, you will be pleased to hear, Mr Hood—to amendment 24. What happens on the ground when there is a challenge? What is the impact of that challenge on the freedom to follow one's religious conscience?

Ian Leigh continues:

"The implication of this distinction is that an individual is only able to bring an action at the Convention level arising from alleged violation of his or her rights by a religious organisation if the question can somehow be 'triangulated' so that it is argued as a failure of the respondent state to protect the petitioner's rights. The process of doing so is no means straightforward in conceptual terms, however, since it depends on the extent of a person's Convention rights in the first place. Put simply: if Article 9 does not apply between an individual and his or her church then there is nothing for the state to be responsible for.

It might be thought that domestic courts are free to grant additional constitutional protection against non-governmental bodies where Strasbourg would not do so but even this raises potential difficulties. Religious organisations have Convention rights of their own and to tip the balance too far in favour of the individual at the domestic level could leave the state open to challenge by the organisation at the Strasbourg level."

Therefore, the Government are performing a balancing act. The significance of the amendment, supported by the EHRC, is that it admits that the Bill's quadruple locks and the Equality Act amendment cannot truly protect individual conscientious objectors. There is already likely to be a challenge, according to leading opinion of the EHRC.

A Church could hold amendment 9 to be an interference in article 9 rights. Although marital status is a protected characteristic, few divorcees are said to have insisted on this and challenged it. In contrast, a legal provision by the state that limits the religious freedom of organisations is far more likely to succeed down the line. I do not believe the amendment does anything to protect—perhaps it sought not to—the conscientious objector, who is compelled by an opt-in Church. There is no legal relief, as indicated in detail in the journal I quoted. There is no legal relief against sanctions imposed by religion on individual ministers who want to opt out.

That is where I believe the Government are conflicted. Any conflicts that I have do not matter. It matters much more directly for the Ministers responsible. The Secretary of State, in response to correspondence from the Catholic Bishops' Conference, said:

"Clause 2 of the Bill protects anyone who takes part in the solemnisation of a religious marriage."

Hear, hear, say all of us. Very good.

The Secretary of State also said that

"we are completely confident that the Convention does not require the UK to force religious organisations to conduct marriages for same sex couples if that is against their religious doctrines."

Therefore, we have the focus back on the organisation rather than the individual. One might say it is a case of not seeing the trees for the wood. The Secretary of State said:

"In our view, any interference with the rights of the same sex couple…would be justified."

Amendment 9 has exposed a contradiction. Amendment of a genuine concern has been sought in one direction, effectively to say that there will be a limit to individual

conscience, but before the Bill has even been enacted, there is already a real risk of a challenge. If such a challenge were successful, the impact might be the compulsion of individual ministers, which might lead to a great ejectment scenario.

I turn to amendment 24. Although protection from compulsion is central to the protections provided for religious organisations, and although Ministers and organisations set great store by the word "compulsion", it is not defined. Amendment 24 would clarify that definition for the purposes of clause 2. On Tuesday, I said that the Government's watchwords were openness and transparency, which elicited great mirth from Opposition Members, and I believe that we should be more transparent and open about the meaning of "compelled".

I hear the concern of the hon. Member for Stretford and Urmston about how far my suggested definition goes and how prescriptive it is in terms of initiating proceedings, and we can debate that point. The definition may need to be perfected, but the amendment's purpose is to assuage the genuine concern that I have just outlined. Clause 2(1) states:

"A person may not be compelled to…undertake an opt-in activity, or…refrain from undertaking an opt-out activity."

Clause 2(2) states:

"A person may not be compelled…to conduct a relevant marriage…to be present at, carry out, or otherwise participate in, a relevant marriage, or…to consent to a relevant marriage being conducted".

At first sight—the Government certainly want us to believe that this is the case, and I accept their intentions—the Bill appears to provide comprehensive and wide-ranging protection for such persons. However, I am concerned for two reasons that after the Bill is enacted, such protection may be quite limited, and the amendment seeks to help. I understand that the word "compelled" has been borrowed from the Matrimonial Causes Act and planted in the Bill. If that is the case, the meaning of "compelled" has never been litigated, although the Minister may want to correct me on those points. "Compelled" will be used in a wholly different scenario, which may, as we have heard in relation to amendment 9, lead to early litigation.

The Minister of State, Department for Culture, Media and Sport (Hugh Robertson): If my hon. Friend is correct that the meaning of the word has never been litigated against, that may be because it is absolutely clear.

Mr Burrowes: The Minister has been listening intently, and if he considers that the challenges involved in balancing the qualified rights of religious freedom and liberty against the rights of others in relation to their sexual orientation are the same as the challenges involved in the case of a divorcee who seeks remarriage, I would like to hear him say so. They are not the same. We can see from litigation in other cases that we are entering a whole new arena in terms of balancing rights. A chill wind is already blowing in other areas for religious liberty, and I believe that the Bill gives us a really good opportunity to obtain some clarity, because the Government are 100% clear that religious freedom will be protected and will not be encroached on. Why not go down that line and make it even clearer?

12.15 pm

What makes the limited case law available in other contexts relevant is protection from compulsion. That is why—to draw on the Minister's intervention—there has been litigation in other contexts. We must at least recognise that the redefinition of marriage puts us into another context. The protection from compulsion provides protection only from the imposition of criminal punishment. That is the case, for example, when individuals are protected from being compelled to incriminate themselves. If one interprets the clause in that way, without clarification—there is nothing in the explanatory notes to help us either—it will not be able to protect religious persons or organisations from compulsion in the form of civil or legal penalties. It will not prevent public bodies, for example, from treating religious organisations less favourably—this is a whole new terrain—if they decide not to opt in to providing same-sex marriage, nor will it protect religious organisations from the threat of other legal action.

That is why amendment 24 refers not only to "penalties", in proposed new paragraph (a), but to

"the less favourable treatment of a person by a public authority",

in paragraph (b), and to

"the initiation of any legal action by way of a review",

in paragraph (c). Later amendments explore further the public sector equality duty, the impact of human rights legislation and how judicial review might flow. It is important to recognise what one understands compulsion to mean and to deal with the definition head-on. Clause 2 may—I stress "may"; I do not want to stretch it too far, but we must deal with different possibilities—be quite narrow in scope and it may provide relatively little protection unless "compelled" is defined further on the face of the Bill.

The exception introduced by subsection (5) to section 29 of the Equality Act 2010—this forms the whole basis of the amendment—gives rise to further uncertainty about the meaning of "compelled". That is because the explicit provision of an exception to section 29 gives rise to the assumption that without subsection (5), the protection against compulsion in clause 2 would not have been enough by itself. The Government are specifically prescribing that they need to provide the exception, or else the protection will not be good enough. They are making the point that without the exception, there is a prospect of encroachment on religious protection.

Amendment 24 would provide guidance on the meaning of "compelled" and enshrine in statute—so that everyone is clear without having to risk the prospect of litigation and the costs of challenge—the Government's assurance that religious organisations will not be required under any circumstances to conduct same-sex marriages if they object to them. There will be no doubt. The 100% promise will be clear. What it says on the tin will be exactly what we get. It will be the Government's Ronseal commitment to marriage.

Amendment 24 would protect religious organisations from all legal penalties, both criminal and civil, if they decide not to opt in. That is plainly the Government's intention, and it would be helpful for the Minister to make that abundantly clear—that the intention is completely to protect. The meaning of protection and what such organisations will be protected from would also be helpful.

I appreciate that there is some disagreement. As a lawyer myself, I recognise those reservations. Our amendment also seeks to protect religious organisations from other legal actions, and it would ensure that they do not suffer at the hands of public authorities by making it clear that public authorities will be acting ultra vires if they penalise religious bodies for deciding not to opt in.

I know that many members of the Committee were particularly impressed by the evidence we heard from those in the other place, the noble Lord Pannick and Baroness Kennedy. They are good advocates, but the focus of their concern was very much about when such matters go before the European Court. I am worried about what is on the ground: the domestic context; the applications of the Equality Act for which the Bill seeks to provide an exemption. Will it be good enough? Will it avoid judicial reviews? The Minister may assure us that they will not be successful; nevertheless, declarations will have to be made, with thousands of pounds of costs. Will the Government say, "We'll take it a stage further: we've giving you the religious protection, and the 100% commitment will ensure that we're indemnifying you against the costs"?

We should not only listen to lawyers with some celebrity; we should listen to Mark Jones, a solicitor on the ground, who made it clear that there is a chill factor—the Church of England also talked about this in its submissions—in public discourse. Practitioners know that the article 9 protection that the Government seek to rely on is weak, to the extent that the right of others not to be discriminated against in relation to sexual orientation for example, which quite properly needs to be balanced, is an area where—in the balancing with the right of religious liberty, which is qualified and restricted doctrinally, away from a manifestation of faith—we effectively know which side of the balancing argument wins, as we have seen in case law already.

Amendment 24 provides proper clarity. Without it, the definition of "compelled" will be left to be decided by the domestic courts. That will affect many people. For example, when the Catholic Church gave evidence to us, some of the questions it was asked effectively amounted to bodyline bowling—many of us might have concerns about that—but if we consider the submissions we have received, including detailed written submissions, we see that it is speaking about a not insignificant number of people. We had representatives from religious groups of thousands of people, but let us consider the Catholic Church, which represents millions—10% of people in England and Wales—as well as the other groups that did not have much of a voice in the oral evidence, which also represent millions. They are genuinely concerned on the ground that the Government need to stand up and deliver, in more clarity and detail, on their 100% commitment to religious liberty. That is the intention of our amendment.

Jim Shannon (Strangford) (DUP): It is a pleasure to speak on this matter. I commend the hon. Member for Enfield, Southgate on the viewpoints he put forward, which are ones I shall be espousing as well. He referred in his conclusion to the large body of opinion in the Roman Catholic Church, as well as the large body of other Churches that have not had the opportunity to attend our witness sessions. Hopefully they will put forward written submissions.

I will speak first to amendment 9 and conclude, as the hon. Gentleman did, with amendment 24. Amendment 9 would have the effect of narrowing the already too narrow protections of the quadruple lock that the Government want to put in place. Same-sex marriage is highly controversial. Historically, it is a recent innovation; globally, it is a rare phenomenon in national law. At no stage should any person be forced against their will to take part in any same-sex marriage affiliation. They should not be forced to do so by anyone, not only the couple who wish to get married. That is my concern about the amendment, which fails to recognise that core issue. The amendment would severely restrict the protection of a person who does not want to take such action. As a consequence, it would clearly subject such a person to all sorts of potential challenges that would clearly hurt an individual with heart-felt views. That is because religious individuals not only are at risk of being compelled to perform or participate in same-sex marriage by the same-sex couples who want to get married, but are subject to many pressures from external organisations and authorities—again, we are putting forward views on behalf of religious organisations and individuals with specific and focused religious viewpoints, which we believe this Committee needs to take into consideration.

Under section 149 of the Equality Act 2010, public authorities, which include local authorities, must

"have due regard to the need to…advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it",

so the issue is very clear. Local authorities must also have due regard to the need to

"remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic".

As we all know, sexual orientation is a protected characteristic in the law.

Many religious groups in this country use facilities and premises that belong to a local authority—for example, a church group that needs to meet in a church hall or community centre. There are many examples, across the whole of the United Kingdom, of where that actually happens—where the community hall is also the church hall. How will the Bill affect them? It is reasonable to think that a local authority could think that the equality duty obliges it to try to compel a place of religious worship—and therefore its leaders—to conduct same-sex marriages, which it could do by threatening to terminate the lease.

We have some concerns about that—other Members have already spoken about it, on Tuesday in particular. Let no one say it will never happen. People tell me that something will never happen and then it does happen, so one can understand the cynicism and suspicion that many organisations and individuals have about this matter, because we all know that there are some local authorities with a track record of exactly this kind of "politically correct enforcement". In other words, they pursue political correctness oblivious to the opinions and conscientious objections of those individuals or their organisations. I believe amendment 9 removes protection against such action. That is my concern about it.

We have also seen evidence in recent years of public authorities and other employers pressurising employees to endorse same-sex relationships. We are all familiar—it

has been in the courts for the past few months—with the case of Adrian Smith, who worked for Trafford Housing Trust. He simply said, out of hours and on his personal Facebook page, that same-sex marriage was "an equality too far". He was demoted and his salary slashed by some 40%. He won his case, but he had to pay his costs and received only £100, and the court did not say he should be reinstated to the job he had before. Very clearly, an authority—an organisation—pushed the political correctness that it wanted to push against an individual. That is an example of why people are concerned.

The other case that is equally well-known—it happened much longer ago; none the less, it is equally known—is that of Lillian Ladele. We spoke about it on Tuesday, and it will be in the back of all our minds. She was the Christian registrar who said she could not officiate at civil partnership ceremonies without acting in violation of her faith. She was told by her employer, Islington borough council, that she had to perform civil partnership ceremonies or else lose her job. Again, I look on that decision with great dismay—many of us do. The Christian organisations—the Churches and the individuals, including many public employees—also feel that if some councils pursue political correctness, it could come back and bite them.

Kate Green: Does the hon. Gentleman accept that, far from Lilian Ladele's case being a simple matter of "political correctness", she failed in her legal action against her employer?

Jim Shannon: I am aware of that; I do not deny it. My point is that Lilian Ladele had a Christian faith and a viewpoint that ultimately were ignored in her job and also in the courts of the land.

Incidentally, I said on Tuesday—I will repeat it now, just to have it in *Hansard* and make the record clear—that I attended an event in this House about three or four weeks ago at which three human rights lawyers were present. Two of them said that in their opinion Lilian Ladele was wrongly treated; the other one did not. There are differences of opinion on this matter, but those two human rights lawyers were clear that they felt that Lillian Ladele was wrongly treated by her employer. That has to be put on the record.

12.30 pm

The two examples illustrate the increasing hostility towards people who refuse to endorse the legal recognition of same-sex marriages or relationships. We cannot be sure exactly where the compulsion will come from for religious people who do not want to conduct same-sex marriages. It will not be limited to same-sex couples, however, so we should not limit clause 2 in the way that amendment 9 proposes. In fact, we should extend clause 2, as suggested by the hon. Member for Enfield, Southgate, through amendment 24, which makes it plain and clear what is meant by "compel". Words are important things to have in order, because they ultimately set the tone for this Bill Committee and where we will be, which may not be where we all intend to be, at the end of the process.

As I said, a place of religious worship that uses premises controlled by a local authority could face serious pressure from that authority to opt into conducting same-sex marriages. The compulsion that some hon. Members want to include in the Bill may come by way of a local authority refusing a place of religious worship the use of premises that belong to the authority, or refusing grants and contracts. There could be far-reaching effects not only on the usage of the venue, but also on whether venues qualify for grants and contracts because of a particular stance that the Church or individuals believe in conscientiously. A Church that opens up a new building or that applies to have one registered to conduct marriages could even be told by the local registry office, "No, we are not going to license you to conduct marriages, because you refuse to conduct same-sex marriages." Again, the issue is clear for Churches and for those with individual conscientious objections.

Kate Green: I am at absolute loss to understand how the hon. Gentleman thinks that that would be possible. The legislation will specifically provide for religious institutions to decide not to conduct same-sex marriages, so how on earth could it be lawful for a local authority then to use that as grounds for refusing a licence?

Jim Shannon: It probably goes without saying that the hon. Lady and I will have different opinions. We will regularly differ on many things in this Committee. I am here to put the views of those who have expressed concerns to me, and I want to have them on record.

Mr Burrowes: Let me add to the point about whether there is a prospect of unfavourable treatment, and the fulfilment of the public equality duty. It is the case that local authorities are applying quite widely—some may say appropriately—their responsibilities in relation to the duty. That may therefore mean that we are not just dealing with the issue directly, as the Government obviously want us to focus on what is happening in relation to the marriage ceremony in religious buildings. It is also the case that many Churches contract with local authorities, and unfavourable treatment may extend to impact on that, depending on the authority's view on the Church's position on same-sex marriage.

Jim Shannon: I thank the hon. Gentleman for that intervention and for giving me the chance to clarify the matter. As I said, Islington council is but one example. Other councils may follow that politically correct agenda. That is a possibility for the future.

Back in 2011, the hon. Member for Hove (Mike Weatherley) said:

> "As long as religious groups can refuse to preside over ceremonies for same-sex couples, there will be inequality."

That is obviously a form of compulsion, and it is not clear that it is covered by clause 2. I hope the Minister will tell us whether he thinks it is when he responds to the debate. I hope that amendment 24 is acceptable to the Minister and to the Committee and that amendment 9 will be rejected, because it is not right; it neglects the opinions of those with conscientious objections—Churches and individuals—and how they will be affected by council decisions.

Tim Loughton (East Worthing and Shoreham) (Con): It will be difficult to follow the marathon innings of my

[Tim Loughton]

hon. Friend the Member for Enfield, Southgate and then the hon. Member for Strangford. I start with a disadvantage in that I am not a lawyer. I trained as a Mesopotamian archaeologist, which equips me to talk about the origins of family and marriage in the law code of Hammurabi in 1772 BC. I will give it a go anyway, but no doubt mine will be a slightly shorter innings. I shall speak in favour of amendment 24, but before doing so, I will comment on amendment 9, which was tabled by the hon. Member for Stretford and Urmston.

If we are to assess amendment 9, we must do so in the context of recognising that the present direction of travel is very much one way. Despite the opposition of most Church and other faith groups to the redefinition of marriage, the Government have decided to proceed on the basis of concerns manifested primarily by three rather small religious groups, important though they are—the Quakers, Liberal Jews and Unitarians—who all gave evidence to us and are named in the Bill. We know that their congregations account for just under 38,000 people. Despite the concerns of religious organisations about their playing a key marriage role, the protections provided by the Bill are only in relation to the actual wedding ceremony, not marriage itself.

Despite the recent Ladele judgment in the European Court of Human Rights, of which we have heard so much, the Government have made no provision for the protection of registrars with a sincerely held religious conscientious objection to same-sex marriages, as exists in the Netherlands, for example. We debated that on Tuesday, and I have no doubt that it will be a recurring theme. Moreover, despite including some efforts towards protecting religious bodies narrowly in relation to wedding ceremonies, those protections are woefully inadequate, as my comments on amendment 24 will make plain.

Mindful of the direction of travel, I find it extraordinary that the only contribution from the Opposition Front-Bench speaker on clause 2 would further limit the already limited scope for the protection of those with religious concerns. The hon. Member for Stretford and Urmston says that the amendment would help religious liberty, because narrowing the category of those who cannot compel someone to conduct religious marriages creates scope for a denomination to compel a priest or minister of that denomination to conduct a same-sex marriage that would be in their interest if, first, that is the view of the denomination as a whole and, secondly, there was evidence that ministers of that denomination were opposed to conducting same-sex marriages and therefore likely to refuse to do so.

On the basis of the first caveat, why have yet another provision to limit religious conscience? Unless we are prepared to move to the world of the hypothetical, that can be only out of regard for the three favoured religious bodies that have seemingly been allowed to make all the running, even though none of them is this country's established Church and they represent a very small proportion of faith communities in the United Kingdom.

On the basis of the second caveat, we received no submissions from Quakers, Unitarians or Liberal Jews who oppose same-sex marriage pressing for the freedom not to officiate at same-sex marriage ceremonies in the interest of protecting of their religious conscience, in relation to which a narrowing of the protection in clause 2 might serve a useful purpose. Moreover, agreeing that amendment 9 would serve a useful purpose can rest only on the basis that the religious consciences of individual ministers taking a different view should be overruled. But what about their religious freedoms?

Opposition Members, and indeed the Government, might want to give the impression that they can secure their religious liberty credentials on the basis of disproportionately championing the interests of those three small religious groups. However, let us be clear that that objective can be achieved only by having regard for our religious bodies in the round or for all our faith communities. If the hon. Lady advances the amendment on the narrow basis that hypothetically in the future, another religious group might want to allow same-sex marriage and might embrace a significant number of clerics who oppose same-sex marriage—in that hypothetical situation, she might like to give such a denomination the opportunity to compel all its ministers to conduct same-sex marriages—and if she is concerned about the religious liberty of our religious communities in the round, why not focus on the religious liberty of our actual religious organisations as they now present themselves in the real world, rather than some hypothetical postulations? If we are really concerned about religious liberty, we must fashion the Bill out of regard for what is, not what might be.

Taken as a whole, I think our religious communities will be rather horrified to find that the only thing the Opposition are doing is tabling an amendment in the interests either of three small groups that do not need it or of other religious bodies that might, hypothetically, change their views on same-sex marriage in the future, and which limits the scope of religious bodies' protection from compulsion. At the same time, it has absolutely nothing to say on behalf of the vast majority of our existing religious organisations, whose faith-inspired view of the Bill would lead them to ask for its complete abandonment or for the scope of the protections to be widened, not limited. On that basis, I cannot see the merits of Opposition amendment 9.

Let me turn briefly to amendment 24, in the name of my hon. Friend the Member for Enfield, Southgate, my name and the name of another hon. Member, which we have tabled on behalf of the Conservative party. As noted, clause 2 sets out the narrow protections for those with sincerely held religious views in relation to weddings, rather than marriage, and, more narrowly, for those with a religious conscience who are officiating in a religious context. Subsection (1) makes it plain that a person in that context

> "may not be compelled to…undertake an opt-in activity, or…refrain from undertaking an opt-out activity."

Subsection (2) states:

> "A person may not be compelled…to conduct a relevant marriage…to be present at, carry out, or otherwise participate in, a relevant marriage, or…to consent to a relevant marriage being conducted".

That is all well and good. However, as my hon. Friend the Member for Enfield, Southgate indicated, there are two major problems with those protections. The first, as he suggested, is that the word "compelled" has been borrowed from the Matrimonial Causes Act, but it has never been litigated on. In the case law that does exist on protection from compulsion, the protection

is only from criminal punishment. Applied on that basis, there will be no protection from any civil legal penalty. There will be no protection for religious bodies that do not opt into same-sex marriage from being treated less favourably by public bodies. Similarly, religious bodies that do not opt in would not be protected from the threat of other legal action, such as a judicial review. On that basis, clause 2 would provide only minimal protection.

Secondly, subsection (5) introduces an exception to section 29 of the Equality Act 2010. However, that exception rather implies that in the absence of subsection (5), the protection from compulsion provided by the clause would not be enough. That generates even further uncertainty about the meaning in the clause of compulsion, which is the basis of the amendments.

Those difficulties are a serious cause for concern, particularly when we remember that the protections are, first, very limited; they are only for religious organisations and not people of faith generally, and they are only for wedding ceremonies, not marriage, which is of far greater faith significance than weddings per se—something the Government have not properly grasped. Secondly, the Government have been keen to celebrate these protections in a rather enthusiastic effort to demonstrate their commitment to having some regard to the religious freedoms of those who are not actually Quakers, Unitarians or Liberal Jews—that is, the members of most Churches and faith groups in the United Kingdom. However, given that those are the only protections the Government feel able to offer the leaders of the vast majority of our faith communities, it is, at a minimum, vital that they cohere, hold together and withstand scrutiny.

Those who otherwise stand to be negatively impacted by the Bill deserve to be properly reassured by clause 2, but that can surely be achieved only by providing a proper definition of "compelled" in the Bill. My right hon. Friend the Minister's assertion that the meaning of "compelled" has not been challenged before because everybody is happy with it only underlines the fact that we should have that extra detail in the Bill as an extra safeguard against the unknown.

Amendment 24 makes the definition and its application to the most relevant compulsion concerns absolutely clear. It states that "compelled" includes, first,

"the imposition of any penalties (whether civil or criminal)";

secondly,

"the less favourable treatment of a person by a public authority";

and, thirdly,

"the initiation of any legal action by way of a review".

If the Minister believes that compulsion should cover those three categories, as I very much hope he does, there can be no good reason to oppose setting them out in the Bill to provide at least some reassurance to the religious groups that stand to suffer if compulsion does not mean what the amendment says it does.

12.45 pm

If the Minister does not believe that the definition of compulsion should cover the amendment 24 definition, that means that the Government's intention for these already extraordinarily limited wedding—not marriage—exemptions, which only recognise the conscience of those operating in a religious establishment, is that even they should be fairly meaningless. I do not believe that that is the Government's intention, so I hope that in the context of improving the Bill by making that clear in the Bill, the Minister will feel able to accept amendment 24, proposed in the name of the Conservative party.

Hugh Robertson: Let me say at the outset that I am grateful for the amendments, which allow us to explore the protections that we have provided in the Bill for those involved in the solemnisation of marriage, and further issues of religious freedom.

Let me deal first with amendment 9, which was introduced by the hon. Member for Stretford and Urmston. Our commitment and intention, as set out in last year's consultation response and indeed enshrined in the Bill, is that no religious organisation or individual—that is important—will be compelled to conduct, or otherwise participate in, a same-sex marriage ceremony. That is why the protections in the clause and elsewhere in the Bill have been included and, indeed, widely welcomed by the Church.

I absolutely understand the concern touched on by the right hon. Member for Exeter that in making explicit what I have described, we have interfered in the right of a religious organisation to manage its own affairs. That is an entirely legitimate question to ask, and the Government have listened carefully to the views of many of the interested parties, including this Committee, on the question. I say to the right hon. Gentleman that it is a balance—that is the honest answer—and, one might say, a balance of competing rights, but we do want to ensure that individual ministers of religion are protected from being compelled to conduct a same-sex marriage ceremony against their conscience, as we have promised.

Jane Ellison (Battersea) (Con): An example was put to me by a constituent who is a Methodist minister. He wondered whether, in the event that his religion embraces same-sex marriage in the future, his wish not to conduct such marriages will be protected. He was particularly concerned because along with his role came accommodation and so on. Is that the sort of person whom the Bill seeks to protect?

Hugh Robertson: Absolutely. Let us be very clear about this. If the religious organisation governing that minister's church were to opt in to same-sex marriages and he were to have an objection to doing them, he would absolutely be protected under the Bill.

Mr Bradshaw: It would be very helpful to the Committee if the Minister could name a precedent for such legal interference by the state in the rules and disciplinary procedures of a religious organisation.

Hugh Robertson: I shall probably have to write to the right hon. Gentleman on that when I have a little more time than 10 seconds to think about it. *[Interruption.]* It sounds as if the answer might be coming from the hon. Member for Rhondda. I will certainly do that. As I said in my answer to the right hon. Gentleman, I do not think that this is something that we can cut absolutely clean. There is a balance contained in the Bill. Because of commitments that we have made to various Church

[Hugh Robertson]

groups, it was felt appropriate to consider these protections and indeed, as he is aware, the protections were welcomed by the many Church groups that came to speak to us.

Mr Burrowes: I might be able to save the Minister from having to write a letter. It has been made clear in this debate, I would have thought, that there is the precedent that the word "compelled" is seeking to say, which is the Matrimonial Causes Act in relation to the remarrying of divorcees. That provides the right to individual conscience for the vicar at St Leonard's, and that is what the Government have sought to apply. The issue is whether it will still apply and whether there will now be a much more vigorous challenge when one is dealing with the issue of same-sex marriage.

Hugh Robertson: I will come on to that point in a minute. It is also worth saying that we think that in practice it is highly unlikely that any religious organisation that took the step of opting in to the conduct of same-sex marriages would then compel individual ministers to conduct such services contrary to their own personal religious beliefs. In our view—I think this was supported during the evidence sessions, and we heard from the rabbi on this—religious organisations would be inclined to respect individual conscience in such matters. Permitting individual ministers to decline to conduct same-sex marriages need not result in any detriment to same-sex couples, because it is of course open to the religious organisation to make other arrangements to ensure that such marriages can take place.

Let me be absolutely clear. I admit that the balance is difficult, but in our view it would not be proportionate to interfere with the religious freedom of an individual minister and force them to do something against their will. A religious organisation should be able to find another minister who can carry out same-sex marriage services. I am happy to place that on record. On that basis, the hon. Member for Stretford and Urmston might feel inclined to withdraw amendment 9.

Mr Burrowes: I also welcome that assurance. We have already heard that there is dissension about the need to allow for the right of organisations to discipline their own. Does the Minister accept that there is the prospect—obviously, he cannot bind future Parliaments—of a different view being taken at a later date? There might be a view that upholds amendment 9 and says that we need to limit the extent to which an individual minister can take a conscience view. So there is the prospect that the amendment will be exposed either through a later Parliament or even sooner by way of a challenge supported by the EHRC that says that this is a challengeable provision.

Hugh Robertson: I do not think I agree with that. The question about amendment 9 is for the hon. Member for Stretford and Urmston to press. The question of whether a future Parliament could return to this and change its mind is a matter for that future Parliament. There is no way that one Parliament can bind another in that way. I do not think that that is likely or relevant.

Amendment 24 allows us to explore the issues from the opposite angle. Broadly speaking, there are two issues. First, I should say that I do not think it is helpful to define the word "compelled" in the way proposed in the amendment. For the most part, the amendment does not add anything or change the effect of the clause. The concept of compulsion is readily understood and does not need clarification of this sort.

On the points made by my hon. Friend the Member for Enfield, Southgate, we have absolutely not borrowed from the Matrimonial Causes Act. The word "compelled" is simply used in its normal sense in the English language. It therefore not only prevents criminal penalties, but has the effect of preventing any type of conduct that would have the effect of forcing a person to do something protected under that clause. This is important. The imposition of any penalties on or subsequent unfavourable treatment of a religious organisation or individual in order to compel that organisation to opt in to same-sex marriage is already unlawful under the Bill as drafted, so proposed new paragraphs (a) and (b) in the amendment are unnecessary.

Mr Burrowes: Will the Minister clarify favourable treatment? Would less favourable treatment by a local authority or, say, a Catholic Church that has not opted into the legislation, which goes beyond the issue of same-sex marriage, but goes to their equality duty, be ultra vires?

Hugh Robertson: It is certainly unlawful under the Act. On my hon. Friend's second point, the reference to the initiation of any legal action is different. I understand the concerns that unnecessary and misconceived legal actions are unwelcome in any situation. I entirely understand that. However, the protections provided to religious organisations and individuals under the Bill as drafted mean that any challenge against a religious organisation or governing body for not opting into conducting same-sex marriages would be bound to fail.

No law can, of course—I think this is territory on which my hon. Friend touched—prevent an individual from filing an application with the court. As a lawyer, I do not suspect that he thinks that that ought to be the case in any event. In a sense, that is what the amendment would seek to achieve. The question is whether such a case would succeed. In this case, we are absolutely confident that it would not. The Committee does not have to take our word for it, because that position was supported by both Lord Pannick and Baroness Kennedy. Just for the avoidance of doubt, it was Lord Pannick who, in his memorandum to the Committee, wrote:

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

I do not think he could have been much clearer about that.

Mr Burrowes: Will the Minister give the same assurance? Does he want to use the same phrase, "a legal miracle", in relation to a challenge in the domestic courts?

Hugh Robertson: No, I will not use exactly that phrase as that was not the question Lord Pannick was asked. I am not a QC or a leading human rights lawyer. The provisions in the Bill are clear. They are drafted precisely to ensure that such a legal challenge would not succeed. This is a case where adding words to the Bill

might simply increase what there is to argue about and potentially water down the protections already provided. Should a claim be issued, an application for strike-out could be made at an early stage as there would be no cause for action. The concept of compulsion is perfectly clear and I do not believe that any more is needed. I therefore ask my hon. Friend not to press amendment 24.

Kate Green: I am grateful to the Minister for that response. One thing that was being sought was clarity about the position. I think that that has been afforded by the Minister's answer that the religious freedom of individuals is given that weight in the Bill. There is some precedent, as the hon. Members for Enfield, Southgate and for East Worthing and Shoreham highlighted, for this sort of state interference in the freedom of religious organisations to set their own rules, as we have seen with the Matrimonial Causes Act. It is important that I acknowledge that, contrary to the impression that may have been given, it was not faith groups who raised this issue but the Equality and Human Rights Commission.

I think we can be reasonably confident that it is not the intention of our religious institutions to seek to enforce against and discipline their ministers in this way. As has been noted, it is highly likely that were an individual minister to refuse to marry a same-sex couple when the organisation itself was willing to do so, that organisation would simply find another minister who would carry out the marriage. That would be a better outcome for the couple in question. They are unlikely to want to be married by a minister who does not believe that the marriage is morally valid in any event.

Mr Burrowes: I welcome the continued assurance from the Minister but I am concerned that it does not go far enough. There needs to be clarity about its being unlawful for there to be any challenges that affect the Churches in terms of unfavourable treatment. I will therefore be pressing amendment 24 to a Division.

Kate Green: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

12.59 pm

Adjourned till this day at Two o'clock.