PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

MARRIAGE (SAME SEX COUPLES) BILL

Eighth Sitting

Thursday 28 February 2013

(Afternoon)

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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

(Afternoon)

[Mr Jim Hood *in the Chair*]

Marriage (Same Sex Couples) Bill

2 pm

Mr David Burrowes (Enfield, Southgate) (Con): On a point of order, Mr Hood. I should like to clarify whether the votes on amendments 24 and 25 will be taken at the conclusion of our discussion of this group of amendments.

The Chair: To clear up any misunderstanding, we will take the votes on amendments 24 and 25 after we have considered the next group of amendments.

Clause 2

Marriage according to religious rites: no compulsion to solemnize etc

Mr Burrowes: I beg to move amendment 34, in clause 2, page 2, line 22, at end insert—

'(3A) No person shall be subject to discrimination or other unfavourable action in the course of employment or in the provision of goods or services for stating or teaching that a same sex marriage is not morally equivalent to a marriage between a man and a woman.

(3B) Where a person alleges in any proceedings that there has been discrimination or other unfavourable action against him for reasons which include that he has stated or taught that a same sex marriage is not morally equivalent to a marriage between a man and a woman, it shall be for the person against whom those proceedings are brought to prove that the reasons for the action constituting the alleged discrimination or other unfavourable treatment did not include those statements or teaching regarding same sex marriage.

(3C) The reference in subsection (3A) above to discrimination or other unfavourable action in the course of employment or in the provision of goods or service includes—

(a) discriminating by not concluding a contract of employment with the person stating or teaching that a same sex marriage is not morally equivalent to a marriage between a man and a woman,

(b) discriminating by not concluding a contract for the provision of goods or services with the person stating or teaching that a same sex marriage is not morally equivalent to a marriage between a man and a woman,

(c) not offering a benefit, whether financial or not, to the person stating or teaching that a same sex marriage is not morally equivalent to a marriage between a man and a woman that is or would be offered to a person stating or teaching that a same sex marriage is morally equivalent to a marriage between a man and a woman.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 31, page 52, line 26, schedule 7, at end insert—

'42 The Education Act 1996 is amended as follows.

43 Section 403 (sex education: manner of provision), after subsection (1D) insert—

"(1E) For the purposes of subsection (1A), no school shall be under any duty as a result of guidance issued, to promote or endorse any understanding of the nature of marriage that is contrary to the character and designation of the school.".'.

Amendment 32, page 52, line 26, schedule 7, at end insert—

'Public Order Act 1986

42 (1) Section 29JA is amended as follows.

43 (2) For section 29JA there shall be substituted the following—

"29JA Protection of freedom of expression (sexual orientation)

In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices or the discussion or criticism of same-sex marriage shall not be taken of itself to be threatening or intend to stir up hatred.".'.

Amendment 33, page 52, line 26, schedule 7, at end insert—

'42 (1) Section 89 (interpretation and exceptions): After subsection (1) insert—

(1A) For the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the discussion or criticism of same-sex marriage shall not be taken of itself to be discrimination for the purposes of section 85.".'.

New clause 7—*Education: Parental right of withdrawal*—

'In the event that a school teaches about same-sex marriage in a way which conflicts with the beliefs of a parent, that parent shall have a right to withdraw their child from the lesson or lessons in which that teaching takes place, regardless of whether the lesson is deemed to constitute sex education.'.

Mr Burrowes: I shall speak to amendments 34 and 32, and leave it to other Committee members to go into bat on amendment 31 and new clause 7.

Amendment 34 is an attempt to prevent people from being discriminated against merely for expressing the view that same-sex marriage is not morally equivalent to a traditional marriage. On Tuesday, the Minister made it clear that the Bill was about ensuring that, as a proposition, same-sex marriage is legitimate. The point of the amendment is to prompt consideration about whether specific protection is needed in relation to the expression of a view, which people may have, that same-sex marriage is not legitimate and not equivalent to traditional marriage.

The amendment will immediately call to Committee members' minds bed and breakfast cases, for example, and provision of goods and services. I do not wish to take up too much of the Committee's time by going down that route. I am focusing primarily on the expression of a view, rather than on provision of goods and services, and discrimination cases that have arisen from a refusal to provide such services. Like the provisions of equality law on which they are based, the relevant provisions in clause 2 reverse the burden of proof, so where a person claims that they have been discriminated against on those grounds, it is for the respondent to prove that their view on marriage was not the reason for the mistreatment. The protection would apply to someone in, say, an employment setting or where they were denied a contract for goods and services because of their views on marriage.

As it has been rehearsed already, the view of a man and a woman in marriage as being the only true marriage is one that, whatever the Bill does and whatever passes as a result of it, will be a view upheld by many millions of people in the country, and will not be limited to religious people. Although the amendment is in the theme of clause 2, in relation to religious protections, it seeks to draw us away from the idea that this view is just that of religious people and those of religious conscience, towards the idea that that is also the view of people of all religions and none—and, indeed, of people of all sexualities—who believe that a man and a woman in marriage is the only true marriage, in their understanding of the ordinary meaning of marriage. The amendment was tabled to probe whether there is a need to protect their expression of that view.

Like the Labour Minister, Lord Filkin, some might say:

"The concept of homosexual marriage is a contradiction in terms, which is why our position is utterly clear: we are against it, and do not intend to promote it."—[*Official Report, House of Lords,* 11 February 2004; Vol. 657, c. 1094-5.]

Let us suppose that we are in the position of a marriage service company, with chauffeurs and photographers. To use the old rhyme, the couple Daisy and Daisy do not want a stylish carriage, but the provision of a service to carry them.

Chris Bryant (Rhondda) (Lab): A bicycle.

Mr Burrowes: I appreciate that intervention. We are all humming the tune. Daisy and Daisy want a bicycle to carry them to the wedding, at which they will tweet and the rest of it, as happens now. After signing the contract, they want a beautiful tandem, but they want a chauffeur to lead their way through the streets paved with people celebrating their sweet marriage. They google marriage service and on Facebook they find a particular chauffeur, who is assigned the task of leading them through the streets on their tandem.

The chauffeur says that he believes what Lord Filkin said, and that the concept of homosexual marriage is a contradiction in terms. He says that his position is entirely clear, but he does not intend to promote it. He might go a little along the lines of Adrian Smith of the Trafford Housing Trust, who put on Facebook that same-sex marriages were "an equality too far", and as a result he may face the same consequences as Adam Smith and end up being demoted, losing his job, and having to pay thousands to get it back. He might also suffer redress for making that point. It is a matter of taking that scenario through and seeing whether there is a need to respect expressions of view that take us way beyond the marriage ceremony itself.

There are other examples, such as when a person is bidding for a contract to provide services to a local authority and someone finds out what that person had said, perhaps in a private capacity. Nowadays, very little that one says is private. The person could lose the contract, be demoted or discriminated against. Do the Government seek to protect such discrimination and expression of view? To put matters close to the context of the clause, a Church or a community group might want to hire a community centre for meetings, but the local authority refuses on the basis of its public sector equality duties because the individuals and, indeed, the leader, have views of traditional marriage that are found wholly objectionable and offensive.

The reality is that many hon. Members will have been party to discussions when people have expressed their views on different sides of the argument on such a highly emotive issue. Like others, I know that when one expresses a view of traditional marriage, it is greeted by people saying they think we are bigoted and the rest of it. We must consider whether that could lead to a particular impact on someone who is providing goods and services. Does there need to be particular protection for them to be exempt because of the views that they express?

Amendment 32 would amend the Public Order Act 1986, which will be familiar to several members of the Committee who have been involved in such matters for several years. It would add a reference to same-sex marriage under section 29JA of the Act, which is the free speech clause inserted by those in the other place, with support from Conservative Members during the passage of the previous Government's homophobic incitement offence measures. The amendment would prevent discussion and criticism of same-sex marriage from resulting in criminal sanction. Clearly, no member of the Committee would think that it should be subject to any type of sanction.

One purpose of the free speech clause relates to how complaints and investigations are handled on the ground, to ensure that the chill factor on people's free expression is avoided. Proposed new section 29JA provides a "beyond doubt" statement that ensures that discussions related to sexual orientation do not in themselves constitute an offence of incitement to hatred on grounds of sexual orientation. The amendment echoes the free speech clause in the religious incitement offence. I supported the creation of that offence, as well as the free speech insertion. Eventually, the timing of the parliamentary Session had something to do with it; the measure came at the very end of the previous Parliament, and the previous Government acceded to the free speech clause.

Amendment 32 is necessary because all individuals should be able reasonably to express views that relate to same-sex marriage without fear of prosecution under the law that criminalises incitement. The amendment makes that clear, and it would also avoid us getting into a situation that has now been prevented by the Government—again coming out with the bat of religious liberty and freedom of expression—by removing "insulting" from section 5 of the Public Order Act defence. I was delighted that the Home Secretary agreed to that after the good work done in the other place, and I was on the Bill Committee that gave the measure a safe passage despite specific reservations from the Opposition, although they did not seek to remove that provision from the Bill in Committee.

The amendment is in the same spirit; it protects the reasonable expression of dissenting, and widely held, views of marriage being between a man and a woman. Indeed, a hallmark of our Parliament is to allow for true and free expression of that view and the amendment would protect that explicitly.

Chris Bryant: The Committee will not be surprised to hear that we do not support any of the amendments, so I am in opposition to the hon. Members for Enfield, Southgate and for East Worthing and Shoreham at least, even if not in opposition to the Government. We do not like the new clause either.

I thought that the pathetic nature of the hon. Member for Enfield, Southgate's argument was exposed when we had to dredge up Daisy. Incidentally, the original song does not define whether it is a heterosexual couple, so it might be two ladies; in fact, I have more frequently seen two ladies on a tandem than a man and a woman. I personally have never been on a tandem, but I see that the right hon. Member for New Forest West is obviously shocked by the idea of two ladies on a tandem.

I merely suggest to the hon. Member for Enfield, Southgate that the paucity of his argument was given away by the fact that he had two women on a tandem who had to have a chauffeur. I do not know whether he has ever seen a tandem, but it is quite difficult to have a tandem with a chauffeur; in fact, that might be a trandem, or something like that, but it is certainly not a tandem.

The legislation already covers the fact that goods and services cannot be provided in a discriminatory fashion, regardless of whether it relates to marriage or anything else, and that is entirely appropriate. I remember the days when taxi drivers would refuse to carry somebody because they thought that they were homosexual, and hotels would refuse to take people.

Mr Burrowes: On Tuesday there was concern that I was being too serious, so I was trying to bring some levity and romance to the proceedings. Perhaps Daisy and Daisy was not necessarily the best example, but Adrian Smith is a real example of someone who was discriminated against, demoted and suffered serious implications for expressing his views.

I do not want to go back to the previous debates and arguments on litigation relating to the provision of services deemed discriminatory. The issue is about expressing a view and then the reaction and impact on the individual for expressing that view. Instead of a chauffeur, let us say that a photographer goes along the streets with the tandem; he expresses a view, and then ends up being demoted.

Chris Bryant: Now we have a photographer, who is presumably on a bicycle or a moped—I do not know, and I do not know who provided it. May I suggest to the hon. Gentleman that he tries to look at things from a different perspective? Incidentally, I think that our complaint was not about his seriousness, but his extended use of metaphors; in particular, the cricketing metaphors, which seemed to have taken him by storm—*[Interruption.]* Let me suggest to him that he looks at it in a different way, and considers what many gay and lesbian couples have had to experience over the years, that terrible moment when a couple arrives at a hotel—or, in the past, a bed and breakfast—and the staff suddenly realise that the names Chris and Alex are both male. Suddenly, the couple get a sort of Barbara Stanwyck face from the hotel staff, and they think: "Oh God, they hate us." That is what we tried to put an end to with the legislation, so that if people are providing goods and services—whether it is the wedding car, the hotel where the wedding is held or the hotel where all the guests are stay—there is no discrimination in the provision of those services.

2.15 pm

Mr Burrowes: Will the hon. Gentleman give way?

Chris Bryant: I am not going to give way to the hon. Gentleman again. He is having a conversation with me from a sedentary position, so I cannot hear what he is saying, and as I am not going to give way to him, I am not going to hear what he is saying.

The Chair: Order. I cannot hear what the hon. Member for Enfield, Southgate is saying, either, because I am listening to the hon. Member for Rhondda, who is on his feet. I am sure that the hon. Member for Enfield, Southgate will deny the accusation that he is heckling from a sedentary position, because the Chair has not heard that yet. I ask Mr Bryant to continue.

Chris Bryant: Thank you, Mr Hood. My first argument against the group of amendments is that they create hypothetical situations that do not really exist. Secondly, two of the measures completely misunderstand the nature of teaching, and seem to suggest that its purpose is to indoctrinate people with a certain view of life. Some people may have held such a view of teaching 100 years ago, but very few people think that today. By far the best education is that which does what it says on the tin: it leads people out, enabling them to understand the world in which they live and to form their own impressions. It would be entirely wrong for anybody to be indoctrinating children in a particular view of homosexuality. It is perfectly legitimate to hold the view that homosexuality itself is wrong, or that same-sex marriage is wrong, or whatever; but I would hope that any teacher worth his salt, and certainly any teacher who was teaching my nieces or any other relative of mine, would not seek to proselytise for any particular cause.

Incidentally, I would say that proselytising is particularly ineffectual. The number of right-wing clergy I have known who have ended up with left-wing children, and in particular, homophobic clergy who have ended up with gay children, as, perhaps, a sort of vengeance from God—and for that matter, the number of extremely liberal clergy I have known who have ended up with children who have strayed from the liberal path—would suggest that even clergy are not very good at proselytising.

My other problem with the amendments is that I do not think that any of them do what the hon. Member for Enfield, Southgate wants them to do. There is a real danger that if we carve out a particular freedom of expression, in relation only to the concept of same-sex marriage, we thereby suggest that there is no freedom in relation to any other matter that somebody might want to teach in a school. If this group of measures was carried, the danger would be that we would restrict freedom of conscience, rather than enhance it in the way that I know the hon. Gentleman would prefer.

My final point is this. It is a great shame that Ann Widdecombe is no longer in the House of Commons. She was a great hater—

Mr Burrowes: Personally?

Chris Bryant: Yes, personally—and mutually. She somehow always managed to make the argument in favour of freedom of conscience end up being an argument for allowing people to be able to hate. I say very gently to the hon. Gentleman, who I know is a passionate

opponent of homophobia, that if we were to carve out exemptions solely on this matter, we would add another drop to the considerable ocean of prejudice that there is in society. Consequently, I disagree with everything that he said.

Jim Shannon (Strangford) (DUP): It is good to have the opportunity to express some viewpoints, which will probably not be what people expect me to say, but I will certainly do it and have it on the record accordingly. We—the three hon. Members who have tabled these amendments—want the amendments considered by the Committee, because we hold clear and strong viewpoints on the issue. Each of the amendments has taken some time to put together. They have been worded in such a way that hon. Members will feel that they are important enough to support. Whether that happens will become fully known in the next hour or thereabouts.

As we have heard, there is a widespread concern that if the Bill passes, the ordinary people—these amendments are about them—who happen to believe, as I do, as the overwhelming majority of people have for thousands of years, that marriage is only between a man and a woman, could be subject to legal constraints. The amendments were tabled to ensure protection for those people with those strong views. Their freedom of speech and their freedom to disagree publicly may be under serious threat. That is why we tabled the amendments. Obviously some people feel that they cannot support them, and I understand that, but at the same time we have an obligation to put the amendments forward on behalf of the people who have spoken to us. I do not believe that they are scaremongering for a minute. The litany of similar warnings over the past 10 years when promises about religious liberty have been made have largely all come to pass.

I will give a couple of examples. We are now at a stage where at least four members of the Committee believe that there is a de facto hierarchy of rights. As the hon. Member for East Worthing and Shoreham said on Tuesday, in his protracted deliberations with the Minister, lip service is paid to freedoms that we once took for granted. New intolerance has emerged that effectively penalises historic orthodoxies and social consensus. Again, those members of the public who have spoken to us believe—those members of this Committee who have supported the amendments believe this, too—that the new legislation will be forced on them, and they must be guaranteed legal protection. The Bill needs much amendment to even approximate to achieving that protection. That is why we tabled the amendments. We have all come to know by harsh experience that unless so-called promises and assurances are written on to the face of the Bill in a way that everyone is happy with—not just some, but everyone—they are often worth nothing in practice.

The Church of England briefing paper, which we had some time ago, said:

"Too much emphasis, we believe, is being placed on the personal assurances of Ministers."

Many people have contacted me over the past few days—not just from Northern Ireland, but across the whole United Kingdom—including the Orange Institution, which has laid down its view. They referred to a departure from Christian standards and marriage as a divine institution. Those opinions came from two different individuals within that organisation.

In that context, and especially with regard to the amendments before us, I make it clear that I am not solely concerned with people of religious conviction. I will qualify that. The amendments are specifically aimed at protecting those who have a core belief—not necessarily a religious belief—that marriage is between one man and one woman. That belief is obviously not just a religious belief, because it has been almost universally held by everyone for most of human history.

Indeed, in an evidence session, Brendan O'Neill said:

"I can see the concerns Christians have. I am not a Christian myself—I am an atheist—but I can see the concerns they have. What I am worried about is that in focusing on Christian concerns, we are overlooking the more subtle attack that is being launched".—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 14 February 2013; c. 163, Q421.]

That is the opinion of a gentleman who referred to himself as an atheist. While I have a Christian viewpoint and the people I represent have clearly indicated that they have a Christian viewpoint, many others do not have that same religious viewpoint, but look suspiciously on this legislation and how it will affect them.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): The hon. Gentleman spoke a moment ago about believing that there is some sort of hierarchy of rights and I disagree with him. The Equality Act 2010 set out nine protected characteristics and they protect religion and belief and people of religion or belief as much as they protect people of different sexuality or sex or any of the other nine characteristics. Somehow, a mistaken belief is emerging around the Bill that it is in some way impinging on other people, when in fact it is not. It is a permissive Bill; it is not mandatory, it does not force anything on other people and those protections already exist in the Equality Act.

Jim Shannon: It will come as no surprise to the hon. Gentleman that his opinion, which I understand is heartfelt, differs from the one that I have. I believe that the locks—the quadruple lock, or whatever number of locks we are going to put on; the Fort Knox locks—will not be sufficient to take on a future legal challenge. I feel very strongly about such things. I understand that the hon. Gentleman feels equally strongly—we can still be friends after this, and hopefully still do our best in the House.

Millions of ordinary people believe marriage to be between a man and a woman for reasons other than religious beliefs. We know that for political reasons some have tried to make out that the Bill is only opposed by those of religious conviction. It is not. Those with religious views have their viewpoint, but those with non-religious views have the same viewpoint—I mentioned the contribution of Brendan O'Neill as an example of that. I have good reason to believe that such people—those who have conscientious religious views and those who do not have particular religious views but still oppose the redefinition of marriage—form a significant majority of the country. For that reason, it is important to consider the amendments, which address the very important issues that we are trying to raise.

Some people in the Committee have just brushed aside the Coalition for Marriage as if they were a minority that is not important in this process; but they are. Some 650,000 members of the public, of all faiths

and of no faith, submitted a petition to the Home Office and Downing street—it stood at 500,000 names at that point. Many of us were disappointed that that petition and all the names that the individuals took time to write were not considered in their fullness by the Government to be among those who were opposed. If the Government had included all those names, they would have shown that 84% were against the Bill. I am reminded again of the terminology "lies, damned lies and statistics." I am particularly annoyed that a large batch of people who opposed the Bill were ignored, which, with great respect, is what the Government did.

The point I am trying to make is that when it comes to free speech, which is what the amendments would deal with, there has been an attempt to present opposition to the Bill as coming from only a narrow religious constituency, which must now be pacified by affording it the crumbs of apparent legal protection. We feel that the legal protection is not sufficient and have therefore put forward the terminology in the amendments for consideration. Religious people may or may not end up having their religious beliefs protected. Many of us say, "I suspect not," which is why we have tabled the amendments.

The reality is that there are substantial numbers of non-religious members of the public who also refuse to accept that marriage can ever be between people of the same sex, and they require the same protections for their freedom of speech and conscience. I feel strongly that, as the Bill stands, they do not. The amendments aim to address the major shortcoming of the legislation, because the threat to conscience is very real. Only last week, in Canada, where same-sex marriage was legalised in 2005, the leader of the main Opposition party suggested that the mere act of disagreeing with homosexual relationships goes against Canadian law. Same-sex marriage was legalised in 2005, and some eight years later they are actually questioning whether people have a right to even suggest something different—not to vote against it, but just to have that right. That is just one small illustration of how the traditional belief in marriage will inevitably come under attack if the Bill is passed in its present form. The experience of other countries that have legislated for same-sex marriage confirms that things do not always stop there. People and organisations that maintain the traditional view of marriage will find that they are subject to efforts to censor and ostracise them. That is cause for concern.

The point is that there are many other examples of how easy it is for belief in marriage and relationships to become a potential object of a speech ban and disqualification of people and organisations from public life. I said earlier on how important it is for people in public jobs to have freedom of conscience. We know of other examples from academic colleges, particularly in the United States of America, where admission to certain courses is dependent on holding the right views on things such as same-sex marriage. It effectively disbars people on the basis of what they believe, not what they say, and that is gaining ground.

2.30 pm

The Government are trying to achieve two contradictory aims in the Bill: to redefine marriage; and to give legal recognition of the freedom not to recognise that redefinition. It is against that background that I speak in support of this series of crucial amendments—they are not to be dismissed as unimportant—that seek to ensure that such protection is built into the Bill. Their aim is patently to make it clear in the Bill, which is the only remotely reliable form of protection, that any person who insists that same-sex marriage is not morally equivalent to man-woman marriage cannot be subject to discrimination or legal action based on that view.

In the realm of public order, amendment 32 intends to make it absolutely clear that the public critique of same-sex marriage cannot be interpreted as a breach of homophobic hatred law. It is important to do that. There is also a need for special protection for teachers via amendment 34, about which I will say more in a few moments. The fundamental right of parents to withdraw their children from lessons that conflict with their convictions, religious or otherwise, about the nature of marriage is also absolutely critical and must be protected in the Bill. That shows the need for new clause 7. Unless such areas of life in which ordinary people may want to exercise their fundamental rights to act in accordance with their beliefs about marriage are protected, specifically in the Bill, the reality is that, as we all know, within a relatively short space of time—the examples are there—all the vague promises of protection will become worthless. That is why the amendments and new clause 7 are so important.

The hon. Member for Enfield, Southgate referred in passing to the case of Adrian Smith and I mentioned it this morning. I want to look at the case, because it is important for the amendments that we have tabled; I want to look at how his case was handled and how this new legislation will affect any new Adrian Smiths or Mrs Smiths with an opinion similar to his. I referred to the case, which is recent and well known, by way of warning.

In November, Mr Smith, who happens to be a Christian, went to court after having made a remark on his personal Facebook page, which was not visible to the general public, outside of working hours that gay weddings in churches would be, in his opinion, an equality too far. His employers, Trafford Housing Trust, based near Manchester, took action against Mr Smith, saying that the comments amounted to gross misconduct and could bring the trust into disrepute. That is the thrust of what they were saying. It emerged in evidence that the trust was worried that it could lose its gay rights charter award unless it took action against Mr Smith. However, the judge decided that the trust had no right to demote Mr Smith over his Facebook comments and ruled that the trust had breached the terms of his contract. In his ruling the judge said:

> "In my judgment Mr Smith's postings about gay marriage in church are not, viewed objectively, judgmental, disrespectful or liable to cause upset or offence. As to their content, they are widely held views frequently to be heard on radio and television, or read in the newspapers."

We have frequently heard similar views from at least four people in this Committee as well. The judge also rejected the suggestion that Mr Smith's comments could be viewed as homophobic. The judge concluded:

> "Mr Smith was taken to task for doing nothing wrong, suspended and subjected to a disciplinary procedure which wrongly found him guilty of gross misconduct, and then demoted to a non-managerial post with an eventual 40 per cent reduction in salary."

Some people will say, "Well, he won, didn't he?" Yes, he did, but at the end of the day, did he really win? What I have said so far is only half the story. The crucial part is that he had to go to court in the first place, and that the costs involved fighting such cases are high. Frequently the argument is lost by default because people cannot afford to challenge such allegations in court. People such as Mr Smith—or any future Mr or Mrs Smiths—can be sacked or demoted without the world hearing about it, which is a grave injustice. We are elected representatives, and lots of constituents come to us and say, "I would like to fight this case, but I'd better settle out of court." That happens in many cases. Or they say, "I will not bring the case at all because it is going to cost me money and I cannot get legal aid." Therefore the barrister, or the solicitor, gives him some problems in relation to the case, but does not take it further.

After the case, Mr Smith said:

"All I did was express a genuinely held view. Yet it became a public trial."

There was a public trial for that man and his beliefs. He added:

"I have won today. But what will tomorrow bring? I am fearful that, if marriage is redefined, there will be more cases like mine—and if the law of marriage changes people like me may not win in court."

He commented:

"Does the Prime Minister want to create a society where people like me, people who believe in traditional marriage, are treated as outcasts?"

That might not be the Prime Minister's intention, but it is what will happen. The Prime Minister should think very carefully about the impact of redefining marriage.

The Minister of State, Department for Culture, Media and Sport (Hugh Robertson): I absolutely take the hon. Gentleman's point about the consequences of the court case. However, the fact is that when it was tested in law Adrian Smith's right to hold that view, provided he did not express it in a discriminatory or unpleasant manner, was upheld. That will discourage anybody else from bringing a similar case in the future. The hon. Gentleman has not only the assurances in the Bill, but the case law to back it up.

Jim Shannon: I thank the Minister for his intervention. I will explain how a person can win a case without actually winning it. Mr Smith won the case about how the Trafford Housing Trust treated him, but when he took the case to court, his legal fees were not covered and his job was not reinstated. That concerns us.

The amendment that we tabled would protect the Adrian Smiths of our society and give them the full protection of the law. We feel that they are not protected at the moment. I will explain what happened to Mr Smith to explain our concerns and why we tabled the amendment. We are not here to labour these Bill Committee sittings and make them go on longer than they have to. We are here to put forward our viewpoints and those of our constituents. We are not here to waste time; we are here to put forward viewpoints that we feel are important.

The trust in the Smith case was guilty of breach of contract, as the Minister outlined. However, the case was brought under contract law for technical legal reasons, and Mr Smith was awarded less than £100 in damages and the restoration of his previous position was not mandated by the court. The judge commented:

"A conclusion that his damages are limited to less than £100 leaves the uncomfortable feeling that justice has not been done to him in the circumstances."

We feel that the amendments would protect Mr Smiths in the future. When the court gave its opinion on this case, it did not go as far as it should have. Despite his court win, Mr Smith had to meet over £30,000 in legal costs. His career is in tatters after 18 years at Trafford council and the Trafford Housing Trust. He was clearly committed to his employer, and was probably coming near to the time when he would get a wee clock for long service. I am not sure what happens now when it comes to the wee clock. I think he would rather have the £30,000 of legal fees and his job reinstated. That is what he deserves.

The case could not be brought under employment law for technical reasons, but even if it had been, legal experts said that Adrian Smith would almost certainly have lost, despite popular reporting to the contrary. This case cannot be used to suggest that everything worked out fine for Mr Smith. The point that I am trying to make to the Minister and the Committee is that it did not work out exactly in the way it should for Mr Smith.

I come on to amendment 34. Teachers who believe that marriage is only between a man and a woman clearly need special protection, whether or not they are motivated by religious belief. They, too, could find themselves working for an employer who takes the same kind of approach as Mr Smith's employer. It could be down to the borough council or the local education authority and those who have a particular agenda to follow.

Some 40,000 teachers have expressed concern over the legislative change and the impact it will have on them. Perhaps the Minister can explain how this will work when he responds. What will happen to those teachers who have a conscientious religious view, or perhaps a non-religious view like Mr Brendan O'Neill but still the same view, and when it comes to teaching children may not wish to tell them about same-sex marriage? What will the criteria be? What will the guidelines be? Will it be just a simple, "Yes, you can have same-sex marriage," and then they can talk about heterosexual marriage between man and woman in its fullness and totality?

I believe, with respect, that the Secretary of State was less than helpful in his evidence to the Committee when he just denied that there was any problem. The reality is that in the current climate teachers require clear, unambiguous protection under the Bill. Our amendments attempt to provide that. To dismiss them as not being substantial is unfair to ourselves as members of the Committee and very unfair to the people we represent. We are doing this on behalf of all of those teachers. My sister happens to be one of those teachers. She lives in England and she also has a very similar viewpoint. Last week she told me that many in her school would be of the same opinion. My question is this: does it go vastly beyond the 40,000 teachers who have indicated that they would be unhappy?

The legal advice given to the Committee by John Bowers QC is pertinent here. The Bill as it is currently drawn needs significant amendment to ensure that it is not difficult for teachers with a conscientious objection to same-sex marriage to express their views in the classroom in a way that they can feel happy with, and that they are not impacted by the legal system should the Bill progress further. The Secretary of State and Lord Pannick said that they felt teachers should be free to reasonably express their genuine beliefs. Lord Pannick said that in his evidence to us. That gave us some comfort. But we tabled our amendments because we believe that there is nothing in the Bill at present that ensures that teachers can do that.

Ordinary people in public life who hold to traditional marriage will be highly vulnerable to legal action without much stronger statutory protection. I strongly urge the Minister, the Committee and the Government to amend the Bill to enshrine basic civil liberties. We must not leave members of the general public, and especially teachers and parents—most of us here are parents—unable to express, and to live their lives in accordance with, their deeply held views about the nature of marriage. Protecting Churches from being sued for not carrying out gay marriages is only one tiny fraction of our problem. If the Bill is left as it is, the rights of millions of people from faith-based organisations will be ignored and threatened. A future of deep social and legal conflict beckons unless we get it right.

The onus is on the Minister—no pressure there, of course—and this Committee to ensure that the legal rights are there and that the protection is there for the people whom we represent. I hope the Committee will consider our viewpoint in relation to these amendments. They are sincerely held views. I think hon. Members appreciate that. Whether they agree with them is another issue, but they are sincerely held, as I know their views are sincerely held. On behalf of the millions of people who have concerns, we commend these amendments.

Tim Loughton (East Worthing and Shoreham) (Con): I rise to support this raft of amendments. In particular, I want to speak to amendments 31 and 33 and new clause 7. Before doing so, I ought to preface my comments, in view of the fact that the hon. Member for Rhondda has outed himself as an intolerant Widdecombe-o-phobe. I thought that was particularly insensitive to the Under Secretary, who is the successor to the saintly Ann Widdecombe who used to grace these halls.

The hon. Gentleman determined three classes of relationships between clergy and their respective progeny. Let me quickly say that my right-wing reverend father and I fall into none of the categories he defined. He also asked who has ever seen a tandem with a chauffeur, but he is of an age, as am I, to remember "The Goodies", who sort of had a chauffeur at the head of their tandem.

2.45 pm

Chris Bryant: That was not a tandem; it was a trandem.

Tim Loughton: The person at the front—this is going way off the beaten path, Mr Hood—

The Chair: Order. I am pleased that the hon. Gentleman has raised with the Chair the fact that he was speaking out of order. He is absolutely right, so can we now move on?

Tim Loughton: I will not refer to Bill Oddie being often treated as a chauffeur.

I do, however, agree with the hon. Member for Rhondda about the nature of teaching. The amendments are not, as he tried to claim, about restricting, but about clarifying freedoms, which are important, particularly in respect of education and teachers.

Teaching is not about proselytising or indoctrinating—quite rightly—although that might have been the case 150 years ago. A while ago, I gave a speech on founder's day at Lancing college, which was founded a little over 150 years ago by Nathaniel Woodard, from whom the Woodard Corporation schools sprung. When I researched that speech, I was interested to discover that one of his guiding tenets to pupils was, "Don't question the world." I based my speech to those modern students on saying that he was absolutely wrong, because the job of good teaching and the role of students is to go out and question the world. In doing so, the point and purpose of a teacher is to excite students' thirst for knowledge and learning so that they will go out and question the world. That involves debate, recognising differences and tolerating those differences.

That is what is so important about the Bill and the protections in it, if we are to believe they are robust enough, as we hope that they are. The Government must prove that they are, however, which is why we are proposing amendments.

Chris Bryant: I disagree with the hon. Gentleman's use of the word tolerate. "Tolerate difference" makes it sound like a rather unpleasant smell in the room that one is prepared to put up with on sufferance. I think that "respect difference" is a far better phrase.

Tim Loughton: I will read the record, but I thought I said "encourage tolerance" and "recognise difference". The phrase "respect differences" is just as apt. I do not think the hon. Gentleman and I disagree, so we do not want to dance on a pinhead with that use of vocabulary.

During the oral evidence session, the Secretary of State for Education categorically assured us that the Bill would have no impact on teachers who, while they can teach about the existence of same-sex marriage as a matter of law, cannot in conscience positively endorse the idea. Some polling has identified—for whatever reason, and however much we may agree or disagree—a significant minority of teachers with problems with that due to a matter of conscience. They are entirely entitled to have those views. As long as they are not manifested in hate crimes and homophobia, it is entirely legal to have those views.

I have serious doubts about the robustness of the case that the Secretary of State for Education made, which was not helped by his almost Christ-like insistence on answering most questions with another question. I was particularly keen to tease out what he meant by inappropriate teaching, but I was prevented from doing so by the fact that Mr Streeter's strictures were much less tolerant than yours, Mr Hood. The Secretary of

State kept coming back with that phrase when he was asked how a teacher would fall foul of the legislation, so we must try to tease out what would constitute inappropriate teaching that would fall foul of existing legislation, let alone the Bill, if it is enacted. Perhaps the Minister can help us with that.

Hugh Robertson: I can certainly knock that one on the head straight away. As I understood the Secretary of State's evidence, teachers are entirely free to express their views in any reasonable way that they wish, but not in an offensive or discriminatory fashion. I imagine that that was exactly what he meant.

Tim Loughton: But the Secretary of State did not use that terminology, and he repeatedly used the phrase "inappropriate teaching". It would be helpful to know whether inappropriate teaching is simply something that is clearly defined as offensive and subject to existing laws. We do not know from the truncated evidence—I was cut off by Mr Streeter when I tried to probe further—what the full gamut of "inappropriate teaching" is.

Hugh Robertson: I can put my hon. Friend's mind at rest. Inappropriate teaching would be teaching that was done in an offensive or discriminatory fashion.

Tim Loughton: Under what definitions of "offensive" and "discriminatory"? I will come on to where I think things fall foul of some of this terminology, and perhaps the Minister will respond to that.

Many schools will be sensible and will make allowances, but some will not, and I am worried that nothing in the Bill protects people who are in the latter setting. The press has reported that senior figures in the Department for Education think that the Government may be powerless to prevent an extreme or misguided local authority from disciplining a teacher who has sincere conscientious objections to endorsing same-sex marriage, even if his actions could not be constituted as offensive. When the Secretary of State appeared before us, he put on a brave face about that. He has, however, reportedly said something quite different to the chairman of his constituency association by telling him that, in private, he has doubts about the robustness of the law and protections, and I share those worries.

As my hon. Friend the Member for Enfield, Southgate has reminded us, the employment law specialist Mark Jones mentioned legal advice from John Bowers QC in his evidence to the Committee. He has given that advice to various members of the Committee and it is readily available. Mr Bowers was the employment silk of the year in 2010 and is the author of "Bowers on Employment Law", which is published by Oxford University Press, so he should know a thing or two. Interestingly, he acted in a successful case brought by gay servicemen to remove the ban on their serving in the armed forces, so he can hardly be written off as biased and partial.

As Mr Bowers acknowledges, the issue of marriage can arise across the school curriculum and in the ordinary discussions that take place in the classroom. Some primary schools already seek to illustrate same-sex unions, and a range of story books to that end can be found in many British primary schools. Stonewall's "Education for All" campaign already promotes some of those resources in schools in this country. I make no point or criticism about the books; I merely cite them as evidence that there is a concerted campaign to forward a particular view.

The current legal definition of marriage supports teachers who conscientiously believe that marriage can be only between a man and a woman, and who do not want to use such material because they believe that doing so would communicate a personal endorsement of same-sex marriage. That position will change if the Bill is enacted, however, and teachers in state schools who hold to a belief in "traditional marriage" will find that their views are at odds with the legal definition of marriage that we are now debating.

In addition, there is the associated issue of sex and relationships education. That is more of an issue for secondary schools, where it is compulsory, rather than primary schools, where it is not. The law currently provides guidance that children learn about the nature of marriage and its importance for family life and bringing up children. John Bowers QC said:

> "This provides no exception for conscientious beliefs. Unless"

the Bill is

> "amended I envisage that there would be a duty on the teacher to promote marriage as newly defined"—

"to promote marriage" is his phrase. According to Mr Bowers:

> "The importance of this is heightened by the fact that it would inevitably be taken into account by an employment tribunal in assessing what fell within the band of reasonable responses of an employer when it came to assess a claim for unfair dismissal".

As Mr Bowers makes clear, it is hard to square the Bill with a statement from Jane Williams from the Department for Education, which claims that

> "no teacher can or should be compelled to promote views that go against their conscience",

or with the Government's own myth-busting document, which alleges:

> "No teacher will be required to promote or endorse views which go against their beliefs"—

that is grammatically incorrect; it should be "his or her beliefs". In the opinion of Mr Bowers, the stark position is:

> "a Christian teacher (or indeed any teacher with a conscientious objection) may have to teach about (and positively portray) a notion of marriage (and its importance for family life) which they may find deeply offensive."

Teachers, as with every employee, must carry out the reasonable instructions of their employers. In the case of education, that position is reinforced by the Secretary of State's guidance which, as it stands, means that a teacher could be disciplined for his or her stance on the subject. Bowers is clear that a teacher who elevates one kind of marriage over another is likely to face a charge of indirect or direct discrimination. Clearly there will be grey areas, but what in practice amounts to teaching in a discriminatory way will be a matter of fact and degree. Even in a religious school, despite the best intentions of a teacher, merely teaching that there is a range of views and that same-sex marriage is wrong in the view of the school's religious denomination might lead a gay pupil or a pupil whose parents are in a same-sex marriage to feel that they have been treated in a discriminatory way.

Ultimately, whether a school has discriminated in such a scenario will be a matter of fact for the courts and tribunals, but given the provisions of the Equality Act 2010, schools will be under a duty to ensure that the subject is taught sensitively and in a way that leaves little room for misunderstandings that lead to the sort of complaints mentioned. In practice, there may well be little margin between the legitimate expression of a deeply held belief and a feeling by an aggrieved party that, however sensitively delivered, such expression effectively amounts, to quote the Secretary of State in a letter sent to the TUC, to

"haranguing, harassing or berating a gay or lesbian pupil or group of pupils".

As Mr Bowers points out, schools have a positive duty under section 149 of the Equality Act 2010 to "advance equality of opportunity" and "foster good relations" between people with different protected characteristics. If a school curriculum explicitly presents marriage between people of opposite sex as positive and marriage between people of the same sex as less positive or negative, there will be a strong case that that school is breaching its duty under section 149. Although marriage and civil partnership is not a protected characteristic for the purpose of that section, sexual orientation is, and there will be a strong argument that, by presenting same-sex marriage in a less positive light, the school will be failing, for example, to foster good relations between persons who share a relevant protected characteristic and those who do not.

Similarly, a maintained state school has a duty under the Human Rights Act 1998 not to act in a way that is incompatible with convention rights, which includes not discriminating because of sexual orientation under article 14 with reference to article 8. In the light of recent Strasbourg case law, it is highly unlikely that a domestic court or the European Court of Human Rights will accept that discrimination was justified with reference to the right to freedom of expression or freedom of thought, conscience and religion.

A school may feel under a duty to counter what it regards as homophobic attitudes in its school and in wider society. The position of a teacher who advocates traditional marriage may be linked with the notion that not promoting same-sex marriage may be offensive to gay people. Such a situation has been considered in that way by the European Court of Human Rights in recent cases.

3 pm

Mr Bowers considers that section 403(1A) of the Education Act 1996 would also provide a legitimate basis for schools or LEAs that wish to promote a particular vision of equality to require all teachers to teach materials that endorse same-sex marriage. As Mr Bowers states:

"The position of the teacher who manifests a conscientious objection to doing so is not enviable."

He suggests that it would be analogous to the registrar of births, deaths and marriages—Lillian Ladele's name has come up on frequent occasions—who refused to conduct civil partnership ceremonies on grounds of moral complicity and because they were something to which she conscientiously objected. It should be recalled that her employer, the London borough of Islington, had a "dignity for all" equality and diversity policy. In 2005, it designated all existing registrars of births, deaths and marriages as civil partnership registrars.

It is worth examining the Ladele judgment, as Mr Bowers does, because he concludes that the patent reality is one of lack of protection for the conscientious objector, and the European Court of Human Rights again offered no further protection. As Mr Bowers concludes:

"The importance of the analogy in this case is that there were no issues of practical discrimination against homosexuals in the facts of Ms Ladele's case. The legitimate aim was all about maintaining the terms of an equality policy. This is no doubt how a case would be framed in respect of a teacher who was disciplined for not sufficiently promoting same sex marriage in the classroom."

With regard to sex education in schools, John Bowers's overall conclusion is damning of the Government's complacent "everything will be all right on the night" approach. He states:

"If the *Marriage Bill* becomes law, schools could lawfully discipline a teacher who refused to teach materials endorsing same sex marriage. Given that a teacher has to obey reasonable instructions and that when sex education is given to registered pupils at maintained schools they must learn the nature of marriage I think that the employer could discipline on those grounds. Of course, individual situations will vary, and not all teaching materials will be 'reasonable' instructions; for example, I have already mentioned the case of materials which promote gay marriage *over* other forms of marriage, which may amount to discrimination against those who are not gay or lesbian. Further the right to freedom of expression would have to be balanced in respect of any instructions...Unless Section 403(1A) of the Education Act 1996 is amended, the enactment of the new *Marriage Bill* would create a legal duty on schools to positively promote same sex marriage within sex and relationships education. Given that it arises from guidance given under statute I doubt that an SRE teacher would have the right to refuse to teach about the 'importance' of same sex marriage."

I said earlier that I am not a lawyer, but I am relying heavily on somebody who is—a very distinguished one—to help make the case for the amendments.

Hugh Robertson: Before my hon. Friend leaves that point, does he think that it is reasonable to allow a teacher not to teach something that is the law of the land, if indeed this becomes the law of the land?

Tim Loughton: This goes to the heart of the debate that we have been having on some of these other cases. Everybody should be entitled to access a service from the registrar, be it opposite-sex or same-sex marriage. As for the Relate councillor, if there is an obligation to provide that service, they should be able to cater to all types of relationships. There should be access to sex education—I will come to that and how inadequate it is at the moment later—in school. However, should every single member of staff be called upon to teach sex education?

Part of the problem is the postcode lottery in the quality of sex education. We are not talking, in most cases, about sex education in schools. Specialised teachers may come from outside organisations and are specifically trained in sex education. They are able to teach it in a much more effective, empathetic way. That is where I believe sex education needs to go to improve the quality. But what happens is that too often in too many schools Mrs Miggins, the metaphorical geography teacher, has some free periods on a Thursday afternoon and is therefore put in charge of sex education for a particular

class. Using common sense, should Mrs Miggins be able to say, "I am not too hot on same-sex marriage. I got into a discussion with a pupil who said, 'My dad thinks that same-sex marriage is all a load of old rubbish. Don't you agree, Miss?' Therefore, I was not promoting my view or proselytising; I was engaged in debate by somebody questioning the world"—as Nathaniel Woodard said, "We shouldn't"—"and I could either have lied and defied my conscience or said, "Well, I've some sympathy with your dad's view: it happens to be the law of the land, but I don't view same-sex marriage as on a par with opposite-sex marriage"? Should she fall foul of the law? My view is no. Mr Bowers's view is that she is at risk of falling foul of the law, as it stands. I want common sense to pertain, so that if Mrs Miggins was better deployed doing geography rather than sex education, about which she has a particular conscience issue, she could be accommodated within the school. The school would be entitled, within the law, to use common sense to accommodate her, and everybody would be happy, as long as children got decent, good-quality and balanced sex education, which is what this should all be about.

Stephen Williams (Bristol West) (LD): Do not such difficulties already exist if Mrs Miggins or Mr Miggins were presented with that situation? Currently, they might have to answer questions about abortion or human embryology research, for instance, so they already have to be prepared to meet those scenarios. What changes so much if the Bill passes?

Tim Loughton: Two things will change. Earlier in the week, our debate ended on a dramatic note, because I challenged the Minister to recognise that he had acknowledged a hierarchy of exemptions about what are or are not justified conscience objections, and I refer my hon. Friend back to that debate. *[Interruption.]* Hold on. I said that there were two changes. Let me get them both out, and then he can have a go.

Secondly—this is an obvious one—I thought that he might use the example of people who now have a problem with civil partnerships, which I absolutely do not. Many teachers, quite rightly, have no problems with civil partnerships. It is the law of the land about equality, and we see it as an equality issue. Some of those who are absolutely at one with civil partnerships are not at one with same-sex marriage, because they think that it is a redefinition of marriage, which is why some of us object to the Bill. The numbers of those who might fall within the trap set out by Mr Bowers will be greater in future, and therefore the problem that we need to address will be greater.

Stephen Williams: I thought that the earlier debate that my hon. Friend mentioned was about a Dr Miggins being able to object to carrying out abortions. We are now talking about schools and teachers. To come back to Mrs Miggins in the classroom, surely she already has to think through what she would do if a child asked about abortion or any other moral consideration in that area. Why should she be any less prepared for dealing with this situation, given the widespread publicity garnered by this debate?

Tim Loughton: With respect to my hon. Friend, Mr Bowers has set this out—

Chris Bryant: He is wrong. Bring him on.

Tim Loughton: The chundering from the hon. Gentleman—*[Interruption.]* Chuntering, I am sorry. That would be a really bad speech, would it not?

The point made by my hon. Friend the Member for Bristol West is that the situation is no different. The doctor who refuses to do an abortion is offering a public service, as is the teacher teaching sex education, so they should be seen as parallel. It was really unhelpful when the Secretary of State for Education responded to my question with the question, "Do you think that teachers spend an hour deciding how they will present in a lesson that they think same-sex marriage is a load of rubbish?" or whatever phraseology he used. That is not the point. The point is that—when challenged by kids—personal, social, health and economic education and proper sex and relationship education should be about exploring all different forms of relationships, so that they can go away equipped with as many facts, views and visions—

Chris Bryant: Will the hon. Gentleman give way?

Tim Loughton: I will not because I am trying to answer the question asked by my hon. Friend the Member for Bristol West. They must go away with as rounded a picture as possible, but what about the ability of Mrs Miggins to express her own conscientiously held view as to why this is the law of the land, so one cannot go against that, or whatever—*[Interruption.]*.

Chris Bryant *rose—*

Tim Loughton: Will the hon. Gentleman be patient? Mrs Miggins should be able to express a view that she holds, whether for reasons of her personal conscience because she was brought up in a certain religious way, or because she was brought up in a certain non-religious way—or for any manner of reasons. She should be allowed to express those views—without ramming them down the throat of that particular student—without fear of falling foul of the law, as it will change.

Stephen Williams *rose—*

Tim Loughton: I will give way, but then I think that you would like me to make some progress, Mr Hood.

Stephen Williams: I listened carefully to what the Secretary of State said as well; he gave a clear answer that he did not expect teachers to be put in the situation that my hon. Friend describes. Someone will correct me if I am wrong, but is not the Adlai Stevenson quote relevant here: people are entitled to their opinions, but they are not entitled to their own facts? Teachers must teach children about the facts, and that includes the law of the land, but they may contextualise that with opinions held in society, which they may share.

Tim Loughton: That, again, is an interesting distinction, because the compulsory part of sex and relationship education is only that that is factual—the science of

reproduction. Proper, quality sex and relationship education, however, is not only a matter of fact. Some of it is, but much of it is also about opinions and relationships, the nature of sexual activity and so on. When that is taught in the context of a faith school—we have a growing number of faith schools, whether one agrees with the academy and free school programmes or not—there is another ethos within the school that should, and does, affect the teaching of certain subjects, whether we agree with that or not, of which SRE and religious education are the two obvious examples.

Hugh Robertson *rose—*

Tim Loughton: I will give way finally to the Minister but then I will make some progress.

Hugh Robertson: Let me knock this one on the head. One of the joys of my life is to be the Minister in charge of this Bill, so I can put on the record the precise answer to this matter. It is as follows: the question that I think my hon. Friend asked is, if a teacher disagrees with same-sex relationships and says so in class, is that discrimination? The answer, emphatically, 100%, is no. It is already well established that expressing a view on homosexuality does not, in itself, constitute discrimination against a gay person, and that applies to teachers. It is therefore perfectly lawful for a teacher in any school to express personal views on sexual orientation or same-sex marriage, provided that it is done—to pick up the Secretary of State's language—in an appropriate manner and context. That means: in a way that is not offensive or discriminatory. It is perfectly, 100% clear.

Tim Loughton: Which I am really pleased about. In that case, absolutely, the Minister has defined the purpose and urgency of amendment 32, so I assume that he will accept it because exactly the thrust of the protection that he is trying to give is in the amendment that I am trying to get to and my hon. Friend the Member for Enfield, Southgate has already mentioned—*[Interruption.]*

The Chair: Order.

Tim Loughton: Whether the Minister thinks that the amendment is needed or not, there is legal opinion that I have been trying to go through that strongly suggests that the protection is not in the law as it currently stands. The intention of this group of amendments, and amendment 32 in particular, is absolutely, categorically, to put those protections in the Bill.

3.15 pm

I know that there are some members of the Committee here who think that having to turn up and sit through hon. Members scrutinising the Bill is an annoyance; indeed, one member of the Committee said as much to BBC Radio this morning. We are never going to reconcile certain parts of the Committee to the principles of the Bill, but it is absolutely the imperative of the Committee—it is why the Committee is important—to test the robustness of the safeguards that the Government themselves have said are essential to the Bill. That is what I am trying to do.

When I get to the end of Mr Bowers's statement I hope to have shown that somebody who knows what he is talking about still has significant doubts on this matter. He thinks that the law as currently configured will not protect people like Mrs Miggins, who are not trying to be offensive or discriminatory, but are simply being true to their consciences; he also thinks that the law could be used against such people in an industrial tribunal in order to lever them out of their position. That is his genuine concern. The Minister may shake his head; others may think that concern is overdone and overcooked, but it needs to be allayed absolutely, in a watertight manner. I do not believe that it has been.

If I may finish what I was going to say on Mr Bowers, we can move on to some other clauses that we may find easier, Mr Hood. There are some people—*[Interruption.]* There is a lot of huffing and puffing from the Opposition, but they need to engage in debate here—

Chris Bryant: Will the hon. Gentleman give way, then?

Tim Loughton: Absolutely.

Chris Bryant: Finally, it worked. I am surprised that the hon. Gentleman has advanced this cause. It is a very good cause in favour of putting sex and relationships education on a statutory basis; it is a shame that when he was a Minister he did not manage to achieve that. Leaving that to one side, it is surely absolutely legitimate that the law should be able to make a distinction between somebody who acts entirely reasonably, as the Minister has referred to, and somebody who might choose to say in a classroom that all homosexuals are filthy, dirty perverts, that they should all be hounded out of society and that they are all paedophiles. I am sure the hon. Gentleman would agree that that would be an irresponsible, incorrect, inappropriate way to teach and that the law should clamp down on someone doing that. It is a matter of the law being one of common sense—of course it is—but I say to him that he is greatly overcooking his soufflé.

Tim Loughton: We move from cricketing analogies to culinary ones. I always enjoy engaging the hon. Gentleman in debate, but it is difficult to distinguish between his chuntering and his wanting to intervene.

However, if the hon. Gentleman does not believe the testimony of Mr Bowers, let us listen to some teachers, and the representations we have had from a group of people involved in education who share some of Mr Bowers's worries. All hon. Members on the Committee will have a memorandum from an organisation called HighLight. It describes itself as

"an organisation with international links which aims to inspire and equip head teachers, teachers, parents and others who work with young people by offering support, advice, training, conferences and by promoting 'Keys for Generational Development'".

It says:

"HighLight supports the freedom of all individuals to make choices according to their conscience within the law and respects the government's efforts to improve education in this country. In the light of the recent vote in the House of Commons which passed the Same-sex Marriage Bill, HighLight is writing, on

behalf of many teachers and parents who have spoken to us, to ask the Committee to consider amendments which will protect their human right to follow their conscience.

Teachers are deeply disturbed that they can be discriminated against, even endangering their jobs, if they, in all conscience, cannot promote gay marriage to their pupils. Schools with a Christian ethos detect a double standard here: on the one hand they are told they must have a cohesive religious ethos running through all their policies and practice and, on the other, are expected to promote a redefined version of marriage to their pupils which runs completely counter to biblical teaching and their conscience.

Parents, who quite properly have the right to withdraw their children from religious teaching if they so desire, cannot now opt out from teaching which denies the traditional Christian view of marriage.

Surely this is discrimination in another guise?

HighLight appeals to the Committee to redress this incongruous and illogical situation with amendments which will categorically protect the rights of teachers and parents and their freedom of conscience."

I should come back to a point that the hon. Member for Rhondda made. I unfortunately was not the Minister responsible for sex and relationships education; if I had been, I hope that we might have made a bit more progress. I come at this issue as somebody who, as I said at the outset, thinks that SRE in this country is woefully inadequate. It is a postcode lottery. It is taught by people who have little experience, knowledge or, indeed, empathy with that particular subject. If it were Mrs Miggins, the geography teacher, who one day will be teaching about contraception to a bunch of sensitive or giggling teenagers and the next will be teaching about volcanoes and fjords, will she be taken as seriously as somebody who only does that sort of education with that group of children, and knows how to empathise and get them on side?

While I strongly support the requirement of the right of parents to withdraw their kids from SRE if they consider it inappropriate, I do so on the basis that I hope a decreasing proportion of them will. According to my latest figures, the number of parents who exercised that right were fewer than 2,000—a tiny number. I want parents to be sufficiently confident of the quality of sex education in schools that they would consider themselves even less likely to withdraw their children from it. I am not trying to downplay sex education. It is quite the reverse.

I accept that we have had a bit of a major innings, but I shall return to the amendments. Amendment 33 aims to ensure freedom of expression in the education context to protect discussions by teachers of same-sex marriages from being regarded as unlawful discrimination against pupils. It is imperative that neither freedom of expression nor the freedom of thought, conscience and religion are inappropriately limited when individuals are teaching, or when teachers publicly express dissenting views in other contexts regarding same-sex marriage. Unless we incorporate an amendment along those lines, a teacher who criticises same-sex marriage in the school context could be considered to have discriminated on the basis of sexual orientation. If a pupil takes offence at something that is said, even if none were intended and the views were reasonably expressed, it may be held to amount to sexual orientation discrimination. The amendment would prevent such an extension by judicial interpretation in the context of same-sex marriage.

The Minister for Women and Equalities has given assurances that

"discussion or criticism of same sex marriage would not be 'of itself' discrimination under the current law. This would only happen if the discussion or criticism took place in an inappropriate manner"—

the phrase that I have already mentioned—

"or in a context which resulted in discrimination against, or a detriment to, a particular pupil or group of pupils."

She said that the same is true of discussion or criticism of same-sex relationships generally, and:

"Nothing in the Bill affects people's ability to hold and express their belief that marriage should be between a man and a woman."

She said:

"Teachers are perfectly entitled to give their own view, or that of their faith, in appropriate context and in a balanced and respectful way."

That is what my right hon. Friend said, but I do not share that sunny optimism.

Since it is the rights and freedoms of many thousands of our hard-working teachers that are at stake, we should take steps to put the matter beyond doubt. So, in a sense, the amendment would merely put my right hon. Friend's assurances in the Bill. I cannot understand the objection to that. It would provide a beyond-doubt statement that would ensure that teachers would not be exposed to discrimination complaints simply for explaining their conscientious beliefs about marriage.

The Bill is contentious. It has polarised many opinions. With a Bill of this nature, it is more necessary than in most, if not all, other legislation in which I have been involved during the past 16 years that we put as much detail about the robustness of the assurances of the safeguards in the Bill for avoidance of all doubt, and that is the intention of the amendment.

We have said much about teachers. I am also worried about schools that have a religious ethos and, therefore, have a particular view of marriage that everyone is at pains to stress might be different from the law under the Bill, but which they should still be free to teach and promote. Amendment 31 has been drafted by lawyers working for the Roman Catholic Church. It would provide protection for schools with a religious character. As I have said, that is a growing body of schools, not least because of the academy and free school programme.

The Bill, as drafted, will cause two problems for schools that are designated under law as schools with a religious character. In relation to the current guidance, under section 403 of the Education Act 1996, the Secretary of State is under a statutory obligation to issue guidance on the nature of marriage and its importance for family life and the bringing up of children. The Bill, and in particular clause 11(1), which provides:

"In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples",

will effectively amend the meaning of "marriage" in the Education Act to include both same-sex and opposite-sex marriage. As a result, all schools will come under a duty to teach children about the nature of same-sex marriage and the importance of same-sex marriage for family life and the bringing up of children. That interpretation is strengthened by clause 11(2), which provides:

"The law of England and Wales (including all England and Wales legislation whenever passed or made) has effect in accordance with subsection (1)."

Section 403, as thus amended, will mean that the current guidance will have to be interpreted in light of that change.

Secondly, the Bill may also affect any future guidance issued by a Secretary of State, who might see his or her responsibility to issue guidance specifically requiring schools to promote or endorse same-sex marriage. The statutory change, and the consequent effect on both current and future guidance, may therefore result in religious schools being compelled to teach, endorse, or even promote a definition of marriage that runs contrary to the nature and designation of that school. As such, previously protected religious freedoms will be affected.

On Second Reading, the Minister for Women and Equalities stated:

"No teacher will be required to promote or endorse views that go against their beliefs."

She continued:

"The point to make clearly to the House is that teachers would, of course, be expected to explain—and as professionals, they would—the law on marriage, but what we would never expect a teacher to do is promote something that ran contrary to their beliefs or their religious beliefs."—[*Official Report*, 5 February 2013; Vol. 558, c.132-3.]

That should be his or her beliefs or religious beliefs.

My right hon. Friend was equally emphatic when she gave evidence to us on 12 February. The amendment, again, begins effectively to put some of those assurances in the Bill. The assurances, I am sure, were given in perfectly good faith by Ministers. The Government know how sensitive the Bill is; otherwise they would not have come up with a quadruple lock. We are trying to add a few little padlocks to go with that quadruple lock with regard to some of the definitions of terminology in the Bill.

With the amendment, teachers in religious schools will remain under an obligation to teach the legal definition of marriage, and its availability to same-sex couples, and explain the issues to all children. However, the amendment will protect religious schools from any obligation arising, whether through interpretation of the current guidance or through future guidance, actively to endorse same-sex marriage. That is the approach that the Secretary of State favoured and so I can see no objection from Ministers to putting it in the Bill.

Finally, proposed new clause 7 looks at the issue from the point of view of the service user, as it were: the parent who sends his or her child to a school where the prevailing view of same-sex marriage contradicts his or her beliefs and where that view is communicated in lessons other than those of sex and relationship education. That is an important distinction, because there is already a legal right of withdrawal in relation to sex education, as I mentioned. Advocacy groups have long argued that issues around homosexuality and gay rights should be addressed across the whole curriculum. So if it comes up in history or English, there is no right of withdrawal.

Again, where the subject is discussed sensibly and fairly, no issue arises, but where there is a more crusading approach there may be a problem. There are teaching materials on same-sex marriage that many parents might find unobjectionable but some materials are effectively campaign literature. In those cases, surely parents should also have a right to withdraw their children.

New clause 7 would also apply where the view taught is for or against same-sex marriage, so a same-sex couple who did not like the way their children were being taught in school about same sex-marriage would also benefit from it.

Will the Minster address the question of what rights he thinks parents should have when same-sex marriage is involved in lessons other than sex education? If it is taught in a way that the parents find unacceptable, whether for religious or other reasons, what rights does he think they should have? The advice from leading human rights lawyer Aidan O'Neill QC is that European law would ultimately not support the right of parents to withdraw their children from curriculum lessons that promote a view of same-sex marriage with which they strongly disagree. Surely that is something for which we need to legislate. I hope that the Minister will look sympathetically at the amendments, which complement what he is trying to achieve. They would ensure that people who have objections of conscience will have those objections respected and will not fall foul of the changes that the Bill will make to the law.

3.30 pm

Hugh Robertson: Amendment 34 is a wide-ranging measure that would ensure protection for someone who wants to express a view that the marriage of same-sex couples is not morally equivalent to marriage between a man and a woman, in the context of employment and the provision of goods and services. The problem with the amendment is that, as far as we can see, such protection would apply however and whenever that statement was made. To give one of the famous examples that have so far characterised the Committee's deliberations, a hotel employee who stood and preached loudly against the marriage of same-sex couples in the middle of a lawful marriage ceremony or reception that was being conducted in a hotel where he was employed would be free to do so without any fear that his employer would take action against him. I would not find such behaviour acceptable, and I suspect most of the Committee would find it unacceptable. I am sure that my hon. Friend the Member for Enfield, Southgate would not condone it either, but it would be protected by the amendment.

Freedom of expression is not, and never has been, a right to express oneself in any way one chooses; it is balanced by the need to protect the rights of others to run their businesses lawfully and to deliver their services lawfully, and not to be subjected to harassment or threat. I understand that some people are worried that the Bill erodes their right to express their view that marriage should be between a man and a woman. It absolutely does not, as we have made clear several times this afternoon. Through the religious protections the Bill provides, the legislation makes it quite clear that such views are legitimate. The amendment proposes similar protection for a service provider or customer who states that same-sex marriage is not morally equivalent to the marriage of a man and a woman. Again, that is not qualified in any way, so it goes too far.

The key point—I am happy to put this on record—is that we do not need the amendment to protect freedom of speech on the subject. In itself, an employee's simply expressing the view that, according to their religious teaching, marriage should be between a man and a woman could not be said to interfere with their ability to carry out their work. No employee will be required to promote or endorse views about same-sex marriage that go against their conscience. However—this is the balance—acting in an offensive or discriminatory way because of somebody's sexual orientation is entirely different, and the two issues should not be confused.

On education, my hon. Friends the Members for Enfield, Southgate, and for East Worthing and Shoreham proposed amendment 31 to ensure that teachers will be under no duty under section 403 of the Education Act 1996 to promote or endorse an understanding of marriage that goes against the ethos of their school. However, no teacher is under any duty to promote or endorse a particular view of marriage, and neither would they be as a result of any revised guidance in the future. The wording of section 403(1A) is clear. The Secretary of State issues guidance to ensure that pupils "learn"—it is worth paying attention to that word—

"the nature of marriage and its importance for family life and the bringing up of children".

The Secretary of State does not issue guidance to ensure that teachers promote or endorse any particular view of marriage. Guidance is already interpreted by schools with a religious character according to their ethos, and that is reflected in the sex and relationships education policies that they produce. Nothing in the legislation affects schools' rights to teach marriage according to their character, and the additional protections are therefore unnecessary. Legal backing for that position was provided by Lord Pannick, who made it very clear in his evidence to the Committee on 12 February that the Strasbourg Court places great significance on the right to freedom of conscience and religion under article 9 of the convention. As a result, I cannot accept the amendment.

Amendment 33 has been proposed as a measure to give additional protection to teachers when discussing sexual conduct and same-sex marriage, which we have debated extensively this afternoon. The amendment is not necessary to protect the rights of a teacher to express their view on gay relationships and same-sex marriage in a reasoned manner and an appropriate context. It is worth noting that when pupils were first given statutory protection in 2007 against sexual orientation discrimination, faith groups expressed great concern about the effect on faith schools and individual teachers if they were unable to express their views on homosexuality. I specifically asked my right hon. Friend the Secretary of State for Education about this, and we have no evidence that there were significant problems for faith schools or their teachers. No such problems were caused by the introduction of the statutory protection in 2007, and there is no reason to suppose that the effect of the Bill will be different in any way.

New clause 7 aims to provide additional protections for parents to withdraw their children from lessons in which same-sex marriage will be discussed. As I think we have covered already, teaching about marriage is specified in the Education Act 1996 and is covered by the Secretary of State's SRE guidance. Parents have the right to withdraw their child from any or all aspects of SRE, including teaching about marriage, with the exception of those specific topics that form part of the national curriculum, as my hon. Friend the Member for East Worthing and Shoreham knows, having been an Education Minister.

Parents retain the right to withdraw their children from any or all aspects of religious education. However, we do not think it is feasible for the Government to attempt to legislate for every eventuality, such as if a pupil raises a question about marriage in other lessons. Even if a measure were in place, pupils are naturally inquisitive and will ask questions about any aspect of their education at any time, including to Mrs Miggins on a Thursday afternoon. The crucial thing is the doctrine that my hon. Friend followed when he was a Minister in the Department for Education: we need to trust the judgment of teachers to handle such instances in a professional manner as they do with the many other sensitive issues that can be raised in the classroom.

Amendment 32 is an attempt to insert an "avoidance of doubt" provision in the Bill. Section 29B of the Public Order Act 1986 outlaws the use of threatening words or behaviour with intent to stir up hatred on the grounds of sexual orientation, which is a very high test. As I have already said, a simple expression of a view, while I disagree with it, is entirely legitimate. It could not in any way constitute an offence under that section. Although I understand the rationale behind the amendment, I am unable to accept it. I am happy to put on record that my hon. Friends the Members for Enfield, Southgate and for East Worthing and Shoreham and others can be assured that the criticism of marriage of same-sex couples could never in itself fall foul of the offence. On that basis, I ask them not to press their amendments and new clause.

Mr Burrowes: I am glad that this important debate has generated a lot of interest. I would not put it in the realm of a soufflé being over-baked, as there are serious concerns, particularly in relation to schools. I do not want to take up too much of the Committee's time, so I will focus on the Minister's responses about schools, because it is not a marginal issue, and it is something that excites many people. There was a survey that said that at least 40,000 teachers would now refuse to teach the importance of marriage and indeed gay marriage, as it is in the Bill, in accordance with the guidance. It is a real issue.

We have heard reassurances, not least in the Government's myth-busting document, which says:

"No teacher will be required to promote or endorse views which go against their beliefs."

However, it will go against the beliefs of Christian teachers to have to portray positively a notion of marriage and the importance of family life that they may find deeply offensive. The sex and relationships education guidance makes it clear that pupils

"should learn the significance of marriage and stable relationships as key building blocks of community and society. Care needs to be taken to ensure that there is no stigmatisation of children based on their home circumstances…Pupils need also to be given accurate information and helped to develop skills to enable them to understand difference and respect themselves and others and for the purpose also of preventing and removing prejudice."

If the Bill is enacted, that would plainly apply equally to same-sex couples.

There may be a case in which a teacher says—this is not to use the straw argument of the hon. Member for Rhondda, who always uses examples to an extreme—"Yes, same-sex marriage is the law of the land, but it is wrong. I do not believe in it. This school, with its ethos, does not believe it is right." There is clear legal advice on this. One may put forward the view of Lord Pannick QC, but one could also put forward the view of John Bowers QC. Do we want the risk of this being dealt with by litigation? The clear advice is that there is an obligation that goes beyond the guidance—an obligation to promote equality subject to section 85(2) of the Equality Act 2010—so discrimination law does apply. I appreciate that this is not just an issue about the curriculum, where one can look at restrictions in relation to the application, yet the way in which education is provided means that the curriculum must inevitable extend to teaching of the redefinition of marriage.

Hugh Robertson: My hon. Friend, in common with members of the Committee who have been Ministers, will know that the Government are not allowed to put on the face of primary legislation things that are deemed to be unnecessary. He has had reassurance from the Secretary of State and in Committee today that we cannot put forward measures if they are deemed by the Government's Law Officers to be unnecessary. It simply cannot happen.

Mr Burrowes: I hear what the Minister is saying. The Government are doing all that they can to provide locks and protections for conscience and religious liberty in Church buildings. We are saying that people's application of their conscience is also relevant in schools, especially in light of the Government's guidance. The reality is about a school or a teacher elevating one kind of marriage over another. That is not just the leading opinion of John Bowers, as it was also referenced by the Equality and Human Rights Commission, which gave similar examples of where that can lead to indirect or direct discrimination.

We will return to this matter, because many more hon. Members will want to probe and table amendments to the Bill. I will wish to press amendment 31 to a Division at the appropriate stage, because it would establish an appropriate position for conscientious objection for those teachers who have an understanding of the nature of marriage that is contrary to the character and designation of their schools. Teachers, particularly those from schools with a religious ethos who feel that they are obliged to teach and promote a contrary nature of marriage, need protection in the Bill. However, I shall not press the other matters, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: With the leave of the Committee, we will deal with amendments 24 and 25 together.

Amendments proposed: 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.'.

Amendment 25, in clause 2, page 3, line 21, leave out subsection (b).—*(Mr Burrowes.)*

Question put, That the amendments be made.

The Committee divided: Ayes 4, Noes 15.

Division No. 2]

AYES

Burrowes, Mr David	Loughton, Tim
Kwarteng, Kwasi	Shannon, Jim

NOES

Andrew, Stuart	Kirby, Simon
Bradshaw, rh Mr Ben	McDonagh, Siobhain
Bryant, Chris	McGovern, Alison
Doughty, Stephen	Reynolds, Jonathan
Ellison, Jane	Robertson, rh Hugh
Gilbert, Stephen	Swayne, rh Mr Desmond
Grant, Mrs Helen	Williams, Stephen
Green, Kate	

Question accordingly negatived.

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

3.46 pm

Adjourned till Tuesday 5 March at five minutes to Nine o'clock.