

PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

MARRIAGE (SAME SEX COUPLES) BILL

WRITTEN EVIDENCE

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Written evidence

Memorandum submitted by the LGBT+ Liberal Democrats (MB 04)

SUBMISSION

Call for written evidence: Marriage (Same Sex Couples) Bill

Liberals have campaigned for nearly forty years since the Liberal Party first agreed to support the Campaign for Homosexual Equality's Law Reform Bill in 1975. Many steps have been taken since then to enact equality through the passage of legislation. The Marriage (Same Sex Couples) Bill is part of that process. However, the Bill does not currently propose equal marriage.

At the moment the Bill will provide same-sex couples with the right to marry. Those religious organisations who wish to opt-in to providing ceremonies can, and it protects those that do not. It also allows married people who change legal gender to remain in their marriages without going through the process of divorce.

LGBT+ Liberal Democrats are keen to use the committee process of the Bill to ensure that there are amendments that achieve mixed-sex civil partnerships, restore the confiscated marriages of Transgender individuals, enables payment of full pension rights, that removes the permission need for the conduct of marriages in Embassies and Consulates and ensure that there are clear written criteria rather than personal choices on the part of staff in such foreign office roles in the conduct of such ceremonies.

Mixed-sex Civil Partnerships

If the law is to seek equality in matters such as partnership and marriage it is now highly anomalous that opposite sex couples cannot seek a civil partnership.

In 2010 Tom Freeman and Katherine Doyle, both 26, went to Islington register office to ask for the partnership—their request was turned down. It is time to reverse the anomaly that heterosexual couples cannot have a civil partnership.

<http://www.guardian.co.uk/lifeandstyle/2010/nov/08/heterosexuals-attempt-civil-partnership>

Marriages of transgender individuals

The current situation of the treatment of individuals who were married and undertake gender change needs immediate change and restitution.

LGBT+ Liberal Democrats cite the example of one couple who were married in 2001:

The government used to agree that they had been married, but not anymore. In order to be legally recognised as female, the government demanded the annulment of their marriage. They were automatically divorced and issued with a decree absolute—the only official recognition that their marriage of 8 years happened: their original marriage certificate was even taken from them.

Marriages that survive transition of one or both partners are amongst the strongest there are. That the government currently requires their annulment in order to recognise that transition is a cruel irony. The couple had managed to convince themselves that this was just a bureaucratic exercise, that being civil partners would be the same, but they left the divorce court holding each other and crying.

That couple are adamant that when they were subsequently pronounced civil partners a few weeks later, it felt like they were being firmly told that they were not equal, that they were second class citizens, that they didn't deserve to call themselves married.

For transgender people, marriage equality is vital.

It must go further though: we need mixed gender civil partnerships, otherwise existing ones will continue to be confiscated. We also need the government make good the injustice done to couples and reinstate their original marriages, to give back what it stole. At present, the Bill is not proposing to do these things.

We strongly believe the Bill needs a means to restore the stolen marriages of transgender individuals and their partner.

There is no explicit provision in the bill for the re-issue of marriage certificates on transition showing new details. We believe that it is essential that the Bill makes the re-issue of marriage certificates explicit.

The Bill does propose to resolve an anomaly created by the Gender Recognition Act 2004 whereby a couple are forced to annul a marriage or civil partnership because one partner seeks legal gender recognition and instead allow continuity of the relationship across the change. However, it still leaves a large number of people who have had their marriages taken away and potentially been financially disadvantaged in terms of pensions and other rights in the intervening period.

We believe that there has to be a means where a civil partnership that is converted back in to its original form (ie a marriage) can be backdated to the date of the original marriage, restoring all original rights.

A further amendment will also be required to handle the reverse case (restoring a lost pre-transition civil partnership).

The consultation before the bill asked about “marriage regardless of gender”—the Bill as currently drafted fails that test. We urge the Bill Committee to consider taking specific further evidence on these issues. This quite literally the only chance we will have to address these anomalies

Payment of pension rights

As it stands the Bill will not require schemes to provide same-sex spouses with the same survivor benefits as heterosexual married couples.

The Bill explicitly retains loopholes excusing occupational schemes from providing the same benefits to gay and lesbian surviving spouses. Currently, the Equality Act 2010 dictates schemes must treat all members equally, but also gives schemes a get-out clause whereby they can base the survivor’s benefit for civil partners only on service from 2005, when civil partnerships were created, if they wish.

Schemes usually provide married couples with a survivors’ pension based on the whole of the deceased’s pensionable service, regardless of the date of their marriage.

Although it is claimed the bill will address the inequalities between civil partnerships and marriage, it will actually allow schemes to treat same-sex marriages as though they were civil partnerships, rather than as heterosexual marriages.

In response to submissions to its consultation on the bill, the Home Office said: “To equalise treatment of all same-sex couples in a civil partnership or marriage with that of opposite-sex couples, would entail an unforeseen retrospective cost to schemes in a challenging economic climate when schemes are already under significant pressure.”

It added: “Many schemes (we estimate two-thirds) choose to pay exactly the same survivor benefits to spouses, civil partners, unmarried partners and unmarried same-sex couples on a voluntary basis.”

The Bill currently and, in our view, wrongly, retains this voluntary basis.

This comes after a successful legal challenge to the treatment of surviving civil partners, brought by human rights organisation Liberty on behalf of a scheme member.

<http://www.brickcourt.co.uk/news/27-11-2012---employment-tribunal-reads-down-equality-act-to-give-civil-partners-equal-pension-rights.asp>

Marriage overseas and consular marriage

In schedule 6 of the Bill there is specific clause that enables host countries to have the power to object to marriages taking place within UK consulates. In short we consider that to be wrong. The guidance notes further details the examples of Saudi Arabia and five other countries in the Middle East. It is not clear whether this power of objection applies to the conduct of all same sex marriages or only to those where only one of those seeking marriage is a UK national.

We strongly hope that this is simply a measure to prevent Saudi, or other non UK nationals, from using UK Consulates as way of being married against their national laws.

At the moment the legislation and the guidance gives the clear impression that the UK is giving the right of veto to the conduct of marriages within their own Consuls to the host nations. We believe that this would be a wrong precedent.

Further the Bill gives explicit facility to a consular official to refuse to marry—whilst we note that there is an appeal means available we are concerned that the right of refusal is so enshrined in law.

We feel it would be much more appropriate to have clear written guidance that specifies the terms under which any rejection or refusal might be made.

We trust that this submission is helpful to the deliberations of the Committee.

Memorandum submitted by the National Union of Teachers (MB 06)

LGB¹ RIGHTS IN EDUCATION AND THE DEBATES ABOUT EQUAL MARRIAGE—A POLICY STATEMENT BY THE NUT

1. The NUT has been following the debates about Equal Marriage carefully. The NUT has not been contacted by members in relation to concerns about Equal Marriage. The NUT believes that claims from organisations such as ‘Coalition for Marriage’ that teachers are worried about talking about Equal Marriage in schools should be considered carefully and put in context.

2. There are several principles which should inform the consideration about how legislation enabling Equal Marriage will impact on schools.

EDUCATION IS A UNIVERSAL SERVICE FOR ALL CHILDREN

3. First, in any debate, the NUT would stress that it is important to remember that education is a service which must serve the needs of all children and young people.

4. In relation to all equality areas, including LGB rights, schools should be enabling the next generation to develop and create a more equal, fairer world. In relation to sexism, we do not accept that because there is a pay gap and women are paid less, that we should teach girls to expect inferior treatment. We hope that, by educating out the stereotypes about gender, we will reduce gender inequality for the next generation. Similarly, on LGB rights, it is important that schools educate all youngsters in a way which contributes to greater acceptance of diversity in the next generation.

5. At least 10% of the pupils in every school will identify during their teenage years or later adult lives as lesbian, gay or bisexual. Other pupils in every school will have family members, friends or relatives who are LG or B.

6. Although some parents may have religious beliefs which make them fear or denigrate gay people, this does not rule out that their child may be LG or B. Consideration should be given to those gay teenagers who are fearful about coming out to their parent/carers- it is those young people who need to receive positive and reaffirming messages about their identity and worth from their school.²

HOMOPHOBIC BULLYING IS AN ISSUE IN UK SCHOOLS

7. Equal Marriage extends to LGB people a choice which heterosexual people already enjoy. This is part of the jigsaw for civil rights for LGB citizens/taxpayers in the UK.

8. This follows the path of civil rights laid out in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010.

9. Schools are expected by guidance to prevent and identify all forms of bullying, including homophobic bullying, which is highlighted by Ofsted and Stonewall. Teachers, however, are confused about what they can and cannot say in the classroom and homophobic bullying is not always challenged as consistently as is needed.

10. NUT local branches have been using surveys to establish the extent of this issue. One recent NUT survey³ in Kirklees found that:

- 93% of teachers agreed that homophobia is a serious issue demanding action;
- 66% heard homophobic abuse (for example, the ‘gay’ word used as an insult) on a termly basis;
- 10% of the teachers who responded have themselves been subject to homophobic abuse by pupils in the last school year;
- 48% of teachers would welcome specific training to help them better address homophobia in their classrooms.

11. In a similar survey by the NUT in Lancashire, 57.6% of teachers had overheard or observed homophobic abuse in their school on a daily/weekly basis. Only 57% of teachers replied that they were confident about ‘addressing homophobia in their classroom’.

12. Equal Marriage will send a powerful message to teenagers about LGB people. It will reinforce the message that LGB people are people who have the same range of life experiences, emotions and aspirations as their heterosexual friends.

13. This alone, however, will not achieve an end to homophobic bullying in schools. The Department for Education (DfE) needs to consider, in a fragmented school system with a wide variety of school policies, how schools can be empowered to challenge this form of bullying, and the attitudes that generate it. Most parents

¹ LGB rather than LGBT is used throughout this briefing because this is a note about sexual orientation and Equal Marriage and not trans issues or gender reassignment.

² See Albert Kennedy Trust for work to support LGB teenagers who are evicted from home because of lack of support of threats from parents/carers

³ Kirklees NUT Prevalence of Homophobia survey of 900 teachers, 2012.

are very supportive of all strategies to reduce bullying in schools and understand that schools must be safe, welcoming and inclusive to all.

14. The guidance for schools,⁴ commissioned from Stonewall and published by the then Department for Children, Schools and Families in 2008 was very useful and answered most of the common questions asked by teachers and heads. It was deleted from the DfE website which created an absence of guidance.

BALANCE BETWEEN TALKING ABOUT BULLYING AND TALKING ABOUT POSITIVE ACCEPTANCE AND RECOGNITION OF ACHIEVEMENTS OF LGB PEOPLE

15. Equal Marriage will provide an important signal to young people that LGB people are just like straight people. Some will want to be married and some will not. The LGB 'community' contains a broad spectrum of people of different ages, political beliefs and races.

16. LGB teachers and parents of LGB students are rightly wary about the only focus in schools being on homophobic "bullying" and homophobia. It is important not to portray LGB people as victims. Discussions about Equal Marriage should be used to challenge stereotypes about LGB people- for example, that they are not religious. There are gay people within all religious faiths, whose views are rarely reflected or aired.

17. It is not acceptable if the only reference that students hear about LGB people is in the sex and relationships curriculum when HIV/AIDS is discussed or if a couple of teachers tell them that homophobic bullying is wrong. Young people need positive images and messages about a whole range of LGB people. If a greater number of LGB staff were confident enough to be 'out' in their schools, this would be helpful.

18. Homophobia is learned behaviour and can be unlearned and avoided through education. The most powerful reminder that this is important is that homophobic hate crime is carried out by school aged pupils. Some local authorities have spearheaded excellent initiatives to reduce hate crime and homophobic attitudes such as in Liverpool following the murder of 18 year old Michael Causer. Michael, from a tight knit family in a suburb of Liverpool, was proud to be gay, was training to be a hairdresser and volunteered in a local care home.⁵

TEACHERS' ATTITUDES—WHY ARE LGB TEACHERS IN UK CLASSROOMS INVISIBLE?

19. Those who have been speaking about their concerns for teachers and the reservations that teachers supposedly have about talking about gay and lesbian people in the classroom are assuming all teachers are heterosexual.

20. 80% of the teaching workforce is female and between five or 10% of women teachers will be lesbian or bisexual. Debates about Equal Marriage must be conducted in a way which does not assume that all teachers are straight or which marginalises and ignores the existence and contribution of gay teachers.

21. No one knows how many teachers are LGB because the DfE does not monitor and employers do not compile data on sexual orientation. The NUT seeks to monitor members by sexual orientation when this information is provided by individuals so that we can offer relevant guidance. At the NUT's Annual Conference, 8% of the delegates identify as LG or B. Each year at an NUT conference for LGBT teachers, we monitor how many teachers are able to be 'out' about their sexual orientation in their school. Many LGB teachers are still not 'out' in their school. This sends a very negative and inaccurate message to pupils, which is that gay teachers have something to fear or hide.

22. Both the Coalition Government and the DfE should take a lead in arguing that all schools must be safe and welcoming to existing and future LGB teachers and school staff.

23. This is required by the Equality Act 2010 but it is also good practice. Research⁶ shows that employees who are able to be 'out' at work about their sexual orientation are more effective, more loyal to their employer and have fewer periods of sickness absence. The DfE should be speaking out in praise of LGB teachers in debates about Equal Marriage.

24. There are many examples where LGB teachers have already entered civil partnerships and where the primary or secondary school class/tutor group has celebrated with the teacher and presented them with gifts/well wishes as they do with straight teachers.

DO NOT MAKE ASSUMPTIONS ABOUT THE ATTITUDES OF PEOPLE WITH FAITH

25. Equal Marriage is a new legal right which LGB adults will be given. Once it is law, teachers will need to respect this law.

26. In the debates about Equal Marriage, it is important to be specific and refer to the evidence rather than to perpetuate stereotypes about people with faith and faith schools.

⁴ Homophobic Bullying: Safe to Learn- Embedding anti-bullying work in schools, 2007, DCSF.

⁵ Allsorts Youth Project, Liverpool, project to develop teachers pack about hate crime.

⁶ Lesbian, Gay and Bisexual Workers: Equality, Diversity and Inclusion in the Workplace, F Colgan, C Creegan, A McKearney and T Wright, London Metropolitan University, Working Lives Institute, 2006.

27. In the debates on this issue, sometimes faith leaders are taken to speak for all the thousands of individual citizens who follow or ascribe to that faith. This is dangerous. Many women for example will describe themselves as Catholic but will access abortion and use contraception. It is important that we do not use the word 'religious person' as a byword for homophobia or intolerance. Different religious teachers will have different views on Equal Marriage and the religious leaders do not necessarily speak for all their followers.

28. Surveys by Stonewall⁷ show that levels of acceptance of LGB people among people of faith and people with no faith are broadly similar.

29. Three in five people of faith (58%) support Government plans to extend civil marriage to same-sex couples.

30. When asked if it is right to tackle prejudice against lesbian, gay and bisexual people where they say it exists, 81% of people believed it was right, and 79% of people of faith believed it is right.

31. Many faith schools are very inclusive and caring spaces which have excellent anti bullying strategies and which balance creating a faith ethos with respect for other faiths and other communities. This is the practice which needs to be nurtured, encouraged and shared.

32. Often faith schools have very strong track records on anti-bullying but they can be less likely to talk about LGB issues. Only half of lesbian, gay and bisexual pupils in a 2010⁸ survey said that their schools say homophobic bullying is wrong. This figure was even fewer in faith schools at 37%.

33. The NUT was one sponsor on an ESRC (Economic and Social Research Council) project⁹ called *No Outsiders* which supported primary school teachers to be comfortable and confident to talk about the existence of LGB people and different families in primary classrooms. One of the schools involved was a Church of England school which used teaching materials about LGB families and same sex relationships and parents had no objections. The project helped teachers to explore how gender stereotypes and homophobic stereotypes are bound up together.

TEACHERS HAVE A DUTY TO PRESENT BALANCE

34. Section 407 of the Education Act 1996 says that maintained schools must present 'political views' (both in a school and in extra-curricular activities) in a way which offers a balanced presentation. Teachers are required to teach in a balanced manner.

35. Therefore, currently, if teachers were to express homophobic views, or views which were hostile or negative about LGB people, this would be likely to breach Section 407.

36. Teachers would need to be very careful if trying to express a view about why their religion did not support Equal Marriage, because they would have to comply with Section 407. If a Catholic teacher were explaining that the Catholic faith does not allow Equal Marriage, the teacher would need to make it clear that many other faiths did, and that LGB people are equal citizens and that the UK law allows civil partnership and Equal Marriage in some churches. It would be safest for teachers not to comment about their private religious belief.

37. Section 407 has led to understanding among the teaching profession about how to deal with issues which they or others may label as 'controversial'. Teachers, including in faith schools, recognise that they must teach in a balanced manner and express private views in a considered and balanced manner. In the same way that a teacher is not permitted to express racist views within a school, a teacher could be challenged by colleagues or employers for expressing homophobic views. LGB colleagues could allege that this breached their protection from harassment under the Equality Act 2010.

HOMOPHOBIA IS LINKED TO SEXISM AND HAS AN IMPACT ON LEARNING IN SCHOOLS

38. The NUT does not think that talking about LGBT people or about Equal Marriage in the classroom ought to be labelled as a controversial issue. Teachers need to be empowered to understand that the research shows homophobic bullying and attitudes are limiting and negative for all children and young people.

39. Sexism and homophobia reinforce each other. Homophobic stereotypes include stereotypes such as:

- Stereotypes that boys must be 'macho' and play certain sports or display certain attributes otherwise people will think that they are, or call them, 'gay';
- Stereotypes that if girls are sporty, competitive or assertive that they are not 'feminine' and not heterosexual;
- Expectations on boys to want to sexually harass girls and subscribe to certain views of women/girls in order to prove their heterosexuality; and/or

⁷ Living Together: British Attitudes to lesbian, gay and bisexual people in 2012, Stonewall.

⁸ The Stonewall School Report- the experiences of young gay people in Britain's schools in 2012 (a survey of more than 1,200 young people).

⁹ Undoing Homophobia in primary schools by the No Outsiders Project Team, Trentham Books, ISBN 978-1-85856-440-1.

- Expectations that boys will dislike reading, learn in certain ways or be less likely to engage with school because they are boys.
40. The solution to homophobia is not to ignore it and say that Equal Marriage is too controversial for schools, or that faith schools need an ‘opt out’.
41. Whatever the causes of racism, we recognise that it needs to be challenged. Teachers should be at the forefront of dealing with homophobia in all its manifestations within schools. Teachers need support and encouragement in order to be able to do this. It has an impact on children’s learning, their life outcomes and their life opportunities.

DO NOT TOLERATE INTOLERANCE

42. Equal Marriage does not extend the requirements to ensure schools contribute to LGB equality- schools are already under obligations to play a part in eliminating discrimination and achieving equality for LGB people in various ways. These current expectations include:
- Schools are covered by the Equality Act 2010 which requires them to promote equality on grounds of sexual orientation and foster positive relations—in order to this, teachers need to be encouraged to realise it is alright to talk about LGB people and rights in school.
 - Schools are prohibited from discriminating against LGB pupils in the way the school provides education for those pupils (section 85 Education Act 2010).
 - LGB staff are protected from discrimination at work and so their workplace should not be hostile, degrading or be an intimidating environment.
 - DfE guidance on anti-bullying makes it clear that homophobic bullying must be challenged- you can’t do this without talking positively about LGB people.
43. Teachers need to be given the confidence to know how to talk about sexual orientation in schools.
44. All teachers need to understand that talking about the diversity of families in the UK and about the existence of LGB people is important and will reduce homophobic bullying in the classroom and negative outcomes for LGB students, which in some cases have included suicides. All students in each class need to see positive role models and hear positive messages about LGB people. LGBT History Month has been a useful tool to give schools ideas of how to do this.
45. There was at one point huge stigma about inter-racial marriage which has reduced over time. Education is one crucial way to reduce prejudice but teachers need support, clarity and resources to support them in doing this.

February 2013

Memorandum submitted by UK Intersex Association (MB 07)

SUBMISSION SUMMARY

- The UK Intersex Association writes to express concern as to what the legislation will mean for physically Intersex people.
 - Not all Intersex people identify with the binary model of ‘male’ or ‘female’
 - If intersex people wish to marry will they have to conform to a specific gender?
 - How will legislation framed for ‘same sex’ couples benefit or deprive Intersex people?
- I write to the Public Bill Committee as the Director of the UK Intersex Association (UKIA). UKIA is a research, education and advocacy organisation which works on behalf of intersexed people and their families in the UK. We are also engaged in supporting our overseas Associates who provide social/medical care and advice to individuals with an intersex condition and their families.

The attention of the Committee is drawn to the fact that society has long underestimated the population figures relating to those born with an intersex condition, but using the lowest estimate there are at least 30,000 intersex people living in the UK at the present time.

For one group of intersex people whose identity was ambiguous at birth, the physical ambiguity has, in many cases prompted surgical intervention to reassign (for instance) an XY infant (genotypically male) to a female role or (less often) an XX (genotypically female) infant to a male role. Research has shown that such a radical intervention in defining a child’s social gender role is fraught with difficulty and mistakes can be made. A percentage of these ‘socially engineered’ children when they reach maturity, transition to the gender role opposite to the sex they were assigned to. This mirrors the route that is followed by transsexual people. In cases such as this, there is a belief amongst administrators and legislators that the social implications of such a procedure can later be resolved if necessary, by changing the birth certification on grounds that the sex of the child was misdiagnosed at birth.

In-practice however, it is extraordinarily difficult for such individuals to negotiate their way through the labyrinth of regulations that will lead to a revised definition of sex and the gender role associated with this. In most cases, intersex people are required to travel the same path as transsexual people with all the attendant complexity of psychometric evaluations; social assessments; provision of medical reports leading to hormone therapy and in some cases, the long wait for surgery.

There are many factors, both physical and psychological that determine and influence gender identity and its outward expression in societies throughout the world. UKIA's concern is centred on those often 'hidden' individuals who have a medically recognised congenital condition of 'intersex' and stand to lose or gain by the forthcoming legislation.

For some, the issues that their congenital condition creates, followed by reassignment surgery in infancy are unbearable and can only be resolved via medical intervention and transition back to their true identity. The Intersex individuals who transition could therefore fit into a binary model of male/female and if the legislation regarding same sex marriage becomes law, benefit from the same legislation covering homosexual and transsexual people. However, the focus of our current concern with regard to intersex people is what thought, if any, has been given to those individuals who do not identify as male or female. 'Intersex' is a term which usually describes a physical condition, but increasingly it is used by some individuals to define their gender identity.

One could argue that legislation to allow same sex marriage would automatically cover all bases. However, we are concerned that this may not quite work out as straightforwardly as supposed. It may mean that someone who refuses to identify as male or female does 'not fit' the legislation and could find themselves forced to choose a binary-based gender role if they wish to marry.

As the Liberal Democrat councillor and transgender rights campaigner Sarah Brown said: "The lack of marriage equality historically has created a huge legislative mess for trans people. We have to end our existing relationships if we want official recognition of our gender and anyone who doesn't identify as either male or female has to lie when getting married. The current laws presume that gender is a binary and there are no people who identify outside 'man' or 'woman'".

Despite UKIA submitting a detailed document to the GERBIL Committee and the subsequent legislation in 2004, experience has shown that the intersex community was not included. Intersex individuals are still (in 2013) unable to change their birth certificate, which has caused considerable social and emotional problems.

The fact that an organisation as large and active as UKIA has not been consulted in the current debate on same sex marriage may be indicative of either a lack of awareness of intersex people or the fact that no one has considered that some intersex people do not fit into a male/female binary model. UKIA requests that any forthcoming legislation relating to same sex marriage be inclusive of intersex people who do not conform to an identity based on a gender binary.

February 2013

Memorandum submitted by Joe O'Donnell (MB 08)

1. I am responding as an individual with a legal back ground who now writes for a legal journal. These views are my own and are not to represent those of my employer etc. I am a gay man who would not get a civil partnership due to the inherent, social if not legal, inferiority to marriage.

2. I welcome the fact that the Government intends to extend marriage to same sex couples. However, I was very disappointed to note that the Marriage (Same Sex Couples) Bill 2013 contains provisions that mean that same sex couples will be prevented from relying on adultery as a ground for divorce, or non- consummation as a ground for annulment. By excluding only same sex couples from these provisions the Government undermines its commitment to truly equal marriage.

3. *Part 3 of Schedule 4* to the Marriage (Same Sex Couples) Bill 2013 would amend S.1 of the Matrimonial Causes Act 1973, which deals with the divorce, so that only 'conduct between the respondent and a person of the opposite sex may constitute adultery'. Current case law states that adultery requires penile penetration of a woman by a man *as explained here*. Thus neither straight couples nor homosexual couples could currently argue that the fact that their partner had sex with someone of the same sex amounted to adultery. Setting aside the fact it seems very strange that same sex outside marriage does not constitute adultery for straight couples, why does that need to be explicitly spelt out in legislation for gay couples and not straight ones—deviating from true equality before the law?

4. The Bill would also amend S.12 of the Matrimonial Causes Act, so that the marriage of a same sex couple would not be voidable on the grounds that the marriage has not been consummated due to a spouse's incapacity, or a respondent's wilful refusal to consummate the marriage.

5. Possible reasons for the Government's proposed deviation from the idea of equal civil marriage are unappetising. Does the Government think that all same sex partners' sexual morals are so louche that the idea of a monogamous relationship is alien and therefore adultery is not needed to support a divorce petition? Does the Government think same sex couples' sexual appetites are so voracious that no same-sex marriage could possibly remain unconsummated? Or perhaps the Government just couldn't bring itself to contemplate the idea

of a court having to decide what constitutes consummation for a same sex marriage, or hearing the lurid details of an extra marital same sex affair? It's probably more likely that these proposals were added to the Bill as a result of a combination of these factors and an unwillingness to engage with what the Government perceives to be complicated issues. Regardless of the reason it undermines the good intentions behind the Bill.

6. What is telling is that the Government has introduced the Marriage (Same Sex Couples) Bill 2013 not the Equal Marriage Bill 2013. Surely supporting a Bill which would create truly equal marriage would be a better position for the Government than the current proposals which are likely to upset both supporters of the traditional definition of marriage and some in the gay community such as myself.

7. The Bill should be amended to create truly equal marriage by allowing divorce/annulments on the same basis.

8. It would also be very sensible to introduce provisions in the Bill amending the Matrimonial Causes Act to reform divorce across the board. A non fault based divorce, without any mention of adultery or non consummation, would not only avoid any difficult issues but it would make divorces much simpler for litigants in person. This is an extremely important consideration given the Government's savage cuts to legal aid for divorces. I am currently advising on my uncle's divorce, even though it is not within my area of expertise, because he is unable to get legal aid. He is not a rich man but a carer who works part- time to look after his disabled son.

9. The House has the opportunity to fix some major societal ills. I hope it will take that opportunity.

February 2013

Memorandum submitted by Katherine Rock (MB 09)

SUMMARY

I believe that marriage should be extended to same-sex couples as per the proposed same-sex marriage bill with amendments made to the section regarding divorce and annulment of same-sex married couples. I believe that religious same-sex marriages should be legal in accordance with the proposed opt-in option and, furthermore, that civil partnerships should be extended to include opposite sex couples.

1. My fiancée and I share a home and our lives together. We are in a loving, monogamous relationship and plan on starting a family in a few years. Our relationship is equal to that of many of our peers' whose marriages we have celebrated by attending their wedding, yet because my fiancée and I are both women, we do not currently have the option to become each other's wives.

2. This debate and consultation over same-sex marriage has sparked fierce views from both those who support and oppose it, however there seems to be one constant: the value of marriage to British society. It is the bedrock of a family and a symbolic and legal representation between two individuals.

3. The word marriage is powerful and meaningful, unlike that of civil partnership, which although confer the majority of legal rights of marriage, do not infer the same social status.

4. There seems to have been confusion amongst many debating against the case for equal marriage: homosexual couples, like myself and my fiancée, MAY have monogamous, sexual relationships with or without biological or adopted children, just as their heterosexual counterparts. These relationships are not just deep platonic friendships. I fear that the two separate institutions we currently have in the UK have perpetuated the misconceptions surrounding homosexual relationships, and whilst I welcome the increasing acceptance of such relationships, helped in part by the introduction of civil partnerships, gay couples will not be viewed as equals in British society until the law becomes equal and permits us to marry. In light of this I also feel uncomfortable with the discrepancies still left in the proposed marriage (same-sex couples) bill (Part 4, Divorce and Annulment of Marriage) between same-sex and opposite-sex couples with regard to the definition of adultery. A sexual relationship between individuals in a couple is part of marriage and therefore, in my opinion, any sexual contact between and married man or woman and any other individual (regardless of gender) should designate adultery. Whilst skirting around this issue and avoiding defining same-sex sexual relations may be easier legally, it falsely implies that this is not part of marriage for same-sex couples and unnecessarily treats same-sex and opposite-sex couples as two separate groups.

5. I am not religious and would therefore want a civil marriage, just as some of my heterosexual friends have already. I see no reason why equal marriage under the state (civil marriage) should not be legalised. Many deeply religious individuals who are opposed to this bill cite morality as a reason; this saddens me as whilst I suppose their right to religious freedom, they are seeking to quash my civil one.

6. Although it is a very separate issue (as marriage is not possessed by religion), this bill also focuses on religious same-sex marriage. I accept that religion is complex and each different religion or even different religious groups within those religions have different beliefs. However, given the wide ranging support (eg Quakers) and opposition (eg Catholics), I believe that religious organisations should have the right to conduct or not conduct marriages depending on whether they have opted in. I am satisfied that the bill's proposed

“quadruple lock” is more than sufficient to protect people’s religious freedom, just as religious organisations currently have the option of whether or not to allow civil partnerships to be conducted on their premises.

7. Finally, to give full equality to all couples, regardless of gender, I believe that civil partnerships should be extended to heterosexual couples. Whilst it is unfair to deny gay couples of the right to marry, likewise, heterosexual couples who wish to become civil partners should be extended this right too.

February 2013

Memorandum submitted by Brian H T Weller (MB 10)

SUMMARY

This relates to the proposed redefinition of marriage now before Parliament.

1. Definitions
2. Procreation
3. Redefinition clouds its essential component
4. Redefinition ignores personal experience
5. Confusion between equality and fitness
6. Redefinition lacks effective power
7. Redefinition will prove to be detrimental to society
8. Redefinition damages respect for marriage.

1. Words are important. They have specific meaning and import. **Marriage** has from time immemorial denoted the union of a **man** and a **woman** for life, to the exclusion of all others. Resulting from this union the woman is recognised to be the **wife**; the man, the **husband**. They become **spouses**. Within marriage, this union is consummated when the gender division between them is dissolved as they become one flesh, for which there are many biblical authorities whose historicity indicates that it is from ancient times before state or church came into being. Two ‘shall become one flesh’ Genesis 2:24, also quoted in the New Testament I Cor.6:16 and Eph.5:31. Consequently marriage is the bedrock of society regulating the approved and universally acknowledged means for male and female to express their full potential.

2. The procreation of **children** resulting from the union of husband and wife preserves the human race. The two become three, or more, and children grow up within the love and discipline of their parents. Then the man is acknowledged to be the children’s **father** as well as a **husband**; the woman becomes identified as a mother as well as a wife. Words over which there is no dispute about meaning and significance. This is so irrespective of life’s tragedies or the parties’ fitness and behaviour. Furthermore, the ancient definition of marriage contains within it the right and expectation that every child will benefit from the loving example and experience of a mother and a father.

3. Within this natural order adjectives are universally understood ...**man, woman, marriage, husband, wife, spouse, child, father, and mother**. Any attempt to turn same-sex partnerships into marriage creates confusion because no union across the gender divide is possible to the parties within a Civil Partnership—they are biologically unfitted for it, however equal they are under the Law. Procreation is not the intent of the parties, whereas in marriage it is clearly intended. The basis for marriage is attraction, commitment, love and loyalty between the sexes. Everyone recognises this because without our parents union we would not exist. Furthermore, **divorce** becomes possible when the sexual activity of one party extends to third parties and for lack of **consummation**. So sexual difference between the parties to a marriage is and has always been the essential component.

4. The proposal to redefine marriage cuts across every aspect of human affinity. It damages relations between people. It will create disharmony and dislocation because the God given fulfilment within marriage is absent for parties within Civil Partnerships and brings unwanted strains between these same parties and their respective families. The Law cannot deal with such strains because everyone understands that without parents they would never have been born. This knowledge of what is expected from a marriage will never be extinguished because it is self evident to us all.

5. If Equality is to mean anything, citizens should be able to choose between Civil Partnerships and Marriage. This Bill fails to provide for transition between these two states in either direction. It seeks only to move from the lesser to the greater. It cannot facilitate progress from marriage to civil partnership because it cannot change a party’s gender. Therefore it is self evident that what is under discussion is not equality but fitness to contract either union. Physiology and sexuality determines the appropriate choice and the law cannot change this.

6. Civil Partnerships provide the legal framework for two people to live together in a loving caring relationship, but the law enshrining this construct, poses difficulties and strains for relatives. Parties who wish their relationship to be equated to marriage cannot live as married people because they do not chose a partner

of the opposite sex. It is acknowledged that they wish to be treated as if they were married, but this Bill cannot make them fit to be so treated. They want to abandon ancient definitions not realising all the implications: the confusion and ambiguity it creates.

7. For example, have you Mother, thought about your daughter or granddaughter playing the role of a husband or father, or you Father, thought about your son or grandson playing the role of a wife or mother in this proposed 'new marriage'? Being contrary to nature it simply highlights the sexual ambiguity it would introduce. Additionally the passing of this Bill will confuse the public about what is good and right 'legal' behaviour within marriage and what will be the means to dissolve it. (As between homosexual and heterosexual partners it will mean different things.) It follows that for those living together outside of marriage and outside of civil partnerships this is, even now, of little consequence. In these circumstances it is impossible to promote good healthy relationships and whatever the law says, the outcome will be detrimental for society. Civil partnerships inevitably lead to the extinction of a family line. The new marriage cannot address this defect and for all the above reasons the result will have a detrimental effect upon society.

8. The progress of partners from civil partnership to marriage cannot provide them with the titles husband and wife. They will continue to be known as **partners**. The impossibility of naming them **husband and wife**, reveals these ancient descriptions of relationship to be fixed. Others may be added, but they cannot be removed. Ancient 'boundaries' are moved at society's peril. Marriage was given because the human race is composed of two sexes and unless male and female unite in marriage and other behaviours acknowledged to be inferior, our race is doomed. When the key sexual aspects of marriage are downgraded, all manner of questionable behaviours result and civilised society weakened. Respect for others, treating others as one wants to be treated is paramount, but the Bill being scrutinised fails to give marriage its true significance and is therefore both contrary to marriage and antagonistic to it.

February 2013

Memorandum submitted by Stuart Davis (MB 11)

1. BACKGROUND

I am a practising solicitor whose career over the last 20 years has entailed advising on numerous aspects of European Union law. I have degrees from universities in England, France and Germany and have worked in various capacities in legal private practice, industry, and government. I am currently preparing to submit a thesis for a Ph.D. in law at the University of Reading on the topic of 'Cross-Border Recognition of Same-Sex Marriages and Registered Partnerships under European Law'.

2. SUMMARY

I welcome the opportunity to draw the Committee's attention to what I see as two particular defects in the proposals. The Bill makes provision for the recognition of overseas marriages as marriages, rather than treating them as civil partnerships. However, the proposals do not go far enough in addressing issues of lack of capacity where one of the couple is domiciled in a country which does not recognise or permit same-sex marriage. This problem also arises for marriages celebrated in England and Wales, even as between UK residents, where neither of the couple is domiciled in the UK. The result is that many marriages involving UK citizens and residents could be found to be void, even as a matter of English law. I suggest a few minor amendments to Section 10 of the Bill which I believe could address this issue.

RECOGNITION OF OVERSEAS MARRIAGES

3.1. Section 10(1)(b) of the Bill provides that a marriage under the law of any country outside the UK "is not prevented from being recognised" under English law only because it is the marriage of a same-sex couple. That provision rightly does not go as far as to say that a same-sex foreign marriage *must* be recognised under English law in every case, and indeed paragraph 55 of the Explanatory Notes highlights that the effect of this clause is that such marriages "can" be recognised, not necessarily that they will be.

3.2. Whether an overseas marriage is recognised under English law depends on two factors. Firstly the marriage must have been properly performed under the laws applicable in the country of celebration (formal validity). Secondly the parties to the marriage must have had capacity to marry each other under their "personal" law, i.e. the law with which they are considered to be most closely connected (essential validity). The issue of which "personal law" applies is a complex question of choice of law rules, and different countries have different ways of treating this. Some countries (eg France) use nationality as the main connecting factor, whilst others, for example, use habitual residence. English law assesses capacity according to the law of the domicile of the parties immediately before the time of the marriage.¹⁰

3.3. The issue of capacity and choice of law for determining capacity is not addressed in the Bill. This may well be a deliberate choice. When the Law Commission considered these issues in 1987 it decided that

¹⁰ Rule 74 in Collins, *Dicey, Morris and Collins on The Conflict of Laws* (15th edition, Sweet & Maxwell, 2012), 939.

legislation was not needed to change or restate on a statutory basis the existing choice of law rules.¹¹ Had it decided otherwise, it might well have recommended the position taken in its initial report,¹² that “all issues of legal capacity should be referred to the law of the ante-nuptial domicile.” Hence the absence of specific provisions in the Bill simply has the result that capacity will continue to be assessed by reference to the law of the ante nuptial domicile. This will at least be consistent with the treatment of overseas heterosexual marriages.

3.4. However, unlike the case for heterosexual marriages, the failure to make specific provision regarding capacity will potentially cause very serious problems for same-sex couples who have concluded marriages (rather than registered partnerships) abroad. They might find that, for reasons relating to capacity under their personal law, they are not treated as being married under English law. These problems are exacerbated by virtue of the fact that, under Schedule 2, Part 3, of the Bill, s.213(1) Civil Partnership Act 2004 (“CPA”) will be amended such that an overseas marriage will no longer be converted into a UK civil partnership. This means that certain same-sex couples married overseas may find that they are not recognised in England as being either married or partnered.

4. COMPARISON WITH CIVIL PARTNERSHIP ACT

4.1. Before highlighting the problem that is caused by failing to address the issue in the Bill, it is worth comparing the existing situation under the CPA, which deals with capacity issues more explicitly in order to ensure the validity of civil partnerships based on registered overseas relationships.

4.2. Overseas relationships are recognised under the CPA as civil partnerships. Section 215(1)(a) CPA provides that such a relationship will only be recognised if, among other factors, the parties had capacity to enter into the relationship. The normal choice of law rules for marriage are modified by s.215, in the sense that capacity is to be determined according to the “relevant law”, defined in s.212(2) as “the law of the country or territory where the relationship is registered (including its rules of private international law)”.

4.3. This means that, if the partnership or marriage in question was legal in the jurisdiction where it was formed, English law will continue to regard it as being legal, albeit that it would convert it to a civil partnership rather than accepting it as a marriage. That will be the case even if the personal law of one of the parties would not itself recognise the relationship.

4.4. The effects of this are far reaching, and can perhaps best be explained by way of the following example:

4.4.1. Harry, a UK-domiciled British citizen, lived in London and then Paris for many years with his boyfriend Luca, an Italian, but they did not register a civil partnership, preferring to wait instead for an opportunity to marry. Luca’s career took him to Brussels for a few years on a temporary contract. Harry accompanied him, and after three month’s residence in Belgium the couple were then “habitually resident” in Belgium and eligible to marry under Belgian law, taking advantage of the rule under Article 46(2) Belgian PIL Code that Belgian law will ignore their respective incapacities to marry if at least one of them is habitually resident in Belgium. They celebrated their marriage whilst living in Belgium and, a few years later on the expiry of Luca’s work contract, they moved back to London.

4.4.2. A question arises as to the status of the couple under English law. Under Belgian law, the law of the place of celebration, both the formal and essential conditions of validity are met, and the marriage is valid. From a Belgian law perspective this is only because Belgium’s private international law rules require it to disapply the capacity rules under the couple’s respective personal laws (which, using nationality as the connecting factor as is the usual method in Belgium, would be English law for Harry and Italian law for Luca). Otherwise Belgian law would similarly have found the couple lacking capacity to marry. On returning to the UK, the CPA says the Belgian “marriage” is a valid overseas relationship because the couple had capacity to marry applying Belgian law including its private international law rules. It must therefore be treated as a civil partnership.

5. SITUATION UNDER THE BILL

5.1. The Bill would change this. Being a marriage (rather than, for example, a Belgian civil partnership or a French PACS), the relationship would no longer count as an “overseas relationship” under the newly amended s.213(1A) CPA, and would not be treated as a UK civil partnership. But, as the Bill is currently drafted, the relationship would also not be treated as a valid marriage.

5.2. This is because the normal rules as to capacity will now apply. In any proceedings in England or Wales concerning the validity of the marriage, the court will look to the personal law of the parties (determined, under English conflicts rules) by the ante nuptial domicile. If the court, as is likely, finds that Luca was domiciled in either Italy or France then, under the law of those countries, Luca lacked capacity to marry under his personal law. It is unlikely that English law would find that Luca had acquired a domicile of choice in Belgium after only three months residence there, particularly as the couple had no intention to settle permanently there. It is also similarly unlikely that an English court would find that he had acquired and maintained a domicile of choice in England, particularly after the couple’s move to France and thence to Belgium.

¹¹ Law Commission ‘Private International Law: Choice of Law Rules in Marriage’ (Law Com No. 165, HMSO July 1987)

¹² Law Commission Working Paper No.89

5.3. It might be supposed that Article 10(1)(b) of the Bill will solve this problem. However, whilst it might be sufficient to address any concerns as to whether Harry, as an English domiciliary, had sufficient capacity to marry Luca, it does not explicitly address the issue of Luca's lack of capacity. In saying simply that the marriage "is not prevented from being recognised" it is not clear that the normal rules as to capacity under personal law are mandatorily being excluded. At the most the provisions seem to leave a discretion to the court to decide whether or not to apply the rules of capacity, but arguably they do not even go that far. On one reading the provisions say simply that the marriage is not void "only" by virtue of being a same-sex marriage, but implies that validity still needs to be assessed through the application of the normal capacity rules. The result is that Harry and Luca's marriage might be treated as void, although the couple themselves may not become aware of this until many decades later, for example if Harry dies leaving his estate to his "husband".

6. COMPARATIVE APPROACHES

6.1. Similar issues have already been encountered in other jurisdictions to have introduced same-sex marriage. As already seen, Belgium inserted a new provision into its private international law code,¹³ a few years after introducing same-sex marriage itself, in order to ensure that same-sex marriages, (whether celebrated in Belgium or in another country allowing same-sex marriage) would continue to be recognised as valid notwithstanding that one of the parties might lack capacity under his personal law.¹⁴ A similar provision exists under Dutch law, which refers questions of capacity to the law of the place of celebration provided one of the future spouses is Dutch or habitually resident in the Netherlands.¹⁵

6.2. The proposals being considered in France also recognise the need to make explicit provision for capacity issues. The current draft law on French same-sex marriage¹⁶ would modify conflicts rules to add a new clause to the French Civil Code¹⁷ and apply a similar test as Belgium, disregarding issues of lack of capacity under personal law relating to same-sex marriage as long as the marriage in question was permitted by the law of the country where it was celebrated.

7. SOLUTION

A similar solution is needed for England and Wales. I believe this could be achieved by a simple amendment to Section 10(1)(b) along the following lines:

"10 Extra-territorial matters

(1) A marriage under—

- (a) the law of any part of the United Kingdom (other than England and Wales), or
- (b) the law of any country or territory outside the United Kingdom,

is not prevented from being recognised under the law of England and Wales only because it is the marriage of a same sex couple *or because one of the couple has been or is domiciled in, or is a national of, a country or territory which does not permit or recognise same sex marriage.*"

VALIDITY OF MARRIAGES CELEBRATED IN ENGLAND AND WALES INVOLVING FOREIGN DOMICILIARIES

8.1. Section 10(1) is limited in its application to marriages celebrated outside of England and Wales. The question therefore arises as to how capacity issues are to be dealt with for marriages celebrated within England and Wales.

8.2. Where one of the couple at least is domiciled in England and Wales at the time of the marriage, the rule in *Sottomayer v De Barros (No 2)*¹⁸ will ensure that the marriage is valid. This rule provides that "the validity of a marriage celebrated in England between persons of whom the one has an English, and the other a foreign, domicile is not affected by an incapacity which, though existing under the law of such foreign domicile, does not exist under the law of England".¹⁹

¹³ Loi du 16 juillet 2004 portant le Code de droit international privé concernant le statut personnel, Moniteur Belge 27 July 2004.

¹⁴ *ibid*, Article 46(1) : « les conditions de validité du mariage sont régies, pour chacun des époux, par le droit de l'Etat dont il a la nationalité au moment de la célébration du mariage »

ibid, Article 46(2) : « l'application d'une disposition du droit désigné en vertu de l'alinéa 1er est écartée si cette disposition prohibe le mariage de personnes de même sexe, lorsque l'une d'elles a la nationalité d'un Etat ou a sa résidence habituelle sur le territoire d'un Etat dont le droit permet un tel mariage »

¹⁵ Art 2(a) Neth. PIL(M)A, see Ian Curry-Sumner, *All's well that ends registered? The Substantive and Private International Law Aspects of Non-Marital Registered Relationships in Europe* (Intersentia, Antwerp 2005) 376.

¹⁶ Projet de loi ouvrant le mariage aux couples de personnes de même sexe', JUSC1236338L, 7 November 2012 < www.legifrance.gouv.fr > accessed 3 February 2013.

¹⁷ « Art. 202-1. - Les qualités et conditions requises pour pouvoir contracter mariage sont régies, pour chacun des époux, par sa loi personnelle. « La loi personnelle d'un époux est écartée, sous réserve des engagements internationaux de la France, en tant qu'elle fait obstacle au mariage de deux personnes de même sexe, lorsque la loi de l'Etat sur le territoire duquel est célébré le mariage le permet. »

¹⁸ (1879) 5 PD 94

¹⁹ North, PM and Fawcett JJ, *Cheshire and North's Private International Law* (13th edition, Butterworths, London 1999), 731, fn 18, quoting Collins and others, *Dacey and Morris, The Conflict of Laws* (12th edition, 1993), 679

8.3. Where, however, neither of the couple is domiciled in England and Wales but the marriage takes place here, there appears to be no provision in the Bill ensuring that the marriage will continue to be regarded as valid under English law where one of the couple comes from a country or territory which does not permit same-sex marriage. This is a serious omission.

8.4. Again it might be a deliberate policy choice designed to prevent couples from “forum shopping”, i.e. coming to England to marry deliberately to circumvent a prohibition on doing so at home. However, the solution to that issue should be to introduce rules mandating recognition for couples habitually resident in the UK, but to change the rules of eligibility for concluding a same-sex marriage in England and Wales to limit it to habitual residents or domiciliaries, as is the case in Belgium and the Netherlands.

8.5. The alternative, I submit, is that a significant number of marriages celebrated in England and Wales between couples who lack capacity to do so will subsequently be found to be void even under English law, and this will be the case even where the couple were not “forum shopping” but had a genuine connection to the UK. The problem is exacerbated by the difficulties under English law of changing a domicile of origin or acquiring a UK domicile.

8.6. For example, if two women, resident in the UK, but domiciled one in Poland and one in Belgium, celebrate a same-sex marriage in the UK, the Polish woman will lack capacity to marry under English law choice of law rules applying the law of the ante nuptial domicile. That issue may not be picked up at the time of the marriage, or even be a fact known to the couple, but has the potential to cause enormous problems later. Either the couple (or a third party) may be seeking to assert the validity of their marriage in an English court, and find it is not valid, or one of the couple may even be trying to assert they were not married in the first place. In neither case will the English court be able to ignore the potential lack of capacity caused by the fact that it is a same-sex marriage, given the absence of a corresponding provision to Section 10(1). The same of course also applies to couples from territories and countries outside the EU – if a Canadian marries a New Yorker in England the marriage will be valid under English law as both parties will have capacity to form a same-sex marriage, but if the Canadian marries a Texan the marriage will be void.

8.7. This is an issue of international credibility and public policy. Whilst English law cannot ensure that English marriages are recognised elsewhere in the world, it should at least ensure that such marriages are recognised here.

9. The solution again could be a simple further amendment to Section 10(1) so that it reads something as follows:

“10 Extra-territorial matters

(1) A marriage under—

- (a) the law of any part of the United Kingdom (*including a marriage under the law of* ~~other than~~ England and Wales), or
- (b) the law of any country or territory outside the United Kingdom,

is not prevented from being recognised under the law of England and Wales only because it is the marriage of a same sex couple [*or because one of the couple has been or is domiciled in, or is a national of, a country or territory which does not permit or recognise same sex marriage.*]

February 2013

Memorandum submitted by A P Jones (MB 12)

Dear sir or madam,

As a lay person in the Church of England who happens also to be gay I am disappointed with the Marriage (Same Sex Couples) Bill 2012–13. I write as a committed Christian who sees accepting all people as made in the image of God as central to that faith and believe that as a gay person I am still made in that image. Adopting this bill gives us another anachronistic law in that it allows same sex couples to marry but the laws around the consummation and dissolution of those marriages remains strictly heterosexual. It feels to me a bit like the Deed of Union in 1536 when Welsh people were ‘accepted’ as English citizens as long as they gave up their Welshness! However my primary concern is that in excluding the Church of England from marrying same sex couples the bill enshrines an inequality in law.

Equality is vitally important but it is more than people being treated the same, true equality is about acceptance and engagement of all. The difference here is that marriage has not been equally offered to same sex couples. Same sex couples have been asked to conform, change, squeeze into the mould of a heterosexual union. A shape that has changed through the ages and could be argued not even heterosexuals really fit into!

Marriage is not a fixed concept and has and can change. The idea of two people being in love and deciding to spend the rest of their lives together is new. The earliest recorded legal marriage is dated around 4000 years ago and for the majority of that time it has been about shaping and controlling societies: sealing treaties, maintaining and developing alliances, maintaining tribal or religious identity by marrying within the grouping. This romantic ideal of a marriage based on love and two equal partners is not even a hundred years old!

And here lies the disappointment for me in the gay marriage bill. The affirmation of marriage as the ultimate thing for all peoples, as a static timeless norm, being the must have for all couples. Same sex couples are invited to join in this tradition—but not as equal partners in that tradition. This is a heteronormative ideal that doesn't invite the experience and traditions of committed, long term same sex relationships into a conversation about loving partnerships it says join us, be like us, and be acceptable.

What the equal marriage bill doesn't say to LGBT people "you are accepted as who you are" it says "you are acceptable because you conform".

Marriage is older than the Church, but the Church maintains that "marriage is important," that it is something more than a contract and a legal agreement. Much more than that though, the Church holds marriage up as something that God and the community sees as important enough to bless. So enshrined in this bill is an inequality. It says that marriage is about two individuals that has very little to do with the rest of society.

I believe that marriage is about something more than a word or flowers and a party, it is about the recognition of the value of commitment by two people before a community of people (and God). Section 26A part (5) (page 5) states "Nothing in this section is to be taken to relate or have any reference to marriages solemnized according to the rites of the Church of England." This statement enshrines in law the exclusion of same sex couples from the benefits extended to heterosexual couples by the state church.

I recognise too the great importance of religious freedom too and to compel anyone, Church of England or otherwise, to do something which is counter to their convictions infringes on their equality. I urge therefore that the bill be amended so that Church of England priests might in the future have the option to marry same sex couples in the same way it is at their discretion to marry divorced people.

February 2013

Memorandum submitted by Nicholas Britton (MB 13)

Dear Sir/Madam

I am writing to voice my concerns over the Marriage (Same Sex Couples) Bill. I am writing as an individual with profound concerns about the implications for:

- (a) Civil Liberties and freedom of conscience
- (b) School Education
- (c) Further re-definitions of marriage
- (d) Children
- (e) The future of democracy in this nation

CIVIL LIBERTIES AND FREEDOM OF CONSCIENCE

There have been several cases already of citizens who have been persecuted because they held the view that this bill is ill judged and unnecessary. Thankfully, one of these has won his case in the ECHR. However, many people will be put in the position of risking losing their jobs and possible legal action simply for acting in conscience in not wishing to promote the idea of same-sex marriage. This goes against British tradition of fairness and free speech. It is a new kind of intolerance, which will inevitably lead to division and friction on ideological grounds.

SCHOOL EDUCATION

It is no secret that groups such as Stonewall want teachers to not only promote the idea of gay marriage but it also wants them to encourage children to resist the views of the parents and grandparents on the issue. This undermines the very concept of family. Surely it is the States responsibility to *educate*, not to *indoctrinate*. There are strong opinions on SSM on both sides and no amount of social engineering will abolish one opinion or the other. The state would do better to stay away from such issues altogether.

FURTHER RE-DEFINITION OF MARRIAGE

With the genie out of the bottle, the government will find it hard to resist calls for further re-definitions of marriage. I have no doubt that polygamy is next on the list, followed by demands from all kinds of groups. This will doubtless degrade and undermine the very concept of marriage as the building brick of society for the procreation and nurturing of children, which has served all kinds societies successfully for millennia.

CHILDREN

One of my deepest concerns however, is that nobody; I repeat NOBODY, seems to be discussing or considering the effect on children of same sex marriages. The bill is solely concerned with the wishes of the adults. It does not address the effect on children of these couples such as their emotional and social development. It is as if most politicians either don't care about this issue or have chosen to bury their heads in the sand. These children risk being abandoned to a social experiment the results of which nobody wants to even look at, let alone question

them. For a nation so concerned with child safety and welfare, the failure to even ask the question “What is the effect on children?” is frankly bizarre, contradictory, and negligent.

THE FUTURE OF DEMOCRACY IN THIS NATION

We all know that this bill was in no party manifesto, nor in the coalition agreement, and not in the Queen’s speech. In effect, nobody in the country voted for it. The governments consultation reneged on its promise to consider the 500,000 (now 640,000) signatories on the Coalition for Marriage website, thus producing a skewed and misleading result. Concerns over the ability of groups to make anonymous multiple submission to the consultation through the Governments own website were not heeded. The bill was then bulldozed through the Commons at short notice. The damage this has caused to trust in politicians and the political system in this country is incalculable. It seems that manifestos and election pledges should be treated with a great deal of scepticism by the electorate as there is a high probability they will be ignore or broken as the newly elected government creates a new agenda of entirely of its own volition.

In summary, I believe this bill has failed to address a number of vital issues, which should now be considered properly. I believe that the welfare of children should be considered as a matter of urgency, followed by the implication for our civil liberties. The government should also consider whether the role of education is the indoctrination of children with political ideas, and politicians should reflect on their own political integrity and whether through their actions they are causing irreparable damage to both the substance and image of our democratic system.

February 2013

Memorandum submitted by Rob Goldspink (MB 14)

MARRIAGE (SAME-SEX COUPLES) BILL—CONVERSION OF CIVIL PARTNERSHIPS—
PLACE OF REGISTRATION

1. In Northern Ireland and Scotland, but not in Wales, marriage law is a devolved matter; civil partnerships, however, were established in each of the jurisdictions by Parliament in Westminster under the Civil Partnership Act 2004, albeit by different Parts of the Act, and acting with the consent of the legislative bodies of those jurisdictions.

2. Accordingly, the Bill only seeks to introduce marriage for same-sex couples in England and Wales [cl. 17(1)]. However, in seeking to respect the devolution settlement, a group of people appears to be inappropriately hard done by.

3. Unmarried people/non-civil partners who are resident in England or Wales are able to marry under the provisions of the Bill. Existing civil partners who are resident in England or Wales are able to have their civil partnership converted to marriage [cl. 9], backdated to the date of their civil partnership [cl. 9(7)]. This only applies, however, to those whose civil partnership was registered in England or Wales [cl.9(1)].

4. Respecting the devolution settlement means that the decision not to allow residents of Northern Ireland or Scotland to convert their civil partnership to marriage is inevitable.

5. However, people whose civil partnership was registered in Scotland or Northern Ireland are prevented by the Bill from converting their civil partnership to marriage, even if they are resident in England or Wales, and have been for several years. The only route to marriage for these people would appear to be to dissolve their civil partnership, with all the difficulties and heartache that that, and the lack of continuity, entails.

6. Given that there was a significantly higher number of people registering their civil partnerships in the 12 months after their introduction, there may well be a number of people who found themselves living, temporarily, in Northern Ireland when civil partnerships were introduced, and wished to avail themselves of the opportunity to have their relationship recognised by society as soon as possible. Those people, if now resident in England or Wales, will be amongst the group to whom marriage will be forbidden without dissolving their civil partnership.

7. I cannot believe that this is what the drafters intended.

February 2013

Memorandum submitted by O B Hepworth (MB 15)

SUMMARY

This is a submission by a private individual in a Civil Partnership presently living abroad.

I have particular concerns that the Bill should address:

- the practical questions of international recognition
- other observations and questions relating to aspects of the Bill as a person who will be directly affected.

ABOUT ME

1. I am a British citizen, 54 years of age, and have been in a same sex relationship for 27 years (registered as a Civil Partnership (CP) since 2005). We presently live in Australia and have a second home in France, as well as still having family and property and other interests in the UK. We have been corresponding with the MP for our last address in the UK for some years about these issues. From an early date in our relationship we have always regarded ourselves as married and it is very pleasing that the Civil Law of England and Wales is coming to recognize this. I was brought up in and remain a member of the Religious Society of Friends, to which my direct ancestors have belonged for many hundreds of years. My view of my own marriage is grounded in my religious belief but I am aware that most marriages nowadays are not celebrated in religious ceremonies and I do not accept that marriage is of any greater significance to religious people than it is to the non-religious. It is somewhat frustrating that so much of the discussion about this Bill has revolved around religion with the risk that the real importance of the Bill, and those whom it really affects, are in danger of being lost sight of.

2. I am somewhat concerned to read that several members of the Committee are people who have gone on record as being fundamentally opposed to the central principle of the Bill and I wonder how that will work. I hope they will feel able to work positively to implement the purpose of the Bill.

3. I think it is very important for the Committee to restrict itself to consideration of the Bill to its principle purpose—providing for same sex marriages—and not to get distracted by issues that do not relate directly to this purpose, such as Humanist weddings, opposite sex civil partnerships and issues relating to other close family members sharing a home.

4. I wanted particularly to draw to the attention of the Committee the issues relating to international recognition, where there were serious problems with CP's, and which I feel need careful scrutiny. I also have some other points about the Bill in general.

5. INTERNATIONAL RECOGNITION

- (a) One of the serious problems associated with CPs (partly due to their being unique to the UK) was the difficulty of international recognition and understanding by foreign authorities. We personally faced huge problems because, for many years our CP was not recognised in France, except insofar as its existence debarred us from performing the French approximate equivalent (PACS), with the result that we faced huge and real disadvantage in French Tax. Even if we had wanted to we could not get out of our UK CP (because our relationship had not broken down) and thus we were stuck. The UK authorities were of no assistance, insisting that this was a French sovereign matter and even declared (against common sense) that the general non-disadvantage clause in the UK:France treaty for the avoidance of Double Taxation did not apply to us, based on the unlikely scenario that two French citizens in a UK CP would have been treated in the same way. The British Consulate in Paris even told us we would be committing bigamy if we entered into a French PACS at the same time as being in a UK CP. The only avenue we had was to get the French law changed, which took several years and an enormous amount of work and cost, and depended upon the goodwill of a number of French politicians. This problem would never have arisen had we been registered as 'married' as the France always recognized foreign same sex marriages.
- (b) I presume the likelihood of a similar situation should be greatly lessened with this Bill because of the universal understanding and recognition of marriage. However, France is only one example. There are over 200 other countries in the world and many more official languages. It is entirely possible that many of these countries, whilst they may have their own form of same sex union or marriage, will not give any status to either UK marriage certificates for a same sex couple any more than they do a UK CP and thus, because of this, special provision should be made for same sex couples. A couple in a UK CP or marriage, living abroad, may need to end that CP or marriage in order to be eligible to register a foreign partnership.

I think it is essential that:

- (c) It must be clear that what is being registered will be 'marriage' as defined in international private law and not something that could be confusing to foreign authorities eg 'gay marriage', 'same sex marriage' or any other variant of the name
- (d) The UK should make all possible efforts to ensure that foreign governments understand what is being done by the Bill (the wording of the Bill is somewhat obscure, with so many references to other Acts etc, and what it is all about may not come across very plainly in translation) and seek mutual recognition.
- (e) There should be either provision for ending a same sex Marriage or CP if it is necessary to do this in order to re-register the same couple in a foreign jurisdiction or provision that the marriage or CP will automatically terminate on the new registration (thus allowing for the issuing of a Certificate of No Impediment by the UK authorities)

OTHER INTERNATIONAL ASPECTS:

6. I wonder why schedule 6 (marriages overseas) is necessary & how does it differ from the law relating to opposite sex couples?

7. Why should marriages in UK Embassies/Consulates be subject to veto of the local authorities (1/2/c)—are they not sovereign British territory?

8. Please ensure there is provision for couples in UK CP's living abroad to convert to Marriage and that, the conversion shall not be subject to the veto of the country of residence (in our case Australia)

9. Sch 2/pt3—specifies that foreign same sex marriages will not be treated as CP's—'is it clear that they will be treated as Marriages?'

FEES & REGISTRATION

10. Conversion of CP's into Marriages—There should be no cost to the parties for converting pre-existing a CP to a Marriage—with respect to Parliament, it is not the fault of the parties to pre-existing CP's that they were not initially instituted as 'Marriages'

11. I note that the Bill provides that religious premises already registered for the conduct of marriages must be additionally re-registered for same sex marriages; I cannot see anything about fees for this second registration but would submit that, in the interests of fairness, no fee should be charged for this secondary registration as the secondary registration process is only imposed as part of the mechanism to ensure exclusion of those churches that don't wish to join in, not for the benefit of either same sex couples or the denomination seeking registration—thus it would be equitable for the cost to be borne by the whole community. (I note that a recent survey of Local Council charges for the registration of premises to conduct CP's on religious premises show that these are up to 16 times higher than the equivalent fees in respect of Marriages).

OTHER OBSERVATIONS

12. Consummation—plainly this is not a requirement for a marriage to be accepted as such but merely one possible justification, at the option of the parties, if they wish an annulment. It has become to a large extent outdated now most couples sleep together long before they contemplate marriage. Whilst I do not feel this is a serious issue for same sex couples I do not think this Bill is the time to consider its removal for all. In the interests of equality I see no reason why can't be included in the Bill; I do not see any need to define or standardise same sex consummation—perhaps consummation for same sex couples could be defined in accordance with reasonable expectations of the parties, or perhaps left to the Courts to determine. Incidentally I do not think it reasonable to require consummation (whether for same or opposite sex couples) if one party has a sexually transmittable infection (eg HIV) but equally there is no reason to prevent marriage in such cases

13. Adultery—again I don't think this is a vital issue but why exclude it? Define it or leave it to courts to decide. I refute the offensive suggestion made by some that its exclusion is because same sex couples are less capable or inclined to fidelity.

14. Presumption of parenthood—Sch 4 Pt 2—specifies that s.11 does not extend the common law presumption that a child born to a woman during the continuance of a marriage is also the child of her husband; Whilst I don't understand the implications of this provision I would say that there should be a presumption of parental responsibility on both parties to a marriage regarding any child born to or adopted by either party or born to a surrogate mother under and arrangement made by either party during the continuance of the marriage.

CIVIL PARTNERSHIPS

15. Whilst it may now be regretted that the CP name, which appears to be marriage in all but name, was ever invented in order to register same sex partnerships without recognising them as marriages, I agree that the Civil Partnerships regime needs to continue

- for those existing CP's who do not wish to convert to marriages
- in order for the recognition of foreign civil unions/partnerships which are not marriage

16. Whether it is necessary to continue to allow new CP's to be registered is more questionable. To some extent their continued existence may undermine the institution of marriage and obviously there is a cost to having a parallel system. However, as some countries still only have CPs and don't accept same sex marriages the retention of CP's may be necessary as same sex couples need more choice because of these problems.

17. The idea of allowing **opposite sex CPs** is misguided. There is a strong argument that there should be provision for some sort of registerable relationship (open to all couples regardless of sex) that is distinctly different from 'Marriage', perhaps akin to the French PACS (which, whilst always imposing mutual responsibility, is characterised by being a fairly unrestricted, registerable contract which can be tailored to suit personal circumstances, does not create formal family relationships and which can be started and ended under the normal law of contract), but CP's do not meet such a need. CPs are essentially 'Marriage' in all but name and the mere difference of name is insufficient reason to have a dual system with the consequent confusion, duplication of systems and costs. Being so similar, CPs would also threaten to detract from the special status of marriage and have more problems of international recognition. There is also a strong argument for some more legal protection/regulation of long term de facto relationships, particularly where children are involved.

But the present Bill is not the place to be dealing with what should be totally separate issues requiring much consideration, and the principle of which was not voted on at Second Reading.

RELIGIOUS FREEDOM

18. I dispute absolutely the notion that same sex couples wish to force churches to perform weddings against their beliefs; who would want to be married by a Church that does not welcome them? We all hope that churches will come to accept such couples but acceptance will be meaningless if it not given freely and in love.

19. Why is it necessary for the Bill through the civil law to superimpose uniformity and artificially enforce the power of the central authorities of each denomination on all member churches of each religious denomination? Is that not an unnecessary interference with religious freedom? Is it not proper to leave it to the private rules of each denomination as to whether they require uniformity and conformity in this matter?

20. Whilst I am not a member of the Church of England I somehow feel that it belongs to all of us. It is plainly not a private cult entitled to its own private conscience. One of its proudest boasts is that it is at the heart of, and serves, the whole community, whether members, believers or otherwise. Whilst I am sure it is correct that, even being the established church, no compulsion should be applied to the Church of England to serve the same sex community as they do others, it is a matter of public record that many of its member churches and individuals would wish to do so. I question whether the Bill should be placing additional hurdles in the way of allowing diversity and freedom of religious practice within the Church of England.

February 2013

Memorandum submitted by Erich Hou (MB 16)

A PROPOSED LEGISLATION WITH COMMENDABLE AIM BUT PROBLEMATIC MEASURES
(ERICH HOU²⁰)

SUMMARY

The Coalition government's plan to legalise same sex marriage before 2015 and to protect the religious freedom of those who are against the plan is commendable. However, the proposed Marriage (Same Sex Couples) Bill failed to strike a balance between the two. By giving same sex couples the right to marry and to conduct civil partnerships whilst restricting different sex couples to marriage only, the Bill does not only overcompensate the same sex couples, it also creates a new 'separate and unequal' system against the majority of the different sex couples. The only solution to achieve equality is to open up civil partnership to the different sex couples.

Secondly, although the 'quadruple lock' mechanism may protect the conscientious objectors, it inevitably infringe the religious freedom of those individuals within the Church of England (CoE) and Church in Wales (CiW) who wish to marry same sex couples and the same sex couples who wish to be married by them. Unlike other faiths, the CoE and CiW clergy have a common law duty to marry all parishioners and they also bear a statutory public sector equality duty to treat people alike regardless of their race, sex, sexual orientation or religious beliefs. This public sector equality duty comes from the principle and agent relationship between the State and the CoE and CiW clergy.

Based on the 'separation of State and Church' principle, the author suggested that the entanglement of the State and Church in the form of 'quadruple lock' and the lack of different sex couples civil partnership may not be able to pass the scrutiny of the proportionality (reasonableness) test of the domestic, European and international courts.

1. *Introduction*

The aim of the Coalition government to allow same sex couples to enter into the institution of marriage contains a legitimate and commendable aim, namely, to address the marital and familial inequality between the families composed of the same sex and different sex couples respectively. Despite the legitimate aim being commendable, the Marriage (Same Sex Couples) Bill contains two major fundamental inequalities according to the Human Rights Act 1998 and the Equality Act 2010.

Although Article 12 of the European Convention on Human Rights ('ECHR') does not compel states to provide same sex couples with the right to marry *per se*, states bear a positive obligation to protect same sex couples from discrimination on the ground of sexual orientation and it extends to ensuring that same sex relationships are treated like different sex relationships under Article 14 (equality).²¹ This stance is consistent according to the jurisprudence of the United Nations Human Rights Committee ('UNHRC') and the Court of Justice of the

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²¹ *Karner v Austria*, [2003] ECHR 40016/98. *Schalk & Kopf v Austria*, (2010) 53 EHRR 20.

European Union ('CJEU').²² The European Court of Human Rights ('ECtHR') normally allows States a wide margin of appreciation on the matters of family and marriage.²³ However this margin is discretionary under the Chamber and Grand Chamber judges of the ECtHR on a case-by-case basis and the ECtHR is not strictly bound by its own precedents.²⁴ This margin of appreciation therefore cannot be guaranteed by any member state's unilateral legislative measures.

Following this rule of law, it is possible that the proposed Bill may not pass the scrutiny of reasonableness (or proportionality) in the UK Supreme Court,²⁵ let alone the European or international courts.

2. *The Lack of Civil Partnerships for Different Sex Couples Created A More Than Necessary 'Separate and Unequal' Regime Against Different Sex Couples*

During the Parliamentary debate on 5 February 2013, MP Michael McCann suggested that the lack of access for different sex couples to enter into civil partnerships would create a new discrimination against the different sex couples.²⁶ Activist Peter Tatchell commented that 'this will mean that for the first time in British law gay couples will have legal privileges over heterosexual couples.'²⁷ Being in a civil partnership himself, MP Mike Freer stated that 'I am not asking for special treatment. I am simply asking for equal treatment.'²⁸ Legally speaking, the lack of different sex civil partnership will render the provision of same sex marriage 'more than necessary'.²⁹ It is disproportionate and unreasonable on the detriment of the majority of the different sex couples.

By giving same sex couples the alternative options of both marriage and civil partnership whilst restricting different sex couples to marriage only is not only separate but also unequal for those different sex couples who wish to conduct civil partnerships instead of marriages. This issue, if not addressed by the Public Bill Committee, will almost certainly appear in the form of 'wrecking amendment' in the third reading and the House of Lords debate, according to the history of the Civil Partnership Act 2004.³⁰

There are two main options to cure this new legal inequality, either opening up civil partnerships for different sex couples, or abolishing civil partnerships for same sex couples. Since abolishing civil partnerships will take away the detrimental reliance and existing rights and status of the 100,000 or so registered civil partners and some of them may not want to 'upgrade' their civil partnerships to marriages, opening up civil partnership for different sex couples is the only logical solution.

3. *The Quadruple Locks Infringe Individual Religious Freedom*

The second inequality comes from the infringement of religious freedom of the individuals within the Church of England and Church in Wales who wish to marry same sex couples and the same sex couples who wish to be married by them.

Marriage has different social-legal, cultural, economic and religious meanings in different times.³¹ For example in the 1866 case of *Hyde v Hyde*, the legal definition of marriage used to be a union between a man and a woman 'for life' under Christendom.³² This *Hyde* definition was supported by the Anglican churches in the past and it still coincides with the current definition of the governing body of the Roman Catholic Church. The common law definition of marriage in *Hyde* was upheld by the British court in *Wilkinson v Kitzinger*,³³ but abandoned by the Canadian courts in *Halpern v Canada* and *Hincks v Gallardo*.³⁴ As time changes, the 'for life' requirement in *Hyde* is no longer essential today within the Church of England and Church in Wales which tolerate divorce.³⁵

One of the hallmarks of a civilised society is the respect of individual religious and nonreligious beliefs and they form part of the humanity.³⁶ The historical persecution of Roman Catholic Christians in the UK taught us

²² *Young v Australia*, UN HRC Communication No.941/2000, [2003]. *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*, [2008] ECJ C-267/06.

²³ Jean-Paul Costa, 'On the legitimacy of the European Court of Human Rights' judgments', (2011) 7(2) E.C.L.Review, 173. Costa is a former ECtHR judge.

²⁴ *Goodwin v UK*, (2002) 35 EHRR 18.

²⁵ *Elloy de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing and Others Respondents* [1998] 3 W.L.R. 675, [1999] 1 A.C. 69. *R (Daly) v Secretary of State for the Home Department*, [2001] UKHL 26, para 27.

²⁶ *Hansard*, House of Commons Debate, 5 Feb 2013: Column 179-181.

²⁷ Catherine Fairbairn and others, 'Marriage (Same Sex Couples) Bill, Bill No 126 of 2012-13 Research Paper 13/08 31 January 2013', 56.

²⁸ *Hansard*, House of Commons Debate, 5 Feb 2013: Column 179.

²⁹ *R (Daly) v Secretary of State for the Home Department*, [2001] UKHL 26, para 27.

³⁰ *Hansard*, House of Lords Debate, 24 June 2004: Column 1409. Also see Lorraine Conway and Catherine Fairbairn, 'The Civil Partnership Bill [HL]: background and debate', House of Commons Research Paper 04/64, 7 September 2004, 43.

³¹ Stephanie Coontz, *Marriage, a History - How Love Conquered Marriage*, (Penguin, 2006).

³² *Hyde v Hyde and Woodmansee* (1866), L.R. 1 P.&D. 130.

³³ *Wilkinson v Kitzinger*, [2006] EWHC 2022 (Fam).

³⁴ *Halpern v Canada* (Attorney General), 65 OR (3d) 161. 10 June 2003. *Hincks v Gallardo*, 2013 CanLII 248 (ON SC). (Docket No. FS-11-367046, 7 January 2013).

³⁵ Mary Poovey, 'Covered But Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act', (1988) 14(3) *Feminist Studies* 467.

³⁶ *R (Williamson) v Secretary of State for Education & Employment*, [2005] UKHL 15, para 15.

that it is not the business of the courts and governments to intervene in matters of religion.³⁷ The separation of Church and State principle is not only a legal principle, it is also a hard learned lesson from the persecution of religious minorities.

Justice Munby stated in *Singh v Entry Clearance Officer* that,

*'Although historically this country is part of the Christian west, and although it has an established church which is Christian, we sit as secular judges serving a multi-cultural community of many faiths in which all of us can now take pride (...) So the starting point of the law is a tolerant indulgence to cultural and religious diversity and an essentially agnostic view of religious beliefs. A secular judge must be wary of straying across the well-recognised divide between church and state. It is not for a judge to weigh one religion against another.'*³⁸

Because the judiciary interprets the law, the same principle of 'separation of Church and State' is not limited to the judiciary only and it applies to the whole government including the legislative and administrative branches. This separation of Church and State is crucial on the debate of same sex marriage. According to the public consultation and parliamentary debate, there are conflicting religious views within faiths. The governing bodies of the Roman Catholic Church, the Church of England and the Muslim Council of Britain all consider that marriage is 'between a man and a woman'.³⁹ However, the Quakers, liberal Jews, Unitarians, and some individuals from the Church of England and the Church in Wales believe that marriage is a union between two individuals regardless of their sex or gender.⁴⁰ The government therefore must exercise its balancing judgement in deciding on the matter and the separation of Church and State principle forms the pinnacle of the balancing scales. Even the Bible stated that 'render therefore unto Caesar the things which are Caesar's, and unto God the things that are God's.' (Matthew 22:21)

Fundamentally it is the government's duty to recognise familial and marital relationships. The ECHR, CJEU and UN HRC jurisprudence suggested that states enjoy a wide margin of appreciation in deciding how to legally recognise marital and familial relationships as long as same sex and different sex couples are treated equally.⁴¹ It is also within the state's executive power to delegate part of its duty to any non-state third party.⁴² However, like race and sex, cases concerning sexual orientation are 'intensely scrutinised'.⁴³ On the issue of same sex marriage, the premise is that the State's public sector equality duty must be maintained.⁴⁴

Unlike other faiths, clergy of the Church of England and the Church in Wales are under a common law duty to marry all parishioners according to the Parliament Research Paper.⁴⁵ The fact is, the Clandestine Marriage Act of 1753 ('the Hardwicke Act') made it obligatory for all marriages to take place within the Anglican system except for Quakers and Jews.⁴⁶ Before the Marriage Act 1836, the Anglican clergy enjoyed the monopoly of officiating marriages.⁴⁷ Just like a post 1836 civil registrar of birth, marriage, civil partnership, divorce, and death, the clergy's job is to confer legal powers on behalf of the state upon a same sex or different sex couple to create, by certain specified procedures and subject to certain conditions, structures of rights and duties within the framework of the law.⁴⁸

A civil servant or state agent is different from a private individual. Thoreau called them 'machines'.⁴⁹ They are the faces and arms of the state and they represent the law. They bear the same fiduciary public sector equality duty as the state. Like states, the actions and inactions of these agents should be neutral, egalitarian and non-discriminatory. Just like a registrar with Roman Catholic faith is required to register divorce or a magistrate cannot discriminate against same sex couples on the matter of adoption,⁵⁰ there is little space for personal belief

³⁷ *R (Johns) v Derby City Council*, [2011] EWHC 375 (Admin), para 42; *R(E) v Governing Body of JFS and another (United Synagogue and others intervening)* [2009] UKSC 15, [2010] 2 AC 728, para 157; *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth, ex p Wachmann* [1992] 1 WLR 1036, 1042-1043; *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 1 WLR 909, 932.

³⁸ *Singh v Entry Clearance Officer New Delhi*, [2004] EWCA Civ 1075, para 67.

³⁹ Catherine Fairbairn, Oliver Hawkins, Nerys Roberts, Doug Pyper and Djuna Thurley, 'Marriage (Same Sex Couples) Bill, Bill No 126 of 2012-13 Research Paper 13/08 31 January 2013', 40. <<http://www.parliament.uk/briefing-papers/RP13-8>> Accessed on 6 February 2013. Also see statement from the Second Church Estates Commissioner Sir Tony Baldry, *Hansard*, House of Commons Debate, 5 Feb 2013: Column 143.

⁴⁰ *Ibid.* Also see statements from MP David Lammy, *Hansard*, House of Commons Debate, 5 Feb 2013: Column 192 & 193.

⁴¹ See *Karner, Schalk & Kopf; Young and Maruko*.

⁴² *Catholic Care (Diocese of Leeds) v The Charity Commission for England and Wales*, [2010] EWHC 520 (Ch).

⁴³ *Mendoza v Ghaidan*, [2004] UKHL 30. Also see *R (Carson and Reynolds) v Secretary of State for Work and Pensions* [2005] UKHL 37.

⁴⁴ §149(2) of Equality Act 2010, c.15. Also see §6 of Human Rights Act 1998, c.42.

⁴⁵ Catherine Fairbairn and others, 'Marriage (Same Sex Couples) Bill, Bill No 126 of 2012-13 Research Paper 13/08 31 January 2013', 6 & 46.

⁴⁶ Peter Coleman, *Christian Attitudes to Marriage*, (SCM Press, 2004) 205.

⁴⁷ *Ibid*, 207.

⁴⁸ *Islington London Borough Council v Ladele*, [2009] EWCA Civ 1357. *Eweida and others v UK*, (2013) App Nos. 48420/10, 59842/10, 51671/10 and 36516/10. Also see H.L.A. Hart, *The Concept of Law*, (2nd Ed., OUP, Oxford and London, 1961, 1997), 27 & 28.

⁴⁹ Henry David Thoreau, 'On The Duty of Civil Disobedience', in Thoreau, *Walden and Civil Disobedience*, (Harper and Row, New York, 1965) 253.

⁵⁰ *McClintock v Department of Constitutional Affairs*, [2008] IRLR 29.

in exercising the state power. This public sector equality duty does not prevent civil servants and state agents to exercise their freedom of religion when they are off-duty. They also retain the freedom to decide whether to remain in the state machine.

The Church of England and the Church in Wales are composed of individuals but churches are not individuals. In the matter of conferring legal powers on behalf of the state upon a couple, the individual clergy also act on behalf of the state. They are state agents in the broad sense. If the state's public sector equality duty cannot be maintained through the individual clergy horizontally, the state bears the ultimate and vicarious responsibility in this principle (State) and agent (clergy) relationship. This responsibility, if negated by way of any legislative locks or immunity, is subject to the highest form of scrutiny.

The reality is, not all individuals share the same view even within the same faith. The aim of the proposed 'quadruple locks' to prevent the Church from being sued not only violates the 'separation of Church and State' principle, it also inevitably infringes the individual freedom of religion of those who disagreed with the governing bodies of the Church. The 'more than necessary' quadruple locks indicate the entanglement between Church and State and they are not the least restrictive means. It will almost certainly attract scrutiny of any court, may it be domestic, European or international. Most likely, the legal challenge will even originate within the Church as it was in the case of *Halpern v Canada*.⁵¹

4. *Conclusion: The Aim Should Be Equal Marriage, Not Same Sex Marriage*

The government's aim to push for same sex marriage and to protect religious freedom is commendable. However, the proposed measure will inevitably violate the fundamental principle of equality. It will overcompensate same sex couples without reasonable justification. By protecting the Church through the 'quadruple locks', it will entangle the Church and the State even further. This entanglement will violate the individual freedom of religions of those who disagree with the governing bodies of the Church on the issue of same sex marriage. These are the concerns that the Public Committee should be aware of.

February 2013

Memorandum submitted by George Curtis (MB 17)

INTRODUCTION

I am a married heterosexual male aged over 70, and before I retired I worked in an environment that required the application of reason and logic.

My qualifications and my right to comment on this matter are embodied in the fact that I am British, and that I have children and grandchildren.

I am concerned about the future of my country, not just in a political sense but also in a social sense.

I see problems with this Bill that are of a logical and administrative nature.

I beg leave to make my views known to the committee.

SUMMARY

Although the objectives of the Bill may be considered laudable it does raise far reaching administrative, legal and social problems which could adversely affect the entire population.

These problems resolve around the term 'equal', which may be a desirable word but it does not reflect the practical differences between the various states of marriage which are surely obvious to all.

The Bill aims at creating two states of marriage but in fact creates three states of marriage. These are:

State 1, Traditional marriage between one man and one woman, entered into primarily because of love.

State 2, Same-sex homosexual marriage, also entered into primarily because of love.

State 3, Heterosexual same-sex marriage, entered into for reasons not related to love.

If all these three states of marriage are to be regarded as 'equal' then many problems arise, and these problems are described in the body of this submission.

THE PROBLEMS

1. *Heterosexual same-sex marriage.*

It is not possible to restrict same-sex marriage to loving homosexuals. It follows that heterosexuals may also indulge in same-sex marriage for reasons related to the benefits that ensue from being in a marriage.

⁵¹ *Halpern v Canada* (Attorney General), 65 OR (3d) 161. 10 June 2003. The applicants include the Metropolitan Community Church of Toronto, the Interfaith Coalition on Marriage and Family, the Canadian Coalition of Liberal Rabbis for Same-Sex Marriage, Canadian Human Rights Commission, NGOs and same sex couples.

- (a) Since heterosexual same-sex marriage would be entered into purely for short-term advantage it would not be taken seriously by the participants, this would degrade the meaning of 'marriage' for everyone.
- (b) No future government would be able to give advantages to married couples without also offering those same inducements and rewards to casual heterosexual same-sex marriages, which may take place simply to acquire those benefits.
- (c) It is possible to envisage many scenarios wherein heterosexual same-sex marriage could circumvent existing laws, or benefit from them. One example is of a male landlord marrying his male tenant; the rent he then received from his new 'spouse' would not be counted as income.

Recently announced changes to benefit rules regarding 'spare rooms' will no doubt encourage this form of abuse, wherein a man with a 'spare room' may well find a new 'spouse' to occupy it; the 'spouse' of course would make a 'financial contribution' to the new marriage.

Another example would involve heterosexual members of the armed services indulging in short-term same-sex marriage in order to obtain the entitlement to 'married quarters' and thus move out of the barracks to live in the freedom of a private house.

2. *Sibling or close-relative same-sex marriage.*

Since all same-sex unions are sterile there can be no objections to such unions on grounds of inbreeding, genetic degradation, or genealogy. The term 'incest' would not apply.

- (a) Laws forbidding the same-sex marriage of close relatives can only be founded on grounds of bigotry and prejudice, which could be challenged in a court.
- (b) Such laws envisaged in paragraph 2.a would be difficult to justify except on grounds of bigotry, but are essential. If same-sex marriage is to be permitted between close relatives, such as siblings or parent and adult child, then on grounds of equality that same privilege must be extended to traditional marriage. This would be unacceptable on genetic grounds.
- (c) Heterosexual same-sex marriage between close relatives may be engaged in to circumvent or take advantage of state benefits and laws related to inheritance, property rights, tax, housing and other possibilities.
- (d) Many people of a religious persuasion already find the proposed Bill offensive. If close relatives of the same sex were to be allowed to marry, the number of religious people objecting would increase. The government may regard religious objections as 'bigoted' but religious people are also citizens of this country and are entitled to their democratic view.
- (e) The result of same-sex marriage between siblings and close relatives being made legal would be seen as possibly or probably encouraging real incest.

CONCLUSIONS

The government may hope that the provisions of the Bill will not be abused, but given human nature, such a hope will be in vain.

In order to counter all the possible abuses of the provisions of the Bill the whole corpus of law would need to be revised, and these revisions must necessarily affect all marriages equally, thus changing the existing state of marriage as well as the proposed states.

The end result will be a quagmire of new laws and confused morality.

Once this Bill has passed into law the changes will be irrevocable.

Marriage, both as it has been traditionally known and between loving homosexuals, will be tarnished for all time by the casual nature of heterosexual same-sex marriage along with a complex web of unjust and prejudicial laws that try in vain to counter the abuse, and in the end, the three states of marriage will never be truly 'equal'.

This Bill, though laudable in its intent, will actually make the word 'marriage' meaningless.

February 2013

Memorandum submitted by Dr Sharon Kathleen Dane (MB 18)

RE: BRITISH COUPLE WITH CO-EXISTING UK CIVIL PARTNERSHIP AND CANADIAN MARRIAGE

The following evidence relates to Section 10 (Extra-territorial matters) and Section 9 (7) (a) and 9 (7) (b) of the Bill (Conversion of civil partnership into marriage) and how these provisions might apply for British same-sex couples who have both a UK Civil Partnership and an overseas marriage (in this case, Canadian).

1. BACKGROUND

1.1 My partner and I entered into a UK Civil Partnership in 2006, at the British Consulate in Brisbane, Australia. We are both British citizens. Our Civil Partnership is registered at Sutton Coldfield, the birthplace

and home town of my partner. Although we preferred to be married, this was the only option available to us. Over the years, however, we became concerned that if either of us were to die while waiting for the right to marry, the surviving partner would never be able to say we were married. Therefore, we decided to get married in Canada (to each other) while on holidays in that country. We married in Toronto, Canada in 2008 but have no connections with Canada. As Canada did not (and still does not) recognise our UK Civil Partnership, we were free to legally marry in Canada without ending our civil partnership.

2. CONVERSION OF UK CIVIL PARTNERSHIP

2.1 According to Section 9 (7) (b) of the Marriage (Same Sex Couples) Bill 2012–2013 regarding the conversion of a civil partnership, the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed. This, under normal circumstances, would mean the resulting marriage would be shown to have commenced 2 years prior to our Canadian marriage. However, there appears to be nothing in the current Bill that takes into account an overseas marriage conducted in the interim, involving the same civil partnered couple. Although Section 10 of the Bill (Extra-territorial matters) indicates that England and Wales would recognise our Canadian marriage as a marriage, this does not address the issue of having our marriage registered in Britain or the resulting impact on the status of our civil partnership. It appears that we cannot be simultaneously recognised as being in a civil partnership and a marriage. I assume, therefore, that our civil partnership would need to end, perhaps leaving us without any relationship registered in Britain.

2.2 The above outcome would be problematic for us for a number of reasons. Although we are currently living in Australia, we identify with our British citizenship. We both have current British passports and nearly all of my relatives, and many live in England. For us, it becomes important to be registered as married in a country in which we have legal rights and emotional ties. Although we are not sure if there are any UK or EU legal advantages for British couples with marriages registered in Britain versus abroad, that possibility is also of concern.

3. CLARIFICATION OF PROVISIONS PROVIDED IN THE LEGISLATION

3.1 Given our British ties and identity, and the fact that our UK Civil Partnership took effect well before our Canadian marriage, we wish to have our relationship registered as a marriage in Britain. What we would like to have made clear in the legislation is how this would be achieved, should the legislation become law. For example, could our Canadian marriage also be registered in Britain or would we be required to end our Canadian marriage to make way for the conversion of our UK Civil Partnership? If the latter were to be the case, this may involve costly divorce proceedings, particularly as we do not reside in Canada. I assume this is uncharted waters but there are very likely to be other British couples in our situation.

February 2013

Memorandum submitted by Erika Baker (MB 19)

SUBMISSION WITH REGARD TO THE MARRIAGE (SAME SEX COUPLES) BILL 2012–13

SUMMARY

It is important to ensure that the legal standing of children in same sex families is the same as that of any other child.

ARGUMENT

Thank you for giving me the opportunity to put forward my main concern about marriage equality.

I have two children from a previous marriage. I am now civil partnered and my partner and I are bringing up my two children. She has grown up children who have at various times found a home with us during personal crises and her 5 grandchildren are frequent visitors to our house.

What I have learned more than anything is that life for children in same sex relationships is comparatively more stressful than life for children in straight households but also more stressful than life for children from broken homes and those brought up by lone parents.

Children want nothing more than to fit in, to be the same as their peers. And having same sex parents is still a very new thing for society. It will not be long until it becomes normal and much more accepted. And the law has its own special role to play here.

In order to help our children and grandchildren, and those of the other 8000+ same sex parents in this country, I would urge you to ensure that the legal situation of our children is exactly like that for any other child.

That includes in particular that if they are born into a same sex household by whatever means or adopted by one, both their parents are considered in law as their true parents with equal parenting rights. Should those parents split up or should one of them die, there must be absolutely no question that the remaining parent has full parental rights exactly on the same footing that would apply to children in a conventional marriage.

Civil Partnerships, which are in law almost equal to marriage, have confirmed again that “equal but different” never works but that it always means “different”.

I urge you to ensure that the concept of full equality also applies to our children and that their legal standing will not be “equal but different”.

February 2013

Memorandum submitted by Highlight (MB 20)

HighLight is 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’—our documents on the different aspects of teaching and management. See our website below

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.

February 2013

Memorandum submitted by Nyal Davies (MB 21)

I am now retired but have pastured evangelical churches for many years and am concerned that there is not enough protection for ordinary Christians that are law abiding citizens. These people will not have changed their beliefs but if they act on them they might find themselves on the wrong side of the law. Beliefs are only beliefs if we act on them. The person that says that he believes and acts in the opposite manner doesn’t believe at all.

POINTS FOR THE SCRUTINY COMMITTEE—MARRIAGE (SAME SEX COUPLES) BILL 2012–13

1. It is part of the argument for this bill that sexuality is innate. It is something built in. This innate sexuality will vary from the 100% homosexual through, the bisexual, the norm to the true homophobic. I presume that the 100% homosexual would find the idea of being involved in heterosexual sex distasteful or even abhorrent. I have no problem with that. However I would likewise want the 100% homosexual to realise that there are others whose make up puts them on the other side of the distribution curve. I would not describe myself as homophobic and would be quite happy to have homosexual people as my friends however my sexuality is such that I find the thought of being involved in homosexual sex as something that fills me with horror. This is no academic matter but one of make up and emotions. At a single stroke teachers, counsellors and many other social workers or even registrars will find that the thoughts and feelings created by their innate sexuality is unacceptable and find themselves subject to disciplinary action by the bodies that control their profession. Some protection is needed for such people.

2. I have been a pastor of a church and have some considerable knowledge of how Christians think and what they believe. All the information as to Christian doctrine and practice is in the Bible. There is no other source of information. Some denominations add church traditions to this but in all cases the Bible was there first. Many Christians believe it to be the word of God and for them any statements in it trump all other opinions. Along with the Ten Commandments came a host of rules. Included are one or two statements that say homosexuality is wrong therefore to them it is wrong. I myself cannot use that argument as I believe Jesus freed us from adherence to the Mosaic law but try as I might I cannot get out of the New Testament statements that say the same thing. Committed Christians are law abiding people who seek to follow Jesus’ words in loving God, their neighbours and even their enemies. It is these people that, if we are not careful we will put on the wrong side of the law. They will not have moved in their opinion but, at a stroke, the law will have moved to the other side. The big broad wide church of Christ is made up of individuals. Most of those are not priests or ministers but ordinary people. The bill may seek to protect churches but it will be individuals that have no protection.

3. Many people who provide wedding services will get out of it by saying that they are booked up and will not be available on the day. Committed Christians do not like lying and it will be the honest ones, those that say, 'I cannot lie,' who will find themselves on the wrong side of the anti-discrimination laws. We will thus be penalising the more honest of our citizens for their views.

4. A minister of a church may not be forced to marry a homosexual couple but his church organist needs the same protection and a church secretary who is a professional photographer cannot refuse a job at their wedding.

5. The C4M petition now contains over 637,000 signatures. That is a very large number for a petition and almost undoubtedly represents the viewpoint of many more people. These are the people who I am concerned about as stated above. To date their views seem to have been largely ignored. It is thus large number of people who would have trouble with their conscience and find themselves in court.

6. As a Christian I would not go into a Muslim mosque and cause trouble. Although I do not believe what they believe I respect the fact that they have their religion and would not seek to disrupt their activities or cause them trouble. We have however seen a number of cases where homosexuals have set out to cause trouble for people they know don't approve of their lifestyle. Can't we phrase the law so that people who deliberately set out to manoeuvre normally law abiding citizens onto the wrong side of the law will not be heard?

February 2013

Memorandum submitted by Lesbian and Gay Lawyers Association (MB 22)

OBVIOUS OVERSIGHTS IN THE FIRST DRAFT OF THE BILL

LAGLA

1. The Lesbian and Gay Lawyers Association (LAGLA) membership is made up of solicitors, barristers, judges and academics. LAGLA is not a lobbying organisation, but a group of lesbian and gay lawyers who meet for seminars, conferences and social gatherings. We have more than 600 members with a wide variety of legal backgrounds and feel, therefore, that we are uniquely placed to respond to the Government's proposals. LAGLA was founded in 1994 and responded to the Government consultation on civil partnership and then to the draft bill in 2003/04, in what we understand was regarded as a helpful way all around.⁵² We responded to the Government's consultation on equal marriage in 2012.⁵³

2. The LAGLA Marriage Working Group has identified three areas where it seems to us the drafting of the Bill is clearly mistaken because some issues, either legally or logically, were not fully considered.

3. These are as follows:

1. Conversion and the ability of civil partners to get married (clause 9)
2. Jurisdiction for divorce (Schedule 4, Part 4)
3. Private Legal Instruments (Schedule 4, part 1)

CONVERSION OF CIVIL PARTNERSHIPS TO MARRIAGES (CLAUSE 9)

4. It is not entirely clear what the effect of clause 9 would be. There are essentially two possibilities:

- (a) Clause 9 provides an accelerated and simplified conversion procedure for those couples who have a civil partnership contracted in England and Wales, but any other civil partners can still get married; or
- (b) Clause 9 provides for conversion for those particular couples only and other civil partners cannot get married.

5. This depends on whether s.11(b) of the Matrimonial Causes Act 1973 is interpreted as preventing a marriage or civil partnership between a couple who are already married to or civil partners of each other.

6. The relevant part reads:

- "11. A marriage celebrated after 31st July 1971 shall be void on the following grounds only, that is to say:
- (b) that at the time of the marriage either party was already lawfully married or a civil partner;"

7. Of course a marriage between two people who are already married (or a civil partnership between a couple who are already civil partners, eg because they registered a partnership in another country) would be a nullity at worst, but could be a fall-back position for them if they are unsure about whether their original marriage or civil partnership is recognised in England. For those couples it matters little and so it has not mattered in English law so far and courts did not have to decide on this conclusively. In *Mark v Mark* [2004] EWCA Civ 168 Thorpe LJ obiter said that the wedding of Mr and Mrs Mark at the Merton register office was a nullity as they had already married in Nigeria (paragraph 7).

⁵² e.g. *Hansard* 12 Oct 2004 : Column 199

⁵³ <http://www.lagla.org.uk/Resources/Documents/LAGLA%20RESPONSE.pdf>

8. S.11 does not, however seem to prevent a couple going through the ceremony. No doubt many couples do, for example, because they (perhaps hastily or when they had no money to throw a big party) married in a register office quietly and later have a religious wedding. Legally of course the later wedding has no effect and their marriage starts at the earlier point.

9. The question is, however, how to treat a couple who are civil partners and then get married because they want to change their status. Under a strict interpretation of s.11, they would then not be married, whether they so married in England or elsewhere. Hence if b. above is correct, then only those civil partners who registered originally in England and Wales can get married. All other same-sex couples can never get married at all under English law. If they did get married abroad, English law would not recognise that. This is because clause 9 would not apply to them. The Act would prevent them from ever getting married.

10. This cannot be the government’s aim and is contrary to the purpose of the whole Act. It should, therefore be possible for those couples to get married.

11. It seems that the drafters may have been overly cautious not to offend Northern Ireland here. However, this is unnecessary because:

- same-sex marriages from outside the UK are treated as civil partnerships in Northern Ireland under the Civil Partnership Act 2004 as they are now and will continue to be so treated;
- same-sex marriages from England and Wales will be treated as civil partnerships in Northern Ireland by virtue of paragraph 2 of schedule 2.

12. As drafted therefore the effect seems to be as follows:

<i>Civil Partnership registered in</i>	<i>Treated under English law as</i>	<i>Marriage in</i>	<i>Treated under English law</i>	<i>Treated in Spain etc</i>	<i>Treated in NI as</i>
England	CP	England (s. 9 conversion)	Marriage	Marriage	CP
NI	CP	Not possible in England			
NI	CP	Spain	CP	Marriage	CP
Germany	CP	Not possible in England			
Germany	CP	Spain	CP	Marriage	CP

13. The effect of this would be that couples who marry in Spain or elsewhere are treated as civil partners for English law but as married in many other countries. Should their relationship break down the English courts could only dissolve the civil partnership but not the marriage, which means they may continue to remain married. It is unlikely that such couples would appreciate the law in this area and may therefore have “limping” marriages.

Example 1

Bernd (German) and Claudio (Portuguese) have been a couple since they met in 1995. They have always lived in London. When registered partnership came in under German law, they registered there in 2002. In 2015 they get married in Portugal. Under English law their German registered partnership is a civil partnership. The Portuguese marriage is a nullity. Although they now tick the boxes for “married” etc (rather than civil partnership) on all forms, under English law they are not married. So for Portuguese law they are a married couple but for English law they are not.

In 2025 their relationship breaks down and they want to get divorced in England. Their lawyers discover, however, that they are not married under English law and that the English courts can only dissolve the civil partnership. The only courts which could deal with the divorce are the Portuguese courts. However, Portuguese law takes the view that under Brussels II the Portuguese courts do not have jurisdiction because only one of the spouses is Portuguese and neither is habitually resident in Portugal. As a result they have a dissolved civil partnership under English and German law but under Portuguese law they remain married.

14. We do not see that there is either a need to prevent any couples who are already civil partners from getting married or from marriages from elsewhere not to be recognised under English law.

15. We further think that the provision in clause 9(7) should apply to all same-sex couples who get married (whether in England and Wales or elsewhere) and who were in a civil partnership before.

16. We also take the view that as it stands, there is a danger that the drafted conversion falls foul of EU laws preventing discrimination on grounds of nationality as it would disproportionately affect foreign EU nationals living in England and Wales.

17. This would also then remedy one of the remaining iniquities for trans people.

Example 2

Janet is a trans woman. She is English. She does not yet have a gender recognition certificate. In 2011 she meets Darren, who is from Derry in Northern Ireland and they register a civil partnership in Derry register office in the first week of January 2013. They both live in Oxford. In 2015 Janet is ready to apply for her gender recognition certificate. However, in order to do so (and because there can be no opposite-sex civil partnership), the law requires her and Darren to annul their civil partnership (s.50(1)(d) of the Civil Partnership Act 2004). They are not able to convert their civil partnership into a marriage under clause 9 of the Marriage (Same Sex Partners) Act 2013, nor get married before the application for a gender recognition certificate because they registered their civil partnership in Northern Ireland, not knowing that this would prevent them from remaining a legal couple.

18. We do not have a problem with provisions that only couples who originally registered a civil partnership in England and Wales can avail themselves of an administrative and perhaps cheaper conversion procedure while those who registered elsewhere would have to go through a full wedding ceremony. This may in fact be prudent to afford international recognition.

Thus clause 9 should be amended as follows:

- Delete subsection (1) and replace it with:
 - (1) Nothing shall prevent a couple who are already civil partners from getting married, whether anywhere in the United Kingdom or elsewhere.
- In subsection (2) delete the words “within subsection (3)”
- Delete subsection (3)
- In subsection (7) insert: “When a couple who are already civil partners get married or” at the beginning of the subsection.
- In subsection (8) delete the definition of “England and Wales civil partnership”.

OTHER POINTS

19. Of course our preference would be for same-sex marriages to be recognised throughout the UK. Therefore Schedule 2 should be amended to reflect that. There is of course precedent for that. An English couple both aged 16 can elope to Gretna Green and get married there without their parents’ consent, which is then fully recognised elsewhere in the UK.

20. If there is a deeming provision that treats marriages between parties who were previously civil partners as starting on the date of their original civil partnership registration, we can see no reason why this should not also apply to those unfortunate couples who had to annul their civil partnerships or marriages in order for one of them to obtain a gender recognition certificate. There is no reason why this should not apply retrospectively.

JURISDICTION

21. Jurisdiction for divorce, nullity etc. is governed by EU law, namely Council Regulation 2201/2003 (Brussels II, also called Brussels IIA or II bis). The EU definition of marriage is not limited to opposite-sex couples. This is not something which EU law defines, but which is left to Member States. This is clear from the reports on the proposals for a Regulation on Marital Property Regimes (as can be seen on the relevant website).⁵⁴

22. Therefore, Parliament has no competence to legislate in this area and therefore Part 4 of Schedule 4 of the Bill would be entirely ultra vires and without effect. It should therefore be deleted.

23. The only part which should be preserved from it (and which would not currently be ultra vires) is 2(1)(c) of the Schedule. Since this only applies in any event if no other EU Member state has jurisdiction, this would be a fall-back position allowed under Article 7 of the Brussels II Regulation. Of course there is no reason why this should not apply to opposite-sex couples too, who may (in very rare cases, mainly applying to Filipinos) find themselves in the same situation.

Schedule 4 should therefore be amended as follows:

- Substitute paragraph 6 with the following:
 6. In subsection (2) (b) after “and” insert (i) and after “begun” insert “; or (ii) the couple are of the same sex and married each other under the law of England and Wales and it appears to the court to be in the interest of justice to assume jurisdiction in the case”
- Substitute paragraph 7 with the following:
 7. In subsection (3) (b):
 - (1) after “and” delete “either of the parties to the marriage”
 - (2) after “(i)” insert “either of the parties to the marriage”
 - (4) after “begun;” delete “or”;

⁵⁴ http://ec.europa.eu/justice/civil/family-matters/marriage/index_en.htm

- (3) after “(ii)” insert “either of the parties to the marriage”
- (3) after “death” insert “; or (iii) the couple are of the same sex and married each other under the law of England and Wales and it appears to the court to be in the interest of justice to assume jurisdiction in the case”
- Substitute paragraph 8 with the following:
 - 8. In subsection (4):
 - (1) after “only if” delete “the petitioner”
 - (2) after “(a)” insert “the petitioner”
 - (4) after “begun;” delete “or”;
 - (3) after “(b)” insert “the petitioner”
 - (3) after “date” insert “; or (c) the couple are of the same sex and married each other under the law of England and Wales and it appears to the court to be in the interest of justice to assume jurisdiction in the case”
 - Insert paragraph 9:
 - 9. Amend s 55, subsection 2 of the Family Law Act 1986 as follows:
 - (1) after “and only if” delete “, either of the parties to the marriage to which the application relates”,
 - (2) after “(a)” insert “either of the parties to the marriage to which the application relates”,
 - (3) after “(b)” insert “either of the parties to the marriage to which the application relates”,
 - (4) after “(c)” insert “either of the parties to the marriage to which the application relates”,
 - (5) after “ending with the date of death” insert “; or (d) the two people concerned married each other under the law of England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case”

PRIVATE LEGAL INSTRUMENTS (SCHEDULE 4, PART 1)

24. This provides:

1(1) Section 11 does not alter the effect of any private legal instrument made before that section comes into force.

25. It is not clear what this means. One interpretation is that this only relates to wills etc which have already taken effect (ie where the testator has died). However, the wording is “made”, so the more likely interpretation would be that this provision would have the effect that any references to “spouse”, “marriage”, “husband”, “wife” etc. in documents such as wills and deeds of trust, shall be interpreted as referring to an opposite-sex marriage where that document is executed prior to the entry into force of the Act. Indeed, this is the position set out in the Explanatory Notes to the Bill.

26. No doubt this is intended to reflect that person who made the will etc. could not have intended references to those terms to include reference to same-sex spouses as these were not possible at the time document was executed.

27. However, it is our view that not providing for references to spouses etc in existing documents to mean same-sex spouses may lead to confusion, and/or unintended consequences:

Example 3

Dorothy is the settlor of a discretionary trust executed in 2005. The beneficiaries of the trust are named as children of Dorothy’s family, their spouses and children. Dorothy provides a letter of wishes to her trustees setting out that she wishes all classes of beneficiaries to be treated equally.

At the time of setting up the trust, not all of Dorothy’s children were married. Her son David subsequently marries his same-sex partner following entry into force of the Act. Dorothy had intended all spouses of her children to benefit and assumes David’s husband will too. If the trustee makes a gift to David’s husband he will be acting ultra vires his powers, notwithstanding he is exercising his discretion in line with what the settlor would have done had she be making the decision herself. Depending on the nature of the trust deed, it may or may not be a simple matter to change the document so as to include same-sex marriages.

Example 4

Harold makes a will in 1995 leaving legacies to his grandchildren and their spouses. At the time of making the will, some of the grandchildren are not married. Harold’s granddaughter, Susan, marries her partner Julie. Susan predeceases Julie, however Julie and Harold become very close such that Harold is very keen for her to benefit when he dies. He decides he does not need to change his will as it already refers to his grandchildren’s spouses.

Example 5

If Susan and Julie had instead registered a civil partnership in 2012 and Harold was by then unable due to his mental state to change his will before he finally died in 2017, Julie would also have lost out as the law seems to presume that the testator would inevitably have been hostile to and therefore excluded same-sex partners. The only way this could possibly be remedied would be by way of a costly application to the Court of Protection for an authorisation of a statutory will.

28. In our view, references to spouse etc in existing private legal instruments should be interpreted in light of the new Act (ie to include same-sex marriages) and this should be explicit within the Act. Not doing so could in fact have the consequence of putting same-sex spouses in a worse position than civil partners:

Example 6

Harriet makes a will in 2005 leaving her estate equally to all her children (or if they predecease her their spouse or civil partner if they survive them, or if not their children). Not all of her children are married. In 2015 Jacob marries his partner Adrian. Harriet checks her will and notes that spouses are included. However, Part 1 of Schedule 4 of the Act would mean that same-sex spouses are not included as the will was made before the Act came into force. So if Jacob dies before Harriet, Adrian would not get a share of Harriet's estate. However, if Jacob and Adrian had instead entered a civil partnership, he would have received a share.

29. It is not for the state to second guess what the intention of a testator or settlor would have been and certainly not presume that they were hostile to same-sex marriage. If they mean to exclude a certain group of spouses, be those of a certain religion, race or sex, they should say so explicitly.

30. We therefore take the view that instead provision should be made so that in all those private legal instruments which have not yet fully taken effect (eg wills where the testator is still alive when the Act comes into force; trusts which have not yet been finally distributed) civil partners (and for the avoidance of doubt same-sex spouses) should be included wherever there is a reference to spouse etc. Furthermore, provision should be made for any reference to a civil partner in an existing document to include a spouse in a same sex marriage.

February 2013

Memorandum submitted by Liberty (MB 25)

ABOUT LIBERTY

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

LIBERTY POLICY

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at <http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

INTRODUCTION

1. Liberty is delighted to give its support to the Marriage (Same Sex Couples) Bill. The Bill marks a historic moment for civil liberties in Britain and we commend this Government for recognising that, in a democratic, tolerant and truly free society the love and commitment shared by gay and straight couples must be given equal respect and status under the law. Protecting civil liberties means ensuring that every man and woman has the freedom to pursue personal fulfilment. For many people that means sharing their life with another safe in the knowledge that their union will be equally recognised and respected. Liberty is also deeply committed to religious freedom. Whilst we acknowledge the real concern felt by some about the impact of these changes on a treasured institution, we do not believe that this Bill represents any threat to our proud tradition of religious tolerance or the place of marriage within in our society. Those worried that that faith groups will be coerced into performing ceremonies can rest assured that the Bill has been carefully and cleverly crafted to ensure full protection for freedom of conscience and belief—both for those faith groups who may wish to conduct same-sex marriages and for those who don't wish to do so. We also believe that by opening marriage up to same-sex couples, we can only enhance the valuable role this evolving institution has, and continues to, play in our society and our lives.

2. In the first section of this briefing we seek to explain the new and balanced system set out in the Bill. Liberty strongly supports the proposed legislative scheme with one small but significant exception. Paragraph 12 below includes a suggested amendment to the Bill which would provide equality for same-sex and mixed-sex couples in the provision of survivor benefits in occupational pension schemes. In Part 2 we place the Bill in the context of

the gradual realisation of rights and freedoms for gay people in this country. Part 3 explores the balance the Bill strikes between two crucial aspects of our human rights regime, the right to freedom of religion and protection from discrimination. Annex 1 to this briefing considers the approach taken by democracies throughout the world to legalising gay marriage and Annex 2 contains the legal opinion of leading QC, Karon Monaghan, confirming that religious groups have nothing to fear from the legalisation of gay marriage.

PART 1—THE BILL EXPLAINED

3. Clause 1 legalises same-sex marriage, whilst setting out the first two in a series of measures providing absolute protection for faith organisations which do not wish to solemnize same-sex unions. Subclause 1(3) acknowledges the requirement that the Church of England’s Canon Law be compatible with the general law of the land. It provides specifically that Canon B30, which describes Holy Matrimony as “*a union between one man and one women*”, is to be accommodated and respected within the new legal landscape. Subclause 1(4) responds to the duty placed on clergy of the Church of England and the Church in Wales at common law to marry their parishioners. It makes clear that this duty does not apply to same-sex unions.

4. Clause 2 sets out further protection for religious organisations, or individual members of the clergy, that do not wish to perform functions in connection with same-sex marriages. No faith group or individual representative of a faith group will be required to solemnize the union of a gay couple, nor to take any of the administrative steps necessary to facilitate a same-sex marriage, such as applying to register a building for those purposes. Subclause 2(5) inserts a new provision into the *Equality Act* 2010 which places beyond doubt the fact that no aspect of our equality law can be interpreted as requiring religious groups or their representatives to carry out or otherwise facilitate a marriage they object to because it involves a same-sex couple.

5. The Bill sets out different regimes for those marriages which can only be carried after an effective opt-in and those ceremonies for which no opt-in is required.

6. Clause 3 deals with marriages for which no opt-in is required, namely any secular ceremony, including that of a same-sex couple, carried out on approved premises (for example a hotel or stately home which has a license to conduct marriages) or in the office of a Superintendent Registrar. Where one or both parties to a marriage are housebound or detained, secular ceremonies can be conducted in the main place of residence of the detained or housebound individual without an opt-in. The only marriages which can be solemnized on religious premises without an effective opt-in are marriages between a man and a woman.

7. Clauses 4 and 5 deal with marriages for which an effective opt-in is always required, namely same-sex marriages in places of worship or other religious ceremonies. The Church of England and the Church in Wales are specifically exempted from this regime. New section 26A to be inserted into the *Marriage Act 1949*, stipulates that an application for registration of a building for the religious marriage of a same-sex couple requires the consent of a faith group’s governing authority. Schedule 1 sets out detailed provision for the registration of religious buildings. Clause 5 makes specific provision for those types of religious same-sex ceremonies which may take place in buildings which have not been registered. This reflects the provision made under the *Marriage Act* for different sex marriages and is restricted to Quaker and Jewish marriage ceremonies, and marriages involving a couple one or both of whom are detained or housebound (save that the Church of England is exempted from this scheme). In all cases the consent of the governing authority of the religious group in question is still required.

8. Clause 6 makes specific provision for same-sex ceremonies in military chapels save for marriages in accordance with the rites of the Church of England and the Church in Wales. Clause 7 makes provision for the registration of marriages when one member of a couple is seriously ill, but again the Church of England and the Church in Wales are exempted from the scheme.

9. Clause 8 deals specifically with the Church in Wales. The Church of England has the power, through a Measure passed by its Synod, to amend primary legislation, providing that its Measure is subsequently approved by both Houses of Parliament. As a result, should the Church change its official position on same-sex marriages at some point in the future, there is a clear avenue by which it can trigger legislative reform. As the Church of Wales has no comparable power, clause 8 sets out a scheme whereby, if the Church were to change its position on same-sex marriage, the law could be changed without the need for primary legislation.⁵⁵

10. Clause 9 establishes that those couples who wish to do so may convert their civil partnership into a marriage. The clause makes provision for regulations which will set out the detailed process for conversion. Clause 10 read together with Schedule 2 make provision same-sex marriages carried out abroad to be recognised in this country.

11. Clause 11 is designed to ensure that once married, same-sex and opposite sex couples have the same legal rights and privileges, with Schedule 3 making some specific amendments to this effect. Subclause 11(5) makes clear that the equivalence positions set out in the Bill do not affect Measures, Canons or subordinate legislation of the Church of England.

12. Liberty is disappointed to see that Schedule 4, Part 6 of the Bill makes provision concerning occupational pensions which seeks to perpetuate an inequality facing same-sex couples currently contained in the *Equality Act*

⁵⁵ By Order of the Lord Chancellor with regard to the terms of a resolution by the Governing Body.

2010. Schedule 9, paragraph 18 of the *Equality Act* provides that withholding a benefit, facility or service which would be available to a married person to somebody in a civil partnership in relation to rights accrued before civil partnerships were introduced in this country, does not constitute discrimination; the Bill would extend this discriminatory provision to same-sex spouses. This is an unnecessary and counterproductive anomaly in a Bill which otherwise makes landmark progress in equally respecting the rights of gay people.

Amendment to provide for equal pension rights

Schedule 4, page 33, line 40, leave out clause 15 and insert:

(1) Schedule 9 of the *Equality Act 2010* (work: exceptions) is amended as follows.

(2) Omit sub-paragraph 18(1).

Effect

This amendment will remove the exemption from the *Equality Act 2010* which allows employers and pension providers to treat married couples and civil partners differently as regards pension rights attributable to service prior to 5th December 2005. It would further remove a provision of the current Bill which extends this inequality to same-sex married couples.

Briefing

The Government justifies its decision to sanction discrimination in the provision of occupational pension benefits on the grounds that an equalisation of treatment would entail an unforeseen retrospective cost to pension schemes.⁵⁶ This assertion sits uncomfortably with the inherently speculative nature of pension provision. No pension provider could accurately predict how many individuals within a pension scheme will be gay, never mind the number that will marry or form a civil partnership with an individual who outlives them by a significant period of time. Pension providers are constantly dealing with uncertainties around the length of life, the possibility of illness, the decision to marry and many other issues. Further, given that on the Government's own analysis we are considering only one third of occupational pension providers, we suggest that overall additional liability to schemes will be minimal. By contrast the implications for those individuals affected—people who have paid into their pension schemes in the same way as other employees—will be very grave indeed.

In January this year, Liberty's client, John Walker, won his legal battle to secure equal pension benefits for his civil partner. The Employment Tribunal found that an occupational pension scheme providing that John's civil partner could only benefit from pension rights accrued since the time when civil partnerships became available in the UK was directly discriminatory. If John had married a woman at the same time as he married his civil partner, she would have been entitled to £41,000 per annum had she survived John; the pension scheme sought to restrict the sum available to John's civil partner to £500 per annum. The Tribunal relied on the judgement in *Maruko v VdDB* (1 April 2008), where the Grand Chamber of the European Court of Justice considered the right of a same sex partner to receive a "widow's pension" when their partner dies. The court concluded that treating married and same-sex couples differently in this respect, where national law recognised the relationships as equivalent in other respects, breached the Framework Directive on Equal Treatment in Employment (2000/78/EC).

Prior to representing John before the Employment Tribunal Liberty also succeeded in persuading Foster Wheeler, a major multi-national company, to give civil partners of its employees the same pension benefits awarded to spouses. In this case the couple in question had lived together for 40 years and had entered into a civil partnership in 2006. Under Foster Wheeler's pension scheme surviving spouses were entitled to 50% of a member's pension upon their death, but, relying on the exemption in the Equality Act, civil partners were originally excluded. After filing an action on behalf of our clients in the Employment Tribunal the company changed its policy. Liberty can see no justification for continuing to permit discrimination in this area. If the law remains as it is for civil partners and this inequality is extended to those in same sex marriages, it will be several decades before gay couples achieve real equality in relation to pension provision.

Repeal of the exempting provision in the *Equality Act* and the removal of Paragraph 15 from Schedule 4 of the Bill would ensure we achieve true marriage equality.

13. Clause 12 marks another positive move for equal treatment in this country. Read together with Schedule 5 it would amend the *Gender Recognition Act 2004* to ensure that where transsexual people change their legal gender, they do not need to end their marriages.

PART 2—TOWARDS EQUAL TREATMENT: THE BILL IN CONTEXT

14. Last year marked the 60th anniversary of the conviction of Alan Turing, Second World War hero and father of computer science, on the grounds of his sexuality. In 1952, Turing was sentenced to chemical castration; he took his own life two years later. We have come a long way since the days when this kind of inhumane, homophobic mistreatment formed a part of our legal system. Over the past six decades a slow but steady march has brought us to a point where we can take the final, vital steps towards inclusivity and respect.

⁵⁶ *Equal Marriage: The Government's Response*, December 2012, paragraph 9.19.

15. The emergence of a drive to reform a criminal justice system which sanctioned people for their sexuality—imposing cruel and humiliating punishments—began in the 1950s following a series of much published prosecutions of individuals for homosexual activity in the UK. The Wolfenden Committee, appointed by Churchill’s Government in 1954, concluded that the criminalisation of homosexuality was an unnecessary infringement of civil liberty and recommended the decriminalisation of private sexual activity between two men aged 21 or over.⁵⁷ Unfortunately the Committee also recommended harsher penalties when the same activities were carried out in public places.⁵⁸ Nevertheless, the Report marked a milestone in the history of gay rights—before its publication in 1957 there had been little public discussion of the criminalisation of men because of their sexuality. Reform of our discriminatory criminal law, however, did not make its way on the political agenda until the mid-1960s. In 1965, Conservative whip Lord Arran advanced a motion in the House of Lords calling for the implementation of the Wolfenden Committee’s recommendations and the following year Labour MP Leo Abse sponsored a Private Members Bill which aimed to decriminalise private sexual activity between men aged 21 or over. The *Sexual Offences Act* received Royal Assent in 1967 with Harold Wilson’s Labour Government allowing a free vote on the Bill. The legislation passed with significant support from the Labour benches, but also from a number of Tory MPs including future Prime Minister Margaret Thatcher.⁵⁹

16. During the 1970s, Liberty (then the National Council for Civil Liberties) launched reports into institutionalised discrimination in our public services, with investigations into police harassment of gay men, reports on attitudes in the teaching profession and test case litigation to establish the right of a lesbian midwife to become a health visitor.⁶⁰ In 1981, following intensive lobbying by Liberty and others the *Criminal Justice (Scotland) Act 1980*, came into force, extending the decriminalisation provisions of the *Sexual Offences Act 1967* to Scotland. Parallel provision was made in Northern Ireland the next year following the decision of the European Court of Human Rights in *Dudgeon v United Kingdom* which found that continued criminalisation represented a violation of the right to respect for private and family life.⁶¹ Civil liberties activists continued to push for an end to exemptions to decriminalisation in the military and in 1984 Liberty delivered a body blow to homophobic censorship when it successfully challenged the decision of Customs and Excise Officers to confiscate one third of the stock of ‘Gay’s the Word’ bookshop in London.⁶²

17. Whilst significant strides were made during the 1970s and the early 80s the gay community remained marginalised. In response to a backlash against the publication and availability of gay literature in libraries, section 28 of the *Local Government Act 1988* came into force. The section prohibited local authorities from ‘promoting’ homosexuality or ‘the acceptability of homosexuality as a pretended family relationship’. In 1984 a modest proposal by the Criminal Law Revision Commission sought to equalise defences to the offence of buggery for homosexual and heterosexual offences.⁶³ In 1985 the Howard League for Penal Reform published an influential report recommending that provisions on consent for men and women be equalised.⁶⁴ Liberty and other civil liberties and equality groups continued to lobby for equality in the age of consent and a purging of remaining discriminatory offences from the statute book. In its draft Criminal Code published in 1989, the Law Commission added its voice to the debate recommending that the age of consent for gay men be lowered to 18.⁶⁵

18. In 1994, under John Major’s Conservative Government, the *Criminal Justice and Public Order Act* made its way through Parliament. Conservative MP Edwina Curry tabled amendments which would have equalised the age of consent at 16; sadly the amendments were narrowly defeated notwithstanding substantial cross-party support including from figures such as former Prime Minister Tony Blair, former leader of the Liberal Democrats Paddy Ashdown and current Foreign Secretary William Hague.⁶⁶ Following a free vote in the Commons a new age of consent of 18 was settled upon with support from the Prime Minister and most of the Cabinet. The 1994 Act also decriminalised homosexual acts in the armed forces or on merchant ships.⁶⁷ Two years later the European Commission of Human Rights ruled admissible the application of a 17-year old who sought to argue that continued inequality in the age of consent breached his right to respect for his private life and his right not to be discriminated against.⁶⁸

⁵⁷ See analysis on the National Archives webpage: <http://www.nationalarchives.gov.uk/cabinetpapers/themes/before-after-wolfenden-report.htm>.

⁵⁸ See analysis on the Parliament website: Regulating sex and sexuality: the 20th century, available at: <http://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/sexuality20thcentury/>.

⁵⁹ See historic Hansard, Commons debate, 3rd July 1967. Available at: <http://hansard.millbanksystems.com/commons/1967/jul/03/clause-1-amendment-of-law-relating-to>.

⁶⁰ See Liberty’s gay rights timeline, available at: <http://www.liberty-human-rights.org.uk/campaigns/a-decent-proposal/gay-rights-timeline.php>.

⁶¹ (1981) 4 EHRR 149. The relevant legislation was an *Order in Council*, the *Homosexual Offences (Northern Ireland) Order 1982*, which came into force on 8 December 1982.

⁶² See Liberty’s gay rights timeline, available at: <http://www.liberty-human-rights.org.uk/campaigns/a-decent-proposal/gay-rights-timeline.php>.

⁶³ House of Commons Research Paper 98/68, 19 June 1998: ‘Age of Consent for Male Homosexual Acts’, page 11.

⁶⁴ House of Commons Research Paper 98/68, 19 June 1998: ‘Age of Consent for Male Homosexual Acts’, page 11.

⁶⁵ House of Commons Research Paper 98/68, 19 June 1998: ‘Age of Consent for Male Homosexual Acts’, page 13.

⁶⁶ See historic Hansard, House of Commons, 21 February 1994, available at: <http://hansard.millbanksystems.com/commons/1994/feb/21/amendment-of-law-relating-to>.

⁶⁷ Section 146.

⁶⁸ Application of Euan Sutherland, see Liberty’s Gay Rights timeline, available at: <http://www.liberty-human-rights.org.uk/campaigns/a-decent-proposal/gay-rights-timeline.php>.

19. The pace of change picked up with a New Labour Government, which secured many significant advances in equality. In 1998 the *Human Rights Act* received Royal Assent, providing that all the rights and freedoms it protects be secured without discrimination.⁶⁹ The next year Liberty represented Graeme Grady and Jeanette Smith who were dismissed from the armed forces for their sexual orientation. The European Court of Human Rights ruled that their dismissal together with the intrusive investigations conducted by the armed forces were unlawful.⁷⁰ As the Human Rights Act came into force in 2000, the *Sexual Offences (Amendment) Act 2000* finally equalised the age of consent at 16, in the same year the European Court of Human Rights ruled that the very existence of legislation prohibiting consensual acts between more than two men in private was inconsistent with the UK's obligation to respect the right to private and family life.⁷¹

20. Progression towards equality continued a pace. In 2002, the *Adoption and Children Act*, secured the right of gay couples to adopt a child, the following year brought the long overdue repeal of section 28 of the *Local Government Act 1988*, accompanied by the *Employment Equality (Sexual Orientation) Regulations 2003*, providing significant protection against discrimination in the work place. The following year in a Human Rights Act ruling, the House of Lords found that that the *Rent Act 1977* could be read compatibly with the protections enshrined in the Convention on Human Rights, ensuring that where one member of a same-sex couple dies, the remaining partner has the same rights as the surviving member of an opposite sex couple and would become a statutory tenant by succession.⁷² 2004 also saw the *Civil Partnerships Act* receive Royal Assent and from 2005 gay couples, for the first time, were granted the right to formerly recognise and celebrate their relationship in the form of a civil union granting many—although not quite all—of the rights available to married couples. 2007 brought the *Equality Act (Sexual Orientation) Regulations* which, along with the 2003 Regulations, were ultimately placed on a statutory footing as the outbound Labour Government pushed through the *Equality Act 2010*. Under the 2010 Act it is illegal to discriminate on the grounds of sexual orientation in the provision of goods or services, in education, when selling or letting land, or when exercising public functions.⁷³ The Act also places an 'equality duty' on public bodies to proactively promote equality.⁷⁴ In October 2012 Liberty clients Michael Black and John Morgan won their case after being refused a room at a Berkshire Bed and Breakfast because they are a gay couple and in January this year another Liberty client, John Walker, was successful before the Employment Tribunal in his claim against discrimination on the grounds of sexual orientation under his occupational pension scheme.⁷⁵

21. The newly formed Coalition Government picked up the baton almost immediately, proving once again that respect for civil liberties and a rejection of discrimination has roots which run deeper than the ebb and flow of party politics. Liberty welcomed the Coalition's plans to bring into force a provision of the *Equality Act 2010* providing for civil partnerships to take place on religious premises⁷⁶ and briefed in favour of provisions of the *Protection of Freedoms Act 2012* providing for defunct and discriminatory records of offences between consenting men over 16 to be disregarded by potential employees and others.⁷⁷ Whilst Liberty lobbied for these records to be removed entirely as opposed to disregarded, these new provisions undoubtedly went some way towards addressing a grave historic injustice. The Marriage (Same Sex Couples) Bill is further evidence that this Government is ready to advance the course of equal treatment in this area.

22. The Government's decision to allow same-sex couples to marry is not a mere semantic shift. Liberty supported the introduction of civil partnerships as an important first step, but a regime which is 'separate but equal' is not enough. In order to stop social marginalisation which persists, the recognition and respect which flows from marriage must be extended to gay couples. Liberty wholeheartedly supports the Bill and we were delighted to see overwhelming cross party support for equal marriage at Second Reading in the House of Commons.

PART 3—BALANCING RELIGIOUS FREEDOM AND EQUALITY IN THE BILL

23. Liberty firmly believes that in British society there is room for both religious freedom and equal treatment, with both principles finding legal protection under our Human Rights Act. There is no reason for these two values, which have deep roots in our history, to come into conflict. The beauty of this Bill lies in its commitment

⁶⁹ Article 14 of the European Convention on Human Rights as incorporated into UK Law by the Human Rights Act 1998.

⁷⁰ (1999) 29 EHRR 493.

⁷¹ In the case of *ADT v UK* App. No. 35765/97, Judgment of 31 July 2000. The European Court of Human Rights found that the existence of legislation prohibiting consensual sexual acts between more than two men in private, and the applicant's consequent conviction for gross indecency, violated his right to respect for his privacy.

⁷² *Antonio Mendoza v Ahmad Raja Ghaidan* [2004] UKHL 30.

⁷³ Section 29, Equality Act 2010 makes it unlawful to discriminate in the provision of services (s29(1), Equality Act 2010) and in the exercising of public functions (s29(6), Equality Act 2010).

⁷⁴ Section 149.

⁷⁵ See Liberty's Press Release at: <http://www.liberty-human-rights.org.uk/media/press/2012/liberty-client-wins-legal-fight-for-equal-pension-benefi.php>.

⁷⁶ Liberty's Response to the MOJ Consultation on Civil Partnerships on Religious Premises, available at: <http://www.liberty-human-rights.org.uk/pdfs/policy11/liberty-s-response-to-the-moj-consultation-on-civil-part.pdf>.

⁷⁷ See Liberty's Report Stage Briefing in the House of Lords, available at: <http://www.liberty-human-rights.org.uk/pdfs/policy12/liberty-s-report-stage-briefing-freedoms-bill-hol-jan-2012-.pdf>.

to embracing equal treatment within a treasured social institution whilst steadfastly safeguarding religious freedom.

Freedom of thought, conscience and religion

24. Article 9 of the Human Rights Convention⁷⁸ provides that everyone has the right to freedom of thought, conscience and religion. The right encompasses the freedom to change your religion or belief, either alone or in community with others, and to manifest your religion or belief, in public or private, in worship, teaching, practice and observance. The right can only be limited in law where it is necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁷⁹ The right is given extra weight by section 13 of the Human Rights Act, which provides that courts must have particular regard to Article 9 when considering any issue which might affect the exercise, by a religious organisation or its members, of the right to freedom of thought, conscience and religion. The effect of these two provisions is a robust protection for an important tenet of the British tradition of liberty. The role of the State under this right is simply to encourage religious tolerance.

25. Liberty has long advocated for the protection of religious freedom. There is no doubt Article 9 has played an important role in promoting and protecting religious freedom in modern Britain. In 2008 Liberty represented 14-year-old Sarika Singh, a pupil at Aberdare Girls' School who was excluded from classes for wearing her kara—a plain bangle widely accepted as a central tenet of the Sikh race and religion. Using the Human Rights Act, we successfully defended Sarika's right to wear her kara in the wider pursuit of freedom of thought, conscience and religion for everyone in Britain.⁸⁰ Similarly the European Court of Human Rights, in a landmark and hugely welcome judgment handed down earlier this year, found that a Christian British Airways employee banned from wearing a cross at work had suffered a violation of her right to freedom of religion and a breach of non-discrimination provisions under Article 14 of the Convention. The Court held that:

the refusal by British Airways between September 2006 and February 2007 to allow the applicant to remain in her post while visibly wearing a cross amounted to an interference with her right to manifest her religion ... a fair balance was not struck ... this is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others.⁸¹

26. Liberty was also recently granted permission to intervene in the challenge to the French law which has outlawed the wearing of clothing to conceal the face—the so-called 'burqa ban'.⁸² In our submissions we have outlined the importance of the right to freedom of religion which, given the Convention's historical impetus, needs to be carefully guarded.

Equal treatment

27. The Human Rights Convention was written following one of the most brutal periods of discriminatory treatment in modern global history.⁸³ The principle of non-discrimination, enshrined comprehensively in the Convention, the Human Rights Act and our equalities legislation, provides for a person not to be discriminated against, whether on the grounds of race, sex, religion, language, sexual orientation or political opinion. Article 14 of the Convention prohibits discrimination in the application of human rights. While the article does not give a free-standing right to non-discrimination, it does require that all the other rights protected by the Human Rights Act can be secured without discrimination. In this way, freedom from discrimination is the key to the effective protection of human rights for all, meaning, for example, that protection against torture does not apply only to people of certain faiths, the right to liberty is not dependent on nationality and the right to protest is not dependent on an individual's political views.

Protection from legal challenges

28. While the right to religious freedom is not absolute (the Convention provides for this right to be interfered with where it is proportionate in order to, among other things, protect the rights and freedoms of others), allowing for same-sex marriage does not dilute the protection available to those organisations which are opposed to carrying out such ceremonies. Even before we consider the robust set of protections for faith communities at the centre of this Bill, our human rights framework provides extremely strong protection for religious freedom. In

⁷⁸ The European Convention on Human Rights has been incorporated into domestic law by the Human Rights Act 1998.

⁷⁹ Article 9(2).

⁸⁰ *Watkins-Singh, R (on the application of) v Aberdare Girls' High School & Anor* [2008] EWHC 1865 (Admin) (29 July 2008).

⁸¹ *Eweida and Others v United Kingdom (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)*, paragraph 94. For the full European Court of Human Rights judgment, visit: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#%22itemid%22:\[%22001-115881%22\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115881#%22itemid%22:[%22001-115881%22]).

⁸² *SAS v France*, Application No. 43835/11.

⁸³ For a history of British involvement in the drafting of the European Convention on Human Rights and the events which led to its creation, see Osborne, P and Norman, J (2009) *Churchill's Legacy: The Conservative Case for the Human Rights Act* (Published by Liberty: London), available at <http://www.liberty-human-rights.org.uk/policy/reports/churchill-s-legacy-the-conservative-case-for-the-hra-october-2009.pdf>.

an Opinion produced for Liberty by leading QC Karon Monaghan, this point comes across clearly: *The Article 9 protection afforded religious organisations is strong [and]... would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds...*

29. Indeed, quite the reverse of posing a threat to faith groups reluctant to conduct religious marriages the Legal Opinion (included at Annex 2 below) makes clear that any requirement compelling a reluctant religious organisation to conduct gay marriages would itself fall foul of human rights protections:

Indeed a requirement that a church or other religious organisation conduct same-sex marriages, contrary to their faith, would very likely be regarded as discriminatory under Article 14 read with Article 9 as against it since “the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different. Treating churches and religious organisations that have doctrinal objections to same-sex marriage in the same way as those that do not, is to fail to make a distinction between the two which will result in a discriminatory outcome.

30. The attached legal opinion further sets out, in the clearest possible terms, the kind of legal infrastructure which could be put in place to ensure full and proper respect for the right to freedom of conscience and belief of all religious organisations. We are delighted to see these and other protections incorporated in the Bill.

31. The Bill includes what has been described as a quadruple lock to protect religious freedom, which includes: (i) making it clear in the Bill that no religious groups will be obliged to conduct same-sex marriages; (ii) providing a clear opt-in system for those groups which would like to marry gay couples; (iii) exempting the Church of England and the Church in Wales from this scheme to ensure that measures do not affect their Canon law; and (iv) amending the Equality Act 2010 to place beyond doubt the fact that discrimination claims may not be brought against groups or individual representatives of a faith group who refuse to perform same-sex marriage on religious grounds.

32. The Bill makes clear that the Church of England’s canon law is not to be read as incompatible with the general law of the land by providing that Holy Matrimony is a union between one man and one woman. Further, to assuage the concerns of those who feared that the Bill could extend the common law duty on Church of England clergy to marry their parishioners, at subclause 1(4) the Bill makes absolutely clear that this is not the case. The combination of these protections and the robust support for religious freedom which is already a feature of our human rights framework should provide an absolute assurance that faith groups and their representatives will not face successful legal challenges if they decline to marry gay couples.

Religious freedom for all faiths

33. By including a system allowing faith groups, the Church of England and the Church in Wales aside, to opt-in to same sex marriage on the consent of their internal governance authority, the Government recognises that religious freedom extends further than those faith communities opposed to gay marriage. Liberty is aware of faith groups which consider the ability to solemnize same-sex marriages a crucial element of their freedom of conscience and religion. In 2009, for example, the Quakers in Britain unanimously approved revision of the relevant sections of the Quaker Faith and Practice to enable Quaker Ministers to perform marriage ceremonies for same-sex couples.⁸⁴ The same sentiment exists within other religious denominations. Rabbi Laura Janner-Klausner of the Movement for Reform Judaism stated:

“A recognition of equality for marriage of same-sex couples can only strengthen society and the institution of marriage. We welcome moves to legislate to this end. We are all made in God’s image, an image that has a wide prism of characteristics and believe therefore that same-sex partnerships based on the same stability, faithfulness, love and mutual support as heterosexual relationships should be seen as fully equal in the eyes of the law. Religious bodies who wish to do so should have the freedom to conduct same-sex marriages in their places of worship.”

The General Assembly of Unitarian and Free Christian Churches is firmly committed to freedom of choice for religious organisations, with its Chief Officer, Derek McAuley confirming:

“The Unitarian General Assembly believes that all couples, same-sex or mixed sex, should have equal access to civil marriages, religious marriages and civil partnerships. We have no wish to impose this legislation on those faith traditions who feel, for religious reasons, unable to comply. Religious freedom means that the right to say “no” must be accompanied by allowing those religious bodies whose beliefs lead them to support equal marriage to do so.”

Similarly, for Liberal Judaism, celebrating same-sex marriage is an important matter of conscience, in the words of the faith group’s Chief Executive, Rabbi Danny Rich:

⁸⁴ “Quakers agree to same-sex marriages” The Guardian 31st July 2009, available at <http://www.guardian.co.uk/world/2009/jul/31/quakers-gay-marriage>.

For us, equal marriage is simply a matter of justice in both a religious and a human rights sense. We can see no good grounds for depriving two men or two women of an equal right to affirm their life-long commitment in the same way as we would a man and a woman.”

34. Amongst those religious denominations which do not support same-sex marriage, there has been recognition of the importance of free choice for faith groups. The Methodist Church, for example, whilst making clear that it does not wish to conduct gay marriages, affirms that this choice must be one for individual faith groups in order to ensure respect for their authority and autonomy.⁸⁵

Respecting self-determination for faith groups

35. Prior to the publication of the Bill, Liberty is aware that some religious groups were concerned that legislation in this area would undermine the decision making structures of religious bodies, allowing individual members of the clergy to act in defiance of the established position of a faith group. The Government clearly listened to those concerns and has created a Bill which fully respects the governance systems of religious groups. As with the registration of civil partnerships on religious premises, no building can be registered for the conduct of same-sex marriages without the consent of the governing authority of that religious group. Similarly in the case of Quaker and Jewish weddings or other religious ceremonies (the Church of England exempted) carried out away from religious premises because a party to the marriage is detained or housebound, the governing authority must give consent for same-sex marriages to be carried out in the faith.

36. After initial concerns that the Bill would interfere with the autonomy of religious groups, we are pleased to see that the Church of England has now recognised that “[t]he effect of what the Government has proposed is to leave decisions about the doctrine and practice of the Church of England with the Church of England.”⁸⁶ Like the Church, Liberty does not believe that it would be right for the state to interfere with the internal deliberations and structures of a faith group and we commend the Government for the considerable time and skill it has invested in creating a scheme which ensures real respect for the integrity and self-determination of religious groups. The Bill also demonstrates the great pains to which this Government has gone to ensure that the unique positions of the Church of England and the Church in Wales are respected and accommodated within the Bill. Whilst both denominations are exempted from the opt-in procedure to ensure that no conflict arises between statute and canon law, the Church of England has it within its gift to trigger a change in the law if, at some point in the future, its official line on same-sex marriages changes. Similarly special provision has been built in to give the Church in Wales the freedom to have any change in its formal policy reflected in the law of England and Wales.

Same-sex marriage and employment

37. Liberty understands there has been some concern about the implications of the Bill for teachers. It has been claimed that teachers would be forced to promote gay marriage in the classroom or could be sacked for expressing their personal belief that marriage should be between a man and a woman. The Bill places no additional requirements on teachers, nor does it alter the way in which they are already required to deal with a whole range of sensitive issues, such as civil partnerships, divorce, adoption and abortion. Whilst teachers are expected to give an accurate account of the law as it stands, they will not be expected to endorse same-sex marriage. It would plainly be unacceptable for a teacher to express derogatory views about gay people or act in a way which discriminates against a gay student, but it is very clear that teachers are, and will continue to be, allowed to express personal beliefs as long as they do not convey prejudice.

38. Whilst public servants, including registrars, will continue to be expected to perform their core functions in a non-discriminatory way, the right to freedom of thought, conscience and religion and the right to freedom of expression, as protected by the Human Rights Act will provide a substantial measure of support to employees simply expressing a view about same-sex marriage. Similarly employees are protected against discrimination on the grounds of religion or belief by the *Equality Act 2010*. The High Court in this country recently upheld the right to freedom of expression and freedom of religion of a man demoted by his employer, Trafford Housing Trust, for expressing his personal opposition to same-sex marriage on a social media site.⁸⁷

CONCLUSION

39. Liberty is delighted to offer its support to a Bill which would do so much to advance equal treatment for same-sex couples in this country. We urge Parliamentarians across the political spectrum to support legislative reform which celebrates the valuable role played by marriage in the life of our society and the life of the individual. Respect for freedom of religion is a central feature of this Bill and we hope that those who had feared the prospect of legal challenges feel assured that they are thoroughly protected.

⁸⁵ House of Commons Research Paper 13/08, *Marriage (Same Sex Couples) Bill*, page 41.

⁸⁶ House of Commons Research note, *Ibid*, page 39.

⁸⁷ *Smith v Trafford Housing Trust [2012] EWHC 3221 (Ch)*.

Annex 1

EQUAL MARRIAGE AROUND THE WORLD

40. The pursuit of gay equality here in the UK is part of a global process of change. It is not only our own Prime Minister who has made such a strong principled commitment to same-sex marriage. In an interview with ABC News on 9th May, President Obama ended months of speculation by confirming that he believed it was right that gay couples should be able to marry.⁸⁸ This development is further evidence that the tide has clearly and decisively turned in favour of equal marriage in many parts of the world. Disturbingly, elsewhere the clock is being put back on gay rights issues. In Uganda, for example, legislation is being considered to extend the criminalisation of homosexuality. Here and in countries from Sri Lanka to Saudi Arabia, Barbados to Belize gay people face unspeakable rights violations on a daily basis. Liberty believes that the UK, by eradicating the last vestiges of discrimination from our laws and institutions, sends a strong message to those states which persecute and persecute gay people. The time has come for us to add our name to the list of democracies old and new committed to the equal treatment of loving and committed couples—gay or straight.

41. Many countries have followed a trajectory similar to ours over the past decade. Iceland, for example, legislated for ‘registered partnerships’ for same-sex couples in 1996, in 2008 provision was made for the Church of Iceland to bless registered partnerships. In June 2010 the Government passed a Bill to repeal the law around registered partnership and create the infrastructure for full marriage equality. This legislation made clear that whilst ministers were free to perform same-sex marriages if they so wished, there was no obligation for them to do so.⁸⁹ In Norway same-sex couples were given the right to marry, including in religious ceremonies, in 2009.⁹⁰ Couples had previously had the option of entering a registered partnership since 1993 and, as per the present proposals, those who had already entered a civil partnership had the right to convert this to a marriage. Under the present structure in Norway, Registered Partnerships are no longer available, with all couples simply having the option to marry. In the Netherlands, too, gay couples first received the right to enter into a civil union in 1998 with same-sex marriage legalised in 2001. Whilst local Governments are—in general—obliged to conduct same-sex marriages, the Protestant Church in the Netherlands permits individual congregations to decide whether or not to bless same-sex marriages.⁹¹ In Belgium a Bill legalising same-sex marriage came into force on 1 June 2003—the Bill amended the first paragraph of Article 143 of the Belgian Civil Code to read: “*Two persons of different sexes or of the same-sex may contract marriage*”.⁹² Since 2003, more than 17,000 gay couples have married in that country.⁹³ In Sweden a Bill making marriage a gender-neutral institution came into force in 2009. This legislation allows gay couples to marry in both civil and religious ceremonies and followed on from the introduction of registered partnerships in 1995. A 2009 poll conducted by Sveriges Television found that 68% of pastors in the Lutheran Church of Sweden said they would officiate at gay marriages in their Church.⁹⁴

42. It is not only Northern Europe that is embracing marriage equality, in Spain—a predominantly Catholic country—both civil and religious marriages have been open to gay couples since 2005.⁹⁵ In Portugal same-sex marriage became legal on 5th June 2010.⁹⁶ France is in the process of passing its own Bill to legalise same-sex marriage. On 12th February 2013, legislative reforms received strong support in France’s National Assembly and are expected to be approved by the French Senate in the coming months.⁹⁷ Further, a number of predominantly Catholic South American countries have, to some extent, embraced equal marriage in recent years. In Argentina laws legalising same-sex marriage came into force in July 2010—married same-sex couples now have all the rights and responsibilities of marriage, including the right to adopt children.⁹⁸ Same-sex civil unions have been available in Mexico City since March 2007, these same-sex unions known as ‘Civil Pacts of Solidarity’ had been legalised in Coahuila earlier that year in January 2007. In December 2009, the Legislative Assembly legalised gay marriage in Mexico City.⁹⁹ The law became effective in March 2010 and the country’s Supreme Court upheld the constitutionality of the law in a judgement handed down on 5th August 2010—the Court later ruled that same-sex marriages conducted in Mexico City are valid throughout the country.¹⁰⁰

⁸⁸ <http://abcnews.go.com/blogs/extras/2012/05/09/nightline-daily-line-may-9-president-obama-interview-abc-exclusive/>.

⁸⁹ <http://www.reuters.com/article/2010/06/11/us-iceland-gaymarriage-idUSTRE65A3V020100611>.

⁹⁰ Following the publication of a gender neutral Marriage Act: <http://www.regjeringen.no/en/doc/Laws/Acts/The-Marriage-Act.html?id=448401>.

⁹¹ <http://www.protestantchurch.nl/info.aspx?page=1649>.

⁹² <https://same-sex.web.ined.fr/pdf/DocTrav125/05Doc125Belgium.pdf>.

⁹³ <http://www.thegaymarriageblog.com/2011/08/belgium/>.

⁹⁴ http://current.com/community/89757047_majority-of-swedish-pastors-support-gay-marriage.htm.

⁹⁵ “Spain’s new government to legalize gay marriage”. *Reuters*, available at: <http://legacy.utsandiego.com/news/world/20040415-0750-spain-marriage.html>.

⁹⁶ Law N°9/2010, 31 May.

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⁹⁸ Barrionuevo, Alexei (13 July 2010). “Argentina Senate to Vote on Gay Marriage”. *The New York Times*. <http://www.nytimes.com/2010/07/14/world/americas/14argentina.html>.

⁹⁹ Mark Stevenson (Associated Press) (29 December 2009). “Mexico City enacts region’s 1st gay marriage law”. MSNBC. http://www.msnbc.msn.com/id/34514521/ns/world_news/. Retrieved 30 December 2009.

¹⁰⁰ “Supreme Court rules gay weddings valid in all Mexico” *BBC News*. 10 August 2010. <http://www.bbc.co.uk/news/world-latin-america-10932748>.

43. Gay marriages are conducted in nine US states and in November last year, same-sex marriage was approved by popular vote in Maine, Maryland and Washington.¹⁰¹ In Minnesota a proposal that would have defined marriage solely as a heterosexual union was defeated at the ballot box. In Canada same-sex marriage was legalised in July 2005, prior to this, Courts in 8 out of 10 Canadian provinces had ruled that restricting marriages to opposite-sex couples constituted discrimination on the grounds of sexual orientation and ran counter to the protections enshrined in the Canadian Charter of Rights and Freedoms.¹⁰²

44. Perhaps unsurprisingly, South Africa was amongst the first nations to embrace same-sex marriage, with gay couples able to marry in the country since November 2006. As a nation which understands—all too well—the injustice of exclusion on the basis of innate characteristics, unequal marriage was rife for reform. The decision to legislate for same-sex marriage came after a challenge to the constitutionality of denying gay couples the right to marry.¹⁰³ Faith groups and representatives of religious organisations have the option of hosting same-sex marriages, but are not obliged to do so.

45. Liberty is delighted that, like South Africa and a significant number of others, our Government is forging ahead with plans to make marriage an inclusive institution. The Government can take heart from statistics which demonstrate that, in those countries where same-sex couples may marry, support for equal marriage has remained high or increased. In Norway polls indicate that 66% of the population support same-sex marriage, up 5% from 2003.¹⁰⁴ In Spain recent surveys place support at 60%, whilst a 2008 survey revealed support from 71% of Swedes.¹⁰⁵ In the US, a pole released by CNN in June last year showed majority support amongst Americans for same-sex marriage.¹⁰⁶

46. Similarly, polling carried out in Scotland at the end of last year revealed that more than 60% of the population believed that gay people should be allowed to get married, compared to only 19% who disagreed.¹⁰⁷ In December, the Scottish Government became the first part of the United Kingdom to publish draft legislation to allow same-sex marriage.

47. A report recently published by Stonewall including polling of a representative sample of over 2,000 people in Britain, reveals that 71% of the population support the Government's commitment 'to extend the legal form and name of civil marriage to same-sex couples'.¹⁰⁸ Just 25% of those polled were opposed or strongly opposed to the Government's consultation proposals.

Annex 2

LEGAL OPINION OF KARON MONAGHAN QC

IN THE MATTER OF:

THE GOVERNMENT'S CONSULTATION ON

"EQUAL CIVIL MARRIAGE"

OPINION

INTRODUCTION

1. I have been asked by Liberty to provide an opinion on a number of matters arising out of, and related to, the Government's consultation on the lifting of the ban on same-sex marriage; "Equal Civil Marriage: A Consultation" (March 2012) Government Equalities Office.¹⁰⁹

2. In essence Liberty seek advice as to whether provision could be made so as to allow faith groups willing to do so to conduct legally binding same-sex couples marriages (in the same way as they are currently able to do in the case of opposite-sex marriages under Part III, Marriage Act 1949) without exposing faith groups that do not wish to conduct same-sex marriages to a realistic risk of successful legal challenge on equality or other grounds.

3. In particular, I am asked to consider the following questions:

¹⁰¹ <http://www.freedomtomarry.org/states/>.

¹⁰² Article 15(1) of the Charter.

¹⁰³ *Minister of Home Affairs and Another v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others*

¹⁰⁴ <http://www.buddybuddy.com/mar-norw.html>.

¹⁰⁵ http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf.

¹⁰⁶ http://politicalticker.blogs.cnn.com/2012/06/06/cnn-poll-americans-attitudes-toward-gay-community-changing/?utm_source=twitterfeed

¹⁰⁷ <http://www.scotland.gov.uk/News/Releases/2011/09/02114626>

¹⁰⁸ Living together: British attitudes to lesbian, gay and bisexual people in 2012.

¹⁰⁹ Available at <http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/consultation-document?view=Binary>.

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- a. Were Parliament to enact provisions that would allow religious bodies willing to do so to conduct legally binding marriages in the same way that they can currently conduct marriages under Part III, Marriage Act 1949, would the decision of a body opposed to same-sex marriage not to do so, or the refusal of an individual minister not to conduct such a ceremony, be challengeable under the Equality Act 2010, under another anti-discrimination provision or on human rights grounds?
 - b. If so, would a provision similar to section 6A(3A) Civil Partnership Act 2004 be sufficient to protect a religious body and/or individual members of the clergy from such legal challenges?
 - c. Are there any additional safeguards that could be built into the legislation to forestall such a risk?
 - d. Would provisions similar to those in the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 be adequate to prevent a maverick clergy member conducting a same-sex marriage that might arguably be legally binding?
 - e. Again, are there any additional safeguards that could be built into the legislation to mitigate the risk?
 - f. Would the Article 9 rights of religious bodies that do not wish to conduct same-sex marriages on doctrinal grounds reinforce any safeguards built into the legislation?
4. Additionally, and in the light of comments made by the Church of England in its response to the Consultation¹¹⁰, I am asked to advise whether, if the Government maintains its present position so as to allow same-sex partners only to marry in a civil ceremony, there are realistic prospects of a successful challenge (whether brought in the domestic courts under the Human Rights Act 1998 or in the European Court of Human Rights under the European Convention on Human Rights) which might result in religious organisations, in particular the Church of England, being required to conduct same-sex marriages in church?

5. In summary, I advise that:

- a. A refusal by a minister or a body opposed to same-sex marriage to conduct same-sex marriages would not violate the Equality Act 2010 so long as they could demonstrate that to do so would be in conflict with the strongly held convictions of a significant number of the religion's followers. Further, it is very unlikely that a refusal to conduct a same-sex marriage in such circumstances would unjustifiably violate the Convention rights of any other person, in particular those of a same-sex couple seeking to marry.
- b. for the avoidance of doubt, provision could be made in any legislation (permitting same-sex marriage) analogous to that seen in s6A(3A), Civil Partnership Act 2004.
- c. Again for the absolute avoidance of any doubt, the Equality Act 2010 could be amended so as to add a clause to Schedule 23 (paragraph 2(14)) making it clear that nothing in the Equality Act 2010 "should be taken to require a religious organisation or minister to solemnise a same-sex marriage if they do not wish to do" or similar.
- d. Provisions similar to those in the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 would be adequate to prevent a maverick clergy member conducting a legally sanctioned same-sex marriage.
- e. No further safeguards are required to address the "maverick clergyman" other than those described above (requiring or dispensing with consent in each case at the behest of the governing authority) and those that are ordinarily and already found in this context.
- f. The Article 9 protection afforded religious organisations is strong. This too would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds.

THE CONSULTATION

6. The Government Equalities Office's consultation "Equal Civil Marriage" considers the best way to remove the current ban on same-sex civil marriages, but does not propose to make any changes to the way in which religious organisations solemnise marriages. Under the Government's plans, civil partnerships will continue to be available to same-sex couples but in addition to, rather than instead of, the option to marry in a civil ceremony. Those couples who have already entered a civil partnership will have the opportunity to convert their civil partnership into a marriage. Transgender people will no longer be forced to dissolve their marriage if they legally change their gender. The Government has committed itself to ensuring that the legal rights and privileges which attach to marriage will be identical in the case of gay and straight couples. If these proposals are implemented, civil marriages—absent any religious elements—will be available to gay and straight couples, civil partnerships will be restricted to same-sex couples and religious marriages will be restricted to opposite-sex couples.

7. The Government has indicated in its consultation paper that:

We are proposing that the law is clear that marriages conducted through a civil ceremony would be open to all couples and marriages conducted through a religious ceremony and on religious premises can only be between a man and a woman.

¹¹⁰ "A response to the Government Equalities Office Consultation – 'Equal Civil Marriage' – from the Church of England"

As we are only seeking to lift the ban on same-sex couples getting married through a civil ceremony, we would ensure that any subsequent legislation on equal civil marriage is clear that marriages conducted according to religious rites and on religious premises could not be between a same-sex couple. This would mean that no religious organisation, premises, or leader would face a successful legal challenge for failing to perform a marriage for a same-sex couple, whether or not the religious organisation, premises or leader involved performs marriages for opposite-sex couples. Any changes to the legislation as a result of this consultation will not, legally, enable same-sex couples to have a marriage through a religious ceremony and on religious premises (paras 2.7 and 2.10).

8. It is proposed that the prohibition on same-sex marriages through a religious ceremony and on religious premises will be a general one. This means that those religious organisations that would choose to conduct same-sex marriages through religious ceremonies and on religious premises will be prohibited from so doing.

MARRIAGE

9. The law on marriage is regulated by the common law and statute. For the purposes of this Opinion, the main statutory provisions are found in the Marriage Act 1949 and the Matrimonial Causes Act 1973, both of which would require amendment if the Government's proposals are to be given effect.

10. Section 11, Matrimonial Causes Act 1973 provides that a marriage will be void "if the parties are not respectively male and female" or (amongst other things) "at the time of the marriage either party was already lawfully married [or a civil partner]" (section 11(b) and (c)).¹¹¹

11. Otherwise marriage is generally sanctioned according to where it can take place, and subject to certain formalities, rather than being specifically designated either a religious or civil marriage. Marriage, as set out under the Marriage Act 1949 can presently be effected in the following ways:

- a. A marriage according to the rites of the Church of England or Church in Wales (Part II, Marriage Act 1949).
- b. A marriage according to the usages of the Society of Friends (the Quakers) (s26(1)(c) and s47, Part III, Marriage Act 1949).
- c. A marriage according to the usages of the Jewish religion (s26(1)(d), Part III, Marriage Act 1949).
- d. A marriage in a registered building, namely one certified by law as a place of religious worship,¹¹² in the presence of an authorised person or registrar (this will be a marriage conducted through a religious ceremony and on registered religious premises. This is generally conducted by a minister of faith and overseen and registered by an authorised person that has been appointed by the Registrar General as being able to oversee the solemnisation of marriage) (s26(1)(a), s41 and s43, Part III, Marriage Act 1949).
- e. A marriage in a register office conducted by a superintendent registrar and registered by a registrar. This ceremony cannot contain any religious elements (s26(1)(b) and s45(2), Marriage Act 1949).
- f. A marriage on approved premises (eg a hotel) conducted by a superintendent registrar and registered by a registrar. This ceremony also cannot contain any religious elements (s26(1)(bb) and s46B(4), Marriage Act 1949).¹¹³

12. The Government's proposals are such that same-sex marriages in a register office and on approved premises, in either case conducted by a superintendent registrar and registered by a registrar, will become lawful. In both cases, the ceremony may not contain any religious elements. This will be so whether or not any particular faith group would otherwise be willing to solemnise a same-sex marriage.

13. By s5B, Marriage Act 1949:

- (1) A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person's gender has become the acquired gender under the [Gender Recognition Act 2004](#).
- (2) A clerk in Holy Orders of the Church in Wales is not obliged to permit the marriage of a person to be solemnised in the church or chapel of which the clerk is the minister if the clerk reasonably believes that the person's gender has become the acquired gender under that Act.

14. This is so notwithstanding that s9(1), *Gender Recognition Act 2004* provides that once a full gender recognition certificate is issued to a person, the person's gender becomes "for all purposes the acquired gender". This provision may appear in obvious conflict with s5B, Marriage Act 1949. However, by s9(3), *Gender Recognition Act 2004*, s9(1) is subject to provision made by any other enactment or any subordinate legislation. In this way s5B, Marriage Act 1949 takes priority. As I address below, there is no reason why analogous provision could not be made in the case of same sex marriages.

¹¹¹ Reflecting the common law position: *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130; *Corbett v Corbett (otherwise Ashley)* [1971] P 83).

¹¹² Section 2, Places of Worship registration Act 1855.

¹¹³ There is also provision made for housebound and detained persons and for "death bed" marriages (s26(1)(dd), Marriage Act 1949 and s1, Marriage (Registrar General's Licence) Act 1970, respectively) neither of which are material to this Opinion and both of which it is expected will be made available to same sex partners ("Equal Civil Marriage", para 2.47).

15. A number of religious organisations which are permitted under the Marriage Act 1949 to solemnise marriages discriminate on religious grounds. As my instructions indicate, religious organisations which restrict access to marriage on grounds of religion include:

- a. Orthodox Jews: mixed marriages are prohibited by Deuteronomy 7, 3–4 as interpreted in the Talmud.
- b. Roman Catholic Church: Under Canon 1125 of the Code of Canon Law the local ordinary can grant permission for a marriage between a Roman Catholic and a non-Catholic but only on certain conditions. Further, Canon 1065 § 1 generally requires Catholics who have not been confirmed to be confirmed before they marry.
- c. Quakers: Section 47 Marriage Act 1949 only allows non-Quakers to be married according to Quaker usage if they are authorised under or in pursuance of a general rule of the Society of Friends. A certificate to that effect signed by a registering officer of the Society must be produced to the superintendent registrar. Chapter 16 of “Quaker faith and practice” requires non-Quakers who wish to be married (or indeed civilly partnered) in a meeting house to obtain the support in writing of two adult Friends for each non-Quaker partner. The supporting Friends must satisfy themselves that the applicants are “in unity with our testimony as to the nature of marriage, and [have] experience of our meetings for worship” (paragraph 16.19.)

16. This discrimination is not unlawful under the Equality Act 2010 because of explicit exceptions made, as is addressed below.

17. Further, some religious organisations restrict marriages so as to exclude those who have been divorced, including:

- a. The Roman Catholic Church: Canon 1141 provides that a marriage that is ratified and consummated cannot be dissolved by any human power or by any cause other than death. Canon 1085 § 1 makes clear that a person who has entered into a marriage that has not been consummated cannot marry, while Canon 1085 § 2 provides that where a marriage was invalid or dissolved for any other reason a further marriage cannot be entered into until the nullity or the dissolution of the previous one has been established lawfully.
- b. The Church of England: While the Church of England has lifted its absolute bar on divorcees getting married in church, the decision is left to the individual clergy member subject to guidance from the House of Bishops (Canons of the Church of England B 30 and the accompanying “Advice to clergy concerning marriage and the divorced”).

18. The religious prohibitions on the marrying of those who have been divorced will not be unlawful under the Equality Act 2010 since there is no protection provided for couples seeking to marry in such circumstances. The (very limited) protection against discrimination connected to marriage and civil partnership under the Equality Act 2010 applies only to those who are presently married or civilly partnered (s8, Equality Act 2010), not those who have been. In any event such protection as there is against marriage and civil partnership discrimination does not extend to any of the activities caught by the Equality Act 2010 that might involve marriage.¹¹⁴

CIVIL PARTNERSHIPS

19. The Civil Partnership Act 2004 as originally enacted prohibited the celebration of a civil partnership on religious premises (s6(1)(b), (2)). Several faith groups (including the Unitarians, Society of Friends (Quakers) and Liberal Jews) objected to this prohibition. During the passage of the Equality Act 2010 Lord Ali moved an amendment to remove the prohibition. This was passed and became section 202 of the Equality Act 2010. This section, which came into force on 5th December 2011, removes from the Civil Partnership Act 2004 the subsections containing the prohibition on the conducting of civil partnerships on religious premises (s6(1)(b) and (2)) and inserts provisions into s6A ((2A)-(2C) and (3A)—(3C)) allowing for religious premises to be approved for the celebration of civil partnerships. It also inserts a new subsection 6A(3A), which provides that:

“For the avoidance of doubt nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so.”

20. On the same day as these amendments took effect the Government amended the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 SI 2005/3168 (by SI 2011/2661) (the Regulations). Regulation 3A now allows the proprietor or trustee of religious premises to apply for approval of religious premises as a place at which two people may register as civil partners. Mirroring section 6A(3A), regulation 2B makes clear that nothing in the regulations can be taken as requiring the proprietor or trustee to do so. The application must be accompanied by consent as required by regulation 2D. Regulation 2D(2) with Schedule A1 identifies who must consent to the use of specified religious premises so that, for example, the General Synod must consent to the use of a church or chapel of the Church of England. For religious premises that are not of a description listed in Schedule A1, regulation 2D(3) provides that consent must be given by the “governing

¹¹⁴ Protection against marriage and civil partnership discrimination extends only to the unlawful acts addressing employment and related areas.

authority” of the religious organisation for whose purposes the religious premises are used. Regulation 2D(4) allows the governing authority of a religious body to decide that its consent is not necessary.¹¹⁵

21. These provisions are clearly aimed at preventing a maverick cleric or congregation acting in conflict with the wishes of their religious body’s hierarchy.

22. The provisions are permissive (so do not compel any faith group to effect civil partnerships) and ensure that any decision to allow civil partnerships to be conducted on religious premises is in accordance with the religious tenets of the organisation as decreed by its hierarchy.

EQUALITY ACT 2010

23. A refusal either at institutional level or by a minister individually to marry a same-sex couple would amount to direct discrimination (s13, Equality Act 2010) because of sexual orientation (a protected characteristic; s12, Equality Act 2010). As such, but for certain exemptions, it will be unlawful under s29, Equality Act 2010. Section 29, Equality Act 2010 makes it unlawful to discriminate in the provision of services (s29(1), Equality Act 2010) and in the exercising of public functions (s29(6), Equality Act 2010).

24. Case law holds that the conduct of a civil marriage amounts to the provision of a service or the exercise of a public function for the purposes of equality law (**Islington London Borough Council v Ladele (Liberty intervening)** [2009] EWCA Civ 1357; [2010] ICR 532, then under the Equality Act (Sexual Orientation) Regulations 2007 SI 2007/1263).

25. A Church or other religious organisation will not be a core public authority (**Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank** [2003] UKHL 37; [2004] 1 AC 546). It is possible, however, that the solemnisation of a marriage, even by a religious organisation, would be regarded as a public function and therefore fall within the scope of s29, Equality Act 2010 (and s6, Human Rights Act 1998) (see, **In re All Saints’ Sanderstead** [2012] Fam 51 Southwark Consistory Court and **Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank**, in particular, para 16, Lord Nicholls, para 86, Lord Hobhouse and para 170, Lord Rodger).

26. However, and in any event, if not a public function, the solemnisation of marriage will most likely be regarded as constituting a *service* for the purposes of s29(1), Equality Act 2010¹¹⁶ and accordingly discrimination in the provision of it will be *prima facie* unlawful.

27. The Equality Act 2010 anticipates that certain acts done by religious organisations consistent with the religious ethos of the organisations and the beliefs of their members will fall within the Equality Act 2010. In consequence, the Equality Act 2010 creates wide exemptions so that, in general, the statutory torts created by it do not apply, or do not apply in respect of certain otherwise protected characteristics, where the acts done are closely linked to faith, including religious practice, worship or devotion.

28. As is material to this Opinion, these exemptions include an exemption applicable to certain acts done by “*organisations relating to religion or belief,*” so far as relating to sexual orientation (Schedule 23, para 2, Equality Act 2010).

29. The organisations to which this exemption applies are organisations “*the purpose of which*” is to practice a religion or belief; to advance a religion or belief; to teach the practice or principles of a religion or belief; to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief or to foster or maintain good relations between persons of different religions or beliefs (Schedule 23, para 2(1), EA 2010¹¹⁷). The exemption will cover, then, all the main churches and faith groups.

30. The exemption permits such an organisation to restrict membership of the organisation; participation in activities undertaken by the organisation or on its behalf or under its auspices; and to restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation, or on its behalf or under its auspices (Schedule 23, para 2(3), EA 2010).

31. Further, an exemption applies in relation to ministers¹¹⁸ in the case of such organisations, so far as relating to sexual orientation. The exemption applies in cases where participation in activities carried on in the performance of the minister’s functions in connection with or in respect of the organisation is restricted for reasons of sexual orientation. It also applies where the provision of goods, facilities or services in the course of activities carried on in the performance of the minister’s functions in connection with or in respect of the organisation, is restricted, again for reasons of sexual orientation (Schedule 23, para 2(5), EA 2010).

32. These exemptions are subject to a number of limitations.

¹¹⁵ The regulations also makes clear that consent is not required for an application made in relation to a Quaker Meeting House.

¹¹⁶ Since the Equality Act 2010 (by its exemptions) assumes that the religious activities of religious organisations do fall within s29, I shall assume the same in respect of marriage (though there is an argument otherwise based on older case law under the RRA; **Dockers Labour Club & Institute Limited v Race Relations Board** [1976] AC 285 (on the meaning of “the public or a section of the public”).

¹¹⁷ The exemption applies to acts done by the organisation, or some other person on behalf of or under the auspices of the organisation; Sch 23, para 2(4), EA 2010. The exemption does not apply to an organisation whose sole or main purpose is commercial; Sch 23, para 2(2), EA 2010.

¹¹⁸ As to which, see Sch 23, para 2(8), EA 2010.

33. Firstly, where the organisation falls within the scope of the exemption because its purpose is to foster or maintain good relations between persons of different religions or beliefs, the exemptions insofar as they relate to sexual orientation, do not apply (Schedule 23, para 2(11), EA 2010). In essence, therefore, the exemption applies only to those organisations the key purpose of which is to protect and promote the core aspects of the practice of a religion or belief.¹¹⁹

34. Secondly, and in relation to sexual orientation, “a restriction” for the purposes of the exemption is permitted only if it is imposed because it is *necessary* to comply with the doctrine of the organisation or to *avoid* conflict with strongly held convictions (Schedule 23, para 2(7), EA 2010). “*Strongly held convictions*”, for these purposes are, in the case of a religion, the strongly held religious convictions of a significant number of the religion’s followers. In the case of belief, *strongly held convictions* are those relating to the belief of a significant number of the belief’s followers (Schedule 23, para 2(9), EA 2010).

35. Accordingly, a refusal by a religious organisation or a minister to effect or solemnise a same-sex marriage would not be unlawful under the Equality Act 2010, if that refusal were necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held convictions of a significant number of the religion’s followers. It is not necessary that all followers share the conviction (in this case, the opposition to same-sex marriage), only that a significant number do. This would invariably protect any church or religious organisation against a complaint of sexual orientation discrimination.

36. This exemption also applies so as to exempt discrimination connected to religion and belief. However, in the case of religion or belief the exemption is subject to a (less rigorous) limitation so that a restriction will fall within the scope of the exemption where it is imposed because of the purpose of the organisation or to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.¹²⁰ This means discrimination based on religion and belief in the conducting of marriages by churches and other religious organisation (for example, by requiring both partners to be of the same religion as each other and reflecting that of the organisation concerned) will be lawful.

37. **Islington London Borough Council v Ladele (Liberty intervening)** [2009] EWCA Civ 1357; [2010] ICR 532 is of no relevance to this issue since it did not concern the functions of a religious organisation but instead a public authority and public official.

ARTICLE 9

38. The Article 9 right to freedom of religion includes the “freedom, either alone or in community with others and in public or private, to manifest ... religion or belief, in worship, teaching, practice and observance.” It provides protection for both individuals and churches and other religious organisations. Accordingly any intrusion, by a State compulsion to engage in a practice contrary to the beliefs of its members—for example to conduct same-sex marriage in the case of some faiths—would *prima facie* violate that organisation’s (and its members’) Article 9 rights.

39. Whilst any such violation might be justified under Article 9(2) (in the case of the manifestation of any belief by, for example, the refusal to conduct same-sex marriages), this requires that any interference be “prescribed by law and .. necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Assuming that a requirement to conduct same-sex marriages met the threshold of prescribed by law, then it might be argued that it is necessary to protect the rights and freedoms of others (same-sex couples seeking to marry).

40. However, it is extremely difficult to see how interfering with the religious freedom of churches by requiring them to celebrate marriages that they not only consider to be doctrinally impermissible but also not in fact to be marriages could be justified as proportionate having regard to the importance of the rights under Article 9 and the case law from the ECtHR. As the case law makes clear, “[t]he autonomous exercise of religious communities is indispensable for pluralism in a democratic society” (see, **The Supreme Holy Council of the Muslim Community v Bulgaria (2005) 41 EHRR 3, para 93–96**). Case law under Article 9 positively anticipates that accommodations might be required to facilitate “conscientious objection” (see, for example, **Thlimmenos v Greece (2000) 9 BHRC 1**). The Court has not been sympathetic to “conscientious objections” in the context of employment, as is well known, but principally on the basis that one is not required to accept or remain in particular employment. This is plainly not relevant in the context of the practices of a religious organisation.

41. As I have already indicated, **Islington London Borough Council v Ladele (Liberty intervening)** [2009] EWCA Civ 1357; [2010] ICR 532 is of little assistance here since that case concerned a civil registrar employed to conduct civil marriages. Her role, even if she did not see it this way herself, was entirely secular. The position is wholly different in the case of a religious marriage solemnised in a church or other religious building by a minister or similar. A religious body or minister conducting a marriage is, at least in the eyes of some Christian churches, celebrating a sacrament. Although weddings in church may by virtue of the arrangements under the Marriage Act 1949 create legally binding marriages, the celebrants are also conducting “acts of worship or

¹¹⁹ In the context of Art 9 and to the same effect, see (1995) 80-A DR 147, 150.

¹²⁰ Schedule 23, para 2(6), EA 2010. The same objective analysis will be required if this defence is to be established.

devotion forming part of the practice of a religion or belief” (**Pichon & Sajous v France** Decision 2/10/2001) which will fall within the protection of Article 9.

42. In my view, therefore, any requirement upon a church or religious organisation to conduct same-sex marriages, contrary to the religious convictions of its members’, would violate their Article 9 rights (and those of any person compelled to take part, for example a minister).

43. Merely permitting the solemnisation of same-sex marriages on religious premises, as with opposite-sex marriages, would not, of course, intrude upon the Article 9 rights of any religious organisation.

44. Presently, domestic law does not require any church or other religious organisation to approve same-sex relationships and less so to legally sanction them. The provision made in the Civil Partnership Act 2004 and accompanying regulations, as mentioned above, is entirely permissive as is made expressly clear and nothing in the Equality Act 2010 requires otherwise. The same model could readily be adopted in the case of same-sex marriage.

EU LAW

45. For completeness the European Commission has promulgated a proposal for a new Equal Treatment Directive (“proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation” COM (2008) 426 Final). This is intended to extend the protection against discrimination connected to, *inter alia*, religion and belief and sexual orientation outside the employment and occupational spheres.

46. However, even if enacted, the Directive will not compel the UK to introduce laws interfering with the rights of a church or other religious organisations in respect of their core activities, including the solemnising of marriage. This is because the proposed Directive by its Article 3(4) will provide that the Directive is “without prejudice to national legislation... concerning the status and activities of churches and other organisations based on religion or belief”.

ARTICLES 9 AND 14

47. So far, this Opinion has addressed the rights (and protections) afforded churches and other religious organisations. However, certain of the Convention rights confer equality rights on same-sex couples.

48. The right to marry under Article 12 does not (yet) guarantee the right to marriage for same-sex partners: *Schalk & Kopf v Austria* (App. No.30141/04, judgment of 3rd June 2010, para 61). In *Schalk* the ECtHR held open the possibility that it might extend its interpretation of Article 12 to include same-sex marriage, but presently the issue of whether to allow such marriages falls within states’ margin of appreciation. As such, Article 12 of the Convention does not impose an obligation to grant same-sex couples the right to marry (para 63).

49. However, were the UK, as appears likely, to permit same-sex marriage in some circumstances, then it is difficult to see why such marriages would not fall within the ambit of Article 12 so as to engage Article 14. Whilst a civil partnership would in all probability not be regarded as sufficiently analogous to a marriage to trigger the application of Article 14 given the case law as it stands (*Gas & Dubois v France* (App. No.25951, judgment of 15th March 2012)), the same could not be said of a same-sex marriage as compared to an opposite-sex marriage.

50. A refusal by a church or other religious organisation to marry a same-sex couple (assuming the same were made lawful), if a public function, might violate Article 14, read with Article 12 (and indeed Article 8, as affecting “family life”¹²¹), absent justification. In the circumstances, such a refusal would be contrary to s6, Human Rights Act 1998.

51. In determining whether any such discrimination by a religious organisation was justified, it would be necessary for a court to determine (a) whether the discriminatory treatment pursues a legitimate aim; and then, (b) whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized (see, for example, **Ghaidan v Godin-Mendoza** [2004] UKHL 30, [2004] 2 AC 557, [2004] 3 WLR 113; **A v Secretary of State for the Home Department** [2005] 2 AC 68, para 54).

52. The Article 9 rights of the church or religious organisation concerned would be highly material in determining justification under Article 14. Article 9 is given particular weight under the Convention and this is reflected in the Human Rights Act 1998 (s13). The exemptions in the Equality Act 2010 reflect the respect for religious freedom ordinarily accorded at common law in this jurisdiction and under the Convention.

53. In my view, a refusal by a church or other religious organisation, to conduct a same-sex marriage, so as to comply with the tenets of its religion or the strongly held and faith based convictions of its members, will invariably be regarded by any court as justified.

54. Indeed a requirement that a church or other religious organisation conduct same-sex marriages, contrary to their faith, would very likely be regarded as discriminatory under Article 14 read with Article 9 as against it since “the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention

¹²¹ App. No.30141/04, judgment of 3rd June 2010, paras 94-5.

is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.¹²² Treating churches and religious organisations that have doctrinal objections to same-sex marriage in the same way as those that do not, is to fail to make a distinction between the two which will result in a discriminatory outcome.

QUESTIONS FOR CONSIDERATION

55. In light of the advice above, I now address the specific questions posed by my instructions.

Were Parliament to enact provisions that would allow religious bodies willing to do so to conduct legally binding marriages, would a refusal of a body or minister opposed to same-sex marriage, be challengeable under the Equality Act 2010, under another anti-discrimination provision or on human rights grounds?

56. For the reasons I have given above, a refusal by a minister or a body opposed to same-sex marriage to conduct such marriages would not violate the Equality Act 2010 so long as they can demonstrate that to do so would be in conflict with the strongly held convictions of a significant number of the religions followers. In the case of those churches and other organisations that would object to the conducting of same-sex marriage, clearly that sets a low threshold.

57. Further, for reasons given above, I consider it very unlikely indeed that a refusal to conduct a same—sex marriage in such circumstances would unjustifiably violate the Convention rights of any other person, in particular those of a same-sex couple seeking to marry.

If so, would a provision similar to section 6A(3A) Civil Partnership Act 2004 be sufficient to protect a religious body and/or individual members of the clergy from such legal challenges?

58. As I have indicated, in my view a religious organisation would not be open to challenge if it refused to conduct same-sex marriage because of an objection to such marriages where that objection is founded in religious faith or doctrine.

59. However, provision could be made in any legislation (permitting same-sex marriage) analogous to that seen in s6A(3A), Civil Partnership Act 2004 so as to make clear that “nothing in this Act places an obligation on religious organisations to solemnise [same-sex marriages] if they do not wish to do so.”

Are there any additional safeguards that could be built into the legislation to forestall such a risk?

60. Even absent a provision similar to s6A(3A) Civil Partnership Act 2004, for reasons given above there is still no room for challenge under the Equality Act 2010.

61. It is difficult, therefore, to see why any further protective measures would be required or could be justified.

62. However, for the absolute avoidance of any doubt, the Equality Act 2010 might be amended so as to add a clause to Schedule 23 (paragraph 2(14)) making it clear that nothing in the Equality Act 2010 “should be taken to require a religious organisation or minister to solemnise a same-sex marriage if they do not wish to do”¹²³ or “Nothing in this Act [the Equality Act 2010] places an obligation on religious bodies to conduct same-sex marriages if they do not wish to do so.”

63. This would appear to me to be unnecessary but would put to rest any doubt at all.

Would provisions similar to those in the regulations be adequate to prevent a maverick clergy member conducting a same-sex marriage that might arguably be legally binding?

64. As explored above, the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 SI 2005/3168 (as amended by SI 2011/2661) require that any application by a proprietor or trustee of religious premises for approval of religious premises as a place at which two people may register as civil partners, must be accompanied by consent from the body specified in the regulations (Schedule A1). This prevents “maverick clergy” from seeking approval of premises contrary to the position decreed by the organisations’ hierarchy.

65. There is nothing so far to suggest that the model has proved anything other than adequate. It is difficult to see why the position would be any different in relation to same-sex marriage. Requiring consent from the governing body identified in the regulations ensures against any maverick clergyman seeking approval contrary to the orthodox doctrine of the religious organisation concerned.

66. For this reason, I consider that provisions similar to those in the regulations would be adequate to prevent a maverick clergy member conducting a legally sanctioned same-sex marriage.

Again, are there any additional safeguards that could be built into the legislation to mitigate the risk?

67. In my view, no further safeguards are required to address the “maverick clergyman” other than those described above (requiring or dispensing with consent, in each case at the behest of the governing authority) and those that are ordinarily and already found in this context, as below.

¹²² Thlimmenos v Greece (2000) 31 EHRR 411 at para 44.

¹²³ And amend Sch 23, para 2(8) so as to apply the definition of “minister”.

68. My instructions suggest that provision could be made in any legislation such that same-sex marriages conducted in religious premises which have not been registered for that purpose (with the necessary consent) would be invalid.

69. Assuming any new legislation follows the model of the Marriage Act 1949 (or amends it to include provision for same-sex marriage), such provision will inevitably be included. Sections 25 and 49, Marriage Act 1949 treat as void any marriage which has been conducted in a way which does not comply with the Act. This includes circumstances pertaining to the location of the marriage (being otherwise than as specified in the relevant certificates). Similar provision is made in respect of civil partnerships (s49, Civil Partnership). No doubt the equivalent provision could be and would be made in the case of same-sex marriages.

Would the Article 9 rights of religious bodies that do not wish to conduct same-sex marriages on doctrinal grounds reinforce any safeguards built into the legislation?

70. The Article 9 protection afforded religious organisations is strong, as discussed above. This too would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds, as I have addressed above.

If the Government maintains its present position so as to allow same-sex partners only to marry in a civil ceremony, are there realistic prospects of a successful challenge (whether brought in the domestic courts under the Human Rights Act 1998 or in the European Court of Human Rights under the European Convention on Human Rights) which might result in religious organisations, in particular the Church of England, being required to conduct same-sex marriages in church?

71. Again, I stress that the protection afforded by Article 9 to religious organisations is strong. For the reasons set out above, particularly at paragraphs 37 to 41, I consider that requiring a faith group or a member of its clergy to conduct same-sex marriages contrary to its doctrine or the religious convictions of its members would violate Article 9. Any challenge brought on human rights grounds seeking to establish a same-sex couple's right to marry in church would inevitably fail for that reason. In balancing the rights of a same-sex couple and a religious organisation's rights under Article 9 (in particular, in relation to a matter such as marriage, so closely touching upon a religious organisation's beliefs) the courts would be bound to give priority to the religious organisation's Article 9 rights.

72. I hope this is of assistance to those instructing me and if I can be of any further help, they should not hesitate in contacting me.

Karon Monaghan QC (12 June 2012)

February 2013

Memorandum submitted by the General Assembly of Unitarian and Free Christian Churches (MB 26)

The General Assembly welcomes the opportunity to submit evidence on the Marriage (Same Sex Couples) Bill. We are pleased that the Government has responded to representations made during the consultation exercise on equal marriage.

The position of the General Assembly of Unitarian and Free Christian Churches was clearly expressed in a Resolution approved by at the Annual Meeting in Keele in April 2012:

“This General Assembly of Unitarian and Free Christian Churches calls upon Her Majesty's Government and the Scottish Government to ensure that legislation is passed so that all couples, same-sex or mixed sex, have equal access to civil marriages, religious marriages and civil partnerships. We have no wish to impose this legislation on those faith traditions who feel, for religious reasons, unable to comply.”

The Resolution was supported by 130 for, 4 against and 12 abstaining.

This resolution builds upon the commitment over many years of Unitarians and Free Christians to equality in many spheres of public life. The General Assembly has expressed its support for full equality for Lesbian, Gay, Bisexual and Transgender people, with in 1977 making it clear that ministry in the denomination was open to all and expressing abhorrence of discrimination on the basis of sexual orientation. In 1984 an equal age of consent was supported and in 2000 the repeal of Clause 28 of the Local Government Act 1988 was demanded along with calls for equal acceptance of lesbians and gay men in all walks of life. In 2008 the General Assembly called upon the Government to introduce legislation permitting civil partnerships to be performed in any place of worship or other premises licensed for the celebration of marriage. We gave our full support to the amendment to the Equality Bill to permit civil partnerships to take place in a religious premises and Cross Street Unitarian Chapel in Manchester was the first such religious premises to take advantage of the new provision. We understand that the first such registration took place in May 2012 at Ullet Road Unitarian Church in Liverpool.

This position reflects our longstanding acceptance of the equal validity of same sex relationships in the same way as opposite sex and that they should be celebrated as part of the life of our community of faith.

As a faith group the Unitarian support for same sex marriage arises out of our deep spiritual values. We believe that everyone has the right to seek truth and meaning for themselves. This commitment to private judgment in spiritual matters has of course implications for how we see people and regard civil liberties. “The individual is a fact of existence insofar as he steps into a living relation with other individuals” wrote the Jewish philosopher Martin Buber. Commenting upon this Unitarian minister Philip Hewitt has written “To put the same idea more simply, but not necessarily more comprehensively, to live is to love. The person who is not loving is to that extent not living.”

Over the centuries Unitarians have been open to change drawing upon new understanding and insights. We had our first woman minister in the early 1900’s well before women had the vote in national elections. In our evolving thinking LGBT was seen as part of the natural spectrum and that people should give full emotional and physical expression of their sexuality—“to live is to love”.

In 1993 the General Assembly published a book of special services “Celebrating Life”, which included material to be used during a blessing of a same sex partnership. Some Unitarian ministers have been performing same sex blessings since the 1970s.

“Celebrating Life” highlighted that:

“The intentions of a same sex couple seeking a blessing on their relationship are, for the most part, similar to those of a heterosexual couple seeking marriage. So most of the material in the Marriage section is appropriate and can easily be adapted, Within the Marriage section there is actually some material which was originally written for same sex ceremonies.”

One example in the marriage section relates to the “giving and receiving of rings” with the words “With this ring I join my life with yours. May it be a symbol of my enduring love and the blessings of our community” drawn from Becky Butler’s book “Ceremonies of the Heart: celebrating lesbian unions”. As Rev Maud Robinson told the General Assembly; marriage is a sacred covenant” reflecting a deep and sacred relationship.

Religious marriage in the United Kingdom is, of course, governed by legislation which has, unfortunately, not kept pace with our changing thinking and that of society more generally, on same sex relationships.

In considering the principles of equal marriage we also draw upon our history as religious dissenters. Taking the “long view” we see the evolution of the legislation governing marriage as a progressive opening-up from the rigidities of Hardwick’s Marriage Act of 1753. In the 1820s the Unitarian MP, William Smith, promoted a Unitarian Marriage Bill to secure for Unitarians the same rights as Quakers and Jews however this was rejected. Unitarians were the main protagonists for civil marriage registration and it was a Unitarian MP, John Bonham Carter, who chaired the select committee which led to civil registration of births, deaths and marriages in 1837 and religious marriage outside the Church of England. In the 20th century Unitarians were amongst the first religious groups to re-marry divorcees and pioneered marriages between people of different faiths. Equal marriage is for us a further step towards in the journey to a more just society.

The General Assembly is therefore also fully supportive of allowing all couples, regardless of gender, to have a civil marriage ceremony if that is their wish. In welcoming civil partnerships on religious premises we made clear that this should not be seen as a substitute for equal marriage; but merely a stepping stone on the road to equality. Our support for civil marriage is based on principle but again is not a substitute for religious marriage.

We welcome the decision to legislate to allow those religious bodies who wish to do so, in line with their deeply held beliefs, to conduct marriages for same-sex couples in the same way that they may do for opposite-sex couples. This is a matter of religious freedom; we do not wish to impose our views on others; however, their opposition should not prevent us from doing what we believe to be just and right.

The General Assembly is supportive of the continuation of civil partnerships and would wish this status to be opened up to opposite-sex couples. For some opposite-sex couples, marriage implies a “traditional” status which they do not wish to perpetuate yet at the moment they are denied many of the rights that same-sex couples can received in a civil partnership.

We would welcome the opportunity for couples to convert a civil partnership into a marriage and a religious blessing may be a means to mark this change.

The position of the General Assembly of Unitarian and Free Christian Churches is one shared by other religious groups. By our stance we demonstrate that this is not a debate between religion and secular viewpoints and must not be presented in this way.

BACKGROUND INFORMATION

General Assembly of Unitarian and Free Christian Churches

The Unitarian Movement has 170 congregations and fellowships in Great Britain. It is a progressive and liberal religious movement which grew out of the Radical Reformation and is now open to insights from other faiths and philosophies. Unitarians and Free Christians have long been at the forefront of religious and social reform; including in 1904 appointing the first women minister in any denomination.

Unitarians believe that everyone has the right to seek truth and meaning for themselves and that the fundamental tools for doing this are life experience, reflection, intuitive understanding and the prompting of conscience. On the individual spiritual journey we are inspired by:

- The example and spiritual insights of others; historically of the man Jesus
- Writings of various faith traditions
- Traditions of critical and philosophical thought
- Ongoing creative work of artists, musicians and writers
- The search of science for knowledge and understanding

Derek McAuley

Derek McAuley is Chief Officer of the General Assembly of Unitarian and Free Christian Churches. He worked in the National Health Service for over 17 years before joining the General Assembly in 2009. He is a member of Cross Street Chapel in Manchester and a trustee of the British and Foreign Unitarian Association Incorporated, Dr Williams's Library and the Hibbert Trust.

February 2013

Memorandum submitted by Trevor Sidnell (MB 27)

I am a member of the public with an interest in and knowledge of family issues and bioethics, who has studied theology at degree level and read widely in history, biography and English literature, giving a broad understanding of cultural issues. I am a keen follower of current affairs and cultural trends.

I have written an extensive (as yet unpublished) analysis of the Sexual Revolution from the 1960s to the present day.

I live in Hillingdon and am married with three children.

SUMMARY

There are three aspects to marriage, the *ontological reality*, the *legal framework* and the *cultural perception* of marriage.

The reality is a man and woman pairing off for an exclusive and permanent relationship to start a family; the legal framework is that which regulates this reality for the sake of public order; and the cultural standing of marriage is determined by all sorts of factors by which the public's perception is formed. Of these aspects, the first is unchangeable, just as the nature and definition of a triangle is unchangeable.

The proposal for same-sex marriage (SSM) seriously misunderstands the nature and purpose of marriage, which is based on the complementarity of the sexes; misunderstands the difference between the *private* goods of marriage (support and companionship) and the *public* good (the optimum socialisation of children), which is the sole reason historically for the State's involvement.

SSM is based on a category error, mistaking the legal framework that encompasses marriage for the reality of marriage itself; the law cannot create a marriage by issuing a certificate, no more than issuing a birth certificate can bring forth a birth.

SSM will turn marriage into a genderless institution unrelated to procreation, and will damage the public understanding of marriage. Fewer heterosexuals will marry (as has happened in other countries that have introduced SSM), and since cohabiting couples break up far more readily than marriages, this will greatly damage children's welfare.

The redefining of marriage to accommodate same-sex couples entails a necessary change to the legal definition of parenthood that ignores biological ties, which will mean that all parents will have their legal parental status downgraded to that of a foster parent.

That opposition to SSM is not due to bigotry is made crystal clear by the fact that some homosexuals oppose it.

1. *What Marriage Is*

Marriage can be considered under three aspects:

1.1 **ASPECT (1)** The most important aspect (without which the following two could not exist) is the *ontological reality* of a man and a woman pairing off and publically committing themselves to each other exclusively and permanently for the purpose of starting a new family. This is what marriage actually IS; it is both the definition and description of marriage, just as a figure bounded by three straight lines is both the definition and description of a triangle, and cannot be altered without obscuring the 'triangleness' of triangles.

1.2 **ASPECT (2)** The second aspect of marriage is the legal framework that any given culture chooses to give to the pre-existing reality of marriage to record, regulate and protect this vitally important institution; vitally important because of the children that result. If adult human beings grew on trees fully formed and mature,

the State would not be in the least bit interested in marriage, but with a vested interest in securing stability and continuity through the bringing up of well-adjusted children, the State has sought to regulate and protect marriage from those who would abuse it and bring it into disrepute.

1.3 The legal framework is powerless to bring about a single marriage: if men and women everywhere refused to pair off, marriage would of course continue to exist as a possibility, but there would be no more actual marriages. And vice-versa: if the State abolished all marriage law, it would not mean that no-one could marry: if a man and woman vow publicly and begin a lifelong and exclusive sexual union, then a marriage has taken place regardless of whether the State is interested. After all, births, deaths and marriages have been happening for millennia before the State came along to record and register them!

1.4 The State's involvement in marriage is of very recent date in world-historical terms; perhaps 500–600 years in England to any great degree. The State did not create marriage, and does not own it: one may as well talk of owning gravity as of owning marriage. It does not belong to any organisation, group, culture or religion, but belongs to the human race as that family arrangement which is most conducive to reproduction and human flourishing.

1.5 **ASPECT (3)** The *cultural standing* of marriage: the public's perception and understanding of what marriage is, and what it is for. Marriage has been under attack for the past forty or fifty years from all quarters: liberals, socialists, Marxists, feminists, sociologists and others who have seen the traditional family as oppressive and to be done away with. A veritable avalanche of films, newspaper articles, academic papers, television programmes, novels, memoirs, plays and popular music has subtly and not-so-subtly sought to undermine the importance and beauty of faithful married life.

1.6 As a result, the cultural standing of marriage has never been at a lower ebb ('a meaningless bit of paper'), such that the 2011 census shows that for the first time fewer than half of adults are married. This is a national disaster because of the family instability it betokens (almost half of Britain's 15-year-olds do not live with both birth parents; 300,000 sets of parents split each year); we are already living with the damage and the suffering to both adults and children and wider society (and the £100 billion annual bill 1) that family breakdown brings. Cohabitation is on the increase at the expense of marriage, but cohabitations typically break up three times more quickly than marriages, usually leaving children to be brought up by a single parent. The enormous damage to the stability of society that the Sexual Revolution has brought (not to mention the unhappiness of millions of people) looks set to continue as marriage rates decline.

2. *The Effects of Same-Sex Marriage*

2.1 The proposal for same-sex marriage (hereinafter, SSM) seriously misunderstands marriage and its main purpose: to secure a strong bond between husband and wife so that the mother and father of any children that result are committed to each other and to the task of bringing up their children together so that they become well-adjusted adults ready to contribute to society rather than being a burden to it. Marriage, then, is based on the physiological, emotional and psychological complementarity of the sexes; it is intrinsically heterosexual. This reality cannot be wished away, imagined away, or legislated away. To pass a law that says a man can marry a man will not bring about the impossible, no more than legislating that henceforth all blind people will be able to see will restore their sight.

2.2 The State is not involved in marriage because two people love one another (that is a *private* benefit of marriage which is just that, private), it is involved in marriage because most marriages are fruitful and produce children, and this is a *public* benefit that concerns us all; every single one of us has an interest in well-socialised children who will contribute to society as adults rather than bring a host of social problems.

2.3 The proponents of SSM have made a category error in mistaking the legal framework that surrounds marriage for the reality of marriage itself; they have confused Aspect 2 with Aspect 1, above.

2.4 Just as a birth certificate does not bring a child into being but recognises and registers the reality that a child has been born, so a marriage certificate acknowledges and registers the reality that a man and woman have publicly vowed to commit themselves to a permanent and monogamous union. The law *does not* and *cannot* create a marriage; it regulates a marriage that has taken place for the purpose of undergirding it with certain legal rights. Since the complementarity of the sexes is *intrinsic* to marriage, for the State to issue a marriage certificate to a same-sex couple is like issuing a birth certificate to a childless couple: meaningless, and a cruel deception.

FEWER HETEROSEXUAL MARRIAGES, FEWER STABLE FAMILIES

2.5 But the greatest damage will be done to the public understanding and perception of marriage. By turning marriage into a genderless institution unrelated to procreation (although the ontological reality will remain untouched), the 'marriage brand' will be fatally tainted, and fewer heterosexual marriages will be contracted. In The Netherlands, Sweden and Spain the rate of heterosexual marriage has declined significantly since the introduction of SSM: result, more cohabiting couples, less stability, more breakups, more damaged children. **The lesson is clear: damage marriage and you will damage children's welfare.**

2.6 To accommodate the desires of an incredibly small number of adults, millions of children in the future will have to suffer the misery, loss and psychological and emotional damage of broken homes; and this will play out in all kinds of behavioural problems (disruptive behaviour at school, lower educational attainment, substance

abuse, depression, promiscuity, STIs, dependence on benefits, criminal acts) for which society will have to pick up the tab. Civil Partnerships already grant same-sex couples all the legal benefits of marriage, so the net result will be zero gain for them at the expense of much harm done to society, which will be a loss to everyone, heterosexual and homosexual alike.

LOSS OF PARENTAL RIGHTS

2.7 The second major outcome of SSM will be the redefining of the legal understanding of what a parent is. The legal erasure of ‘Father’ and ‘Mother’ from birth certificates (in line with the legal erasure of ‘Husband’ and ‘Wife’ from marriage certificates) will effectively disavow the biological nature of parenthood.

2.8 As Daniel Moody put it in his recent article *Redefining Marriage will Redefine Parenthood* (December 2012):

2.9 “We are being asked to deprive every single father, mother and child—now and in the future—of all natural rights. They will be replaced by purely legal, State-determined, State-granted subjective rights, because parenthood itself would have been converted from a legal acceptance of physical reality (presumption of paternity, etc) into a purely legal concept. The State would have legally erased all legal recognition that there is such a thing as the natural family unit.

2.10 “This is the one unavoidable consequence, because it happens purely as a result of changing the words in the definition. Even if no same-sex couple register their relationship as a marriage, it still happens. It cannot not happen. A redefinition of legal marriage, and the legal recognition (protection) of natural rights are MUTUALLY EXCLUSIVE. All reasons for redefining marriage have to trump the loss of human rights, and nothing trumps that. Every other aspect of the marriage debate (equality, religion, individual sexual behaviours, infertility, etc) can be adequately explained away. The loss of rights, however, is purely logical and irrefutable.

2.11 “Please note that every wish of same-sex couples can be met without recourse to redefining the legal institution—up to and including religious blessings of said relationship. The only thing that cannot be achieved without redefining marriage is the redefinition of parenthood.

2.12 “England and Wales will have declared themselves to be countries that believe a child’s parents are ‘Two adults’. It’s a clever trick because no parent or child will actually physically feel any different but, legally, all parents will have had their legal parental status downgraded to the equivalent of a foster parent.”

2.13 The potential for increasing State interference in family life in the future will be greatly increased by downgrading parental rights. This sets a dangerous precedent for civil liberties.

3. Important Notes

3.1 (1) None of the above analysis is based on bigotry and homophobia, as is so tiresomely claimed; to repeat this is merely to be taken captive by the propaganda of the militant homosexual lobby; it is based on truth, reason and observation. To shout ‘bigot’ or ‘homophobia’ is merely an ill-disguised attempt to close down the argument without having to engage with the reasons brought forward. The lie to the charge of homophobia is clearly seen in that some homosexuals are against SSM, and everyone agrees that it is impossible for a homosexual to be homophobic.

3.2 For example, Andrew Pierce, a columnist with a national newspaper has written, “I am a Conservative and a homosexual, and I oppose gay marriage. Am I a bigot? And what about Alan Duncan, the first Conservative MP to come out as gay? Mr Duncan, the International Aid Minister who is in a civil partnership, is implacably opposed to gay marriage. So is Dr David Starkey, the celebrated historian, who is openly gay.”

3.3 And homosexual MP Conor Burns has said, “Marriage is an institution that is the building block of stable society. All the evidence points to the fact that kids who are brought up by a married couple have higher education attainment rates, lower propensity to commit crime; marriage is a force for good in society and I think you need absolutely compelling reasons to want to redefine what marriage means. At the moment I am not convinced that those compelling reasons exist.”

3.4 In the recent defeat of SSM in Australia’s federal parliament (September 2012), the bill did not receive unanimous support from the homosexual community. Homosexual Senator Dean Smith voted against it, calling his vote, “an honest acknowledgement of the special and unique characteristics of the union described as marriage”. **It is clearly possible to have a principled opposition to SSM that has nothing to do with homophobia.** Let all those in favour of SSM stop using the manipulative and dishonest tactic of labelling opponents ‘homophobes’.

3.5 (2) The negative effects of redefining marriage will result regardless of what one thinks of the ethics of homosexual behaviour; that is irrelevant to the issue of SSM and its negative outcomes on children’s welfare and parental rights. The law of cause and effect makes these outcomes inevitable.

FOOTNOTE:

1. “The costs of sexual freedom and relationship breakdown to the taxpayer and wider economy are complex and difficult to calculate, but £100 billion annually is probably a reasonable starting point: about twice as much

as alcohol abuse, smoking and obesity combined.” So says a report published by The Jubilee Centre, ‘*Free sex: Who pays? Moral hazard and sexual ethics*’. Read the report in full at: <http://www.jubilee-centre.org/document.php?id=424>.

February 2013

Memorandum submitted by Professor Julian Rivers (MB 28)

Further to oral submissions made at the invitation of the Public Bill Committee on 12 February 2013 I wish to add the following.

INTRODUCTION

Having made a basic shift in the conception of marriage underlying the law of England and Wales, the Bill needs to do two things: it needs to implement the new conception of marriage in a non-discriminatory way, and it needs to protect the rights of those individuals and organisations who hold to the older, more traditional conception of marriage. Broadly speaking, this is what it does, but it is imperfectly drafted. Its two biggest weaknesses are its failure to think through the relationship of the new marriage law with civil partnership and the failure to provide complete protection for individuals and organisations maintaining the older view of marriage. Furthermore, a case can be made that the basic principles of the Bill would be better implemented by a more radical reform to the law of marriage and civil partnership.

CHURCH OF ENGLAND/CHURCH IN WALES

The positions of the Church of England and Church in Wales are accommodated by the provisions of clause 1 ensuring that same-sex marriages cannot be solemnized according to the provisions of Part II Marriage Act 1949 (marriage by banns),¹²⁴ and by the subsidiary clauses ensuring that compatibility of English canon law with statute law,¹²⁵ and relieving clergy from any duty to marry otherwise qualified persons.¹²⁶ These latter two sub-clauses are wise as precautionary measures.

It is also possible to marry in a church or chapel under authority of a superintendent registrar’s certificate (s.17 MA 1949). S. 26(1)(e) has correctly been amended in clause 3 of the Bill to ensure that it refers to the marriage of a man and a woman. This was not noted in my oral submission on that point, which incorrectly assumed that the old drafting of s.26(1)(e) had survived.

According to clause 8, future changes to the legal position of the Church in Wales may be made by the Lord Chancellor under delegated powers. This is understandable for reasons set out in the Explanatory Memorandum, namely that while the Church of England enjoys legislative powers, the Church in Wales does not. However, it does amount to a power to modify substantially Part II MA 49 by delegated legislation. (Although this part of the Marriage Act refers to the Church of England, it also governs the marriage law of the Church in Wales.) Such a power to amend substantial primary legislation by delegated powers is undesirable in principle. Furthermore, although clause 8 requires the Lord Chancellor to have regard to the terms of the resolution of the Governing Body of the Church in Wales, those changes are likely also to affect the terms under which the Church of England might in future permit same-sex marriage. It would be better to remove clause 8 and require primary legislation if and when either Church wishes to solemnize same-sex marriages. This is in line with the terms of the ‘quadruple lock’ as originally announced.

We can be reasonably confident that the religious exception proposals are immune to challenge under the European Convention on Human Rights (eg) on grounds of discrimination within ambit of art. 8 or art. 12. There is no Convention right to get married by a specific process, and the exceptions are clearly in pursuit of collective art. 9 protection.¹²⁷ This would apply even in the case of the Church of England since the ECtHR has made it clear that established churches are not straightforwardly branches of the state and enjoy art. 9 rights of their own as potential victims.¹²⁸ A Convention-argument unpicking the exceptions is not unimaginable, but does not stand a realistic chance of success.

The default position: no religious same-sex marriages

The Bill is based on a default position that same-sex marriages may not be solemnized by religious ceremony. However, this default position is not completely carried through in two contexts.

The default position is not carried through into the conversion of civil partnerships under clause 9. Since civil partnerships can now be concluded on religious premises¹²⁹ it is possible for a religious organisation which is

¹²⁴ Clause 1(2). In spite of its wording, this part also applies to the Church in Wales.

¹²⁵ Clause 1(3).

¹²⁶ Clause 1(4).

¹²⁷ The judgment in *Ladele v UK* (15 January 2013) recognises that religiously-based views of marriage benefit from prima facie protection under art. 9 ECHR.

¹²⁸ *Holy Monasteries v. Greece* (1995) 20 EHRR 1; *Hautaniemi v Sweden* (1996) 85 DR 94.

¹²⁹ Civil Partnership Act 2004, s. 6A; Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2011/2661.

happy to celebrate civil partnerships but not same-sex marriages to be circumvented by a couple who celebrate a religious civil partnership (or as near as is allowed) and who then convert their civil partnership into a marriage. Under clause 9(7)(b) the conversion is deemed to be effective from the date of formation of the partnership. Thus, in law, they will be treated as having married on the religious premises. As a matter of principle there ought to be a narrowly-tailored exception preventing conversion of civil partnerships which were concluded on religious premises and where the religion concerned is not prepared to celebrate same-sex marriages.

A similar point applies to change of gender under clause 12 and schedule 5. An opposite-sex couple may marry by a religious ceremony according to a religion which does not recognise same-sex marriage. One party may undergo reassignment surgery and the other party consent to the continuance of the relationship as a marriage. According to new s.11A(2) the continuity of the marriage is not affected. Once again there should be an exception preventing the continuance of a marriage into a same-sex marriage, where the marriage was celebrated according to the rites of a religious organisation which does not recognise same-sex marriage. It should be dissolved as under current law and the couple required to enter into a civil partnership or a new same-sex marriage by civil ceremony if the integrity of the religious body's conception of marriage is to be respected.

Protection for conscientious objection

The word 'compelled' in clauses 2(1) and 2(2) is narrow. It naturally refers to a duty to act coupled with a sanction for failure to do so. But individuals and organisations which have not opted-in might easily be subject to detriment outside the narrow confines of the provision of same-sex marriage. For example, a minister of religion may have a role as a chaplain in a public institution, and a religious organisation might hire premises from a public body, or might offer public services in partnership with a public body. Such public (or, for that matter, private) bodies might take decisions detrimental to the interests of the religious individual or organisation on account of their views of same-sex marriage. For example, if a prison chaplaincy were terminated on grounds of the individual minister's opposition to same-sex marriage, it would be hard to describe him or her as being 'compelled'. This form of detriment is particularly likely in the context of a public employer or landlord, on account of the public sector equality duty, which could be read in such a way as to require public bodies to promote the new view of marriage.¹³⁰ It should also be noted that domestic courts have been unwilling to read conscientious objection clauses more broadly than the language naturally suggests.¹³¹ European Convention law relating to conscientious objection is sparse, but has recently been expanded by the recognition of a clear right of exemption of pacifist ministers of religion from military service.¹³² It is possible that failure to provide full protection for dissenting ministers of religion and religious organisations may not be Convention-compliant. The word 'compulsion' needs to be expanded: 'a person shall not be compelled, or subject to any detriment on account of a refusal, to ...'

Clause 2(4)(b) creates a rule compelling all registrars to be prepared to act in relation to same-sex marriages. Although the recent decision in *Ladele* recognises the interest of the state in compelling participation by its officials in civil partnership ceremonies, it is possible that the case-law on the accommodation of religious employees and office-holders may continue to develop. A test of reasonable accommodation would in any case be preferable, even if not (yet?) required by the Convention.

In clause 2(5) the Bill ensures that refusal to carry out or be involved in same-sex marriages does not constitute unlawful discrimination in the provision of services contrary to the Equality Act 2010. This exception is also too narrowly tailored. It only covers non-discrimination in the provision of services directly related to the solemnization of a same-sex marriage. It does not cover marriage-related services such as preparation, counselling or 'marriage courses'. For the purposes of equality law, services covered by non-discrimination requirements include those provided free of charge. There is an exception under s.28 Equality Act 2010 for services to married people or those in a civil partnership, but there is no exception for services offered to a sub-category within the new category of marriage defined by reference to a protected characteristic. Religious organizations should be able to decide for themselves whether or not to offer such services to same-sex couples without threat of hostile litigation. The drafting of new s. 25A (1) should add a fourth element (d) 'does not offer marriage-related services' with some definitional clause explaining what such services include.

The relationship with civil partnership

The Bill creates an illogicality in providing for an opt-in regime for marriage but not for civil partnerships. The reason this is illogical is that religious denominations are more likely to approve of civil partnerships for same-sex couples than they are marriage. So the Bill creates a legal regime which does not quite allow for civil partnerships by religious ceremony,¹³³ but does allow it for same-sex marriage. In spite of the margin of appreciation granted to states in this area, this runs a serious risk of being Convention non-compliant. The ECHR

¹³⁰ Equality Act 2010, s. 149.

¹³¹ See *R v Salford AHA ex parte Janaway* [1989] AC 537; *Doogan v Greater Glasgow and Clyde Health Board* [2012] SLT 1041.

¹³² *Bayatyan v Armenia* (2012) 54 EHRR 15. See also the earlier case of *Thlimmenos v Greece* (2001) 31 EHRR 15.

¹³³ Under Civil Partnership Act 2004, s. 2(5), no religious service is to be used while the registrar is officiating at the signing of the document. The precise limits are set out in the Marriages and Civil Partnerships (Approved Premises) Regulations 2005/3168, Sched. 2A para. 15. The key difference with secular ceremonies is that the introduction, any interval and conclusion to the proceedings on religious premises may be religious: see, by implication, Sched. 2 para. 11(4).

contains no right for religious organisations to conduct marriages or civil partnerships with civil legal effect, but where the state chooses to make this possible, it must do so on a non-discriminatory basis.¹³⁴ Given the close relationship between civil partnership and marriage established by the Bill, it is discriminatory on grounds of religion to allow a religious organisation which wishes to solemnize same-sex marriages to do so, but to prevent a religious organisation which only wants to form civil partnerships from doing so. There is no objective or rational justification for the difference of treatment here.

The failure to think through the relationship with civil partnership is most exposed in clause 12 and schedule 5. Where one party changes gender, a marriage may subsist but a civil partnership must be dissolved or converted into a marriage. The power to convert the civil partnership to a marriage and the unusual possibility that both civil partners change sex simultaneously hardly mitigate the clear discrimination on grounds of sex and sexual orientation here. This, perhaps more than any other area, is where the Bill risks being Convention-non-compliant.

Once one takes seriously the requirements of non-discrimination in this field, the options would appear to be limited to (a) a single legal regime for all couples; (b) a dual regime, one for same-sex couples only, the other for other-sex couples only, with the two regimes closely related, albeit not identical;¹³⁵ (c) a triple regime, being a combination of (a) and (b). The UK cannot maintain a regime for same-sex couples only alongside an institution for both.

Wider religious liberty concerns

The Bill completely fails to address the impact of the changes on religious liberty and conscience protection, most obviously in schools but also in other contexts of public-private interaction such as fostering, adoption and social care.

In schools, there are already two sets of rules, one relating to religious worship and education, the other to sex education. Change to the underlying basic view of marriage touches both. The rights of parents to secure education for their children in conformity with their religious and philosophical convictions under art. 2 First Protocol ECHR are affected, as are the rights of teachers. As regards teachers, a parallel may be drawn with the comprehensive protection found in s.59 School Standards and Framework Act 1998; a provision which dates back to 1944.¹³⁶

That is the sort of thoroughness of protection which is required with reference instead to divergent views on the nature of marriage. But the whole area needs more careful thought and legislative clarification.

A more radical proposal

The rushed nature of this Bill means that the Government has failed to consider whether the time is not right for a much more radical change to the structure of our marriage law. Many European states have uniform civil ceremonies and treat any religious ceremony as entirely extra-legal. This was the result of earlier conflicts between religious and secular views of marriage, conflicts to which the UK was largely immune, but which have now emerged with a vengeance. The logic of the underlying premises of the Bill points to a more radical reform: (1) to create a single legal framework for all couples substantially based on civil partnership, perhaps with a new name such as ‘civil union’; (2) to deem all existing marriages and civil partnerships to continue as civil unions in law; (3) to permit individuals to celebrate their civil union in any way they see appropriate. One attractive model is to adopt a celebrant-based system as proposed in the then Government’s 2002 White Paper and which has regrettably been ignored since.¹³⁷

The advantages of such an approach would be to remove some of the doubts about whether religious liberty interests are adequately protected, to take the heat out of the battle over the ‘marriage’ label, and to avoid the inconsistencies the Government has fallen into over the relationship between same-sex marriage and civil partnership. In the current climate of debate, these would be considerable gains.

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¹³⁴ The nearest case in point is *Spetz v Sweden* no. 20402/92 (1994). The basic structure (no positive right to offer the service, but a right of non-discrimination when the state collaborates) can also be found in other areas of potential state-religion overlap such as education. See *Verein Gemeinsam Lernen v Austria* no. 23419/92 (1995). For a full account of the rights of religious organisations under European human rights and domestic law, see Julian Rivers, *The Law of Organized Religions* (Oxford: OUP, 2010)

¹³⁵ This remains an option for at least as long as the ECtHR continues to treat other-sex marriage under art. 12 and same-sex partnerships under art. 8. Both may eventually fall to be treated under art. 12. See *Schalk & Kopf v Austria* (2011) 53 EHRR 20, para. 61

¹³⁶ See s. 59(2): No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship—

(a) from being a teacher at the school, or

(b) from being employed or engaged for the purposes of the school otherwise than as a teacher.

(3) No teacher at the school shall be required to give religious education.

(4) No teacher at the school shall receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage—

(a) by reason of the fact that he does or does not give religious education, or

(b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

¹³⁷ See *Civil Registration: vital change*, Cm 5355 (Jan 2002), paras. 3.16-3.21.

Memorandum submitted by The Gender Identity Research and Education Society (MB 29)

INTRODUCTION

1. This submission is made by The Gender Identity Research and Education Society (GIRES). GIRES is a charity that provides information, policy advice and education in the transgender field, with the aim of encouraging a welcoming environment for trans people, and better social inclusion for them and their families. The Equal Marriage Bill is crucial to the delivery of fair and equal treatment in the future of trans people and their spouses; it is also hoped that those who have been subject to previous inequalities arising from the conflict between the GRA and marriage as well as other legislation will now, in some measure, achieve justice and restitution. We have identified, below, steps that could deliver these ends. We have not yet drafted all the amending clauses that our recommendations would entail in the Bill. We plan to complete that task by working with the Bill drafting team. However, we will send what we have prepared so far as a separate Annex to this submission. Moreover we support the amendments prepared by Zoe O'Connell and Sarah Brown that have already been tabled.

SUMMARY OF ISSUES

2. Ending of a relationship for one party to obtain a Gender Recognition Certificate (GRC) is wrong in principle and there is no case for excluding different legal sex couples from civil partnerships.

3. The Bill redefines an existing marriage as a same sex marriage following a trans spouse's gender recognition. As a consequence, a wife's survivor benefits in her trans spouse's occupational pension scheme change from the married wife basis to the more restricted same sex basis. The wife's survivor benefits may therefore be drastically reduced or totally lost as a result of gender recognition, which may result in an unfair and unacceptable condition on the trans spouse's human rights to gender recognition.

4. Furthermore, the Bill contains gender specific language that might be wholly inappropriate for many trans affected marriages and is a clear indication that non-gendered/intersex people have been excluded from the Bill.

5. There has been no attempt to undo the hurt inflicted on couples who had their marriages 'stolen' for one party to obtain their legal rights. This may be a challenge for government but something must be done to reinstate such marriages from their original date.

6. The Bill fails to appreciate the pressures within the family unit during the difficult time of transition. The proposed measures do not address the destabilising effect on families of the Gender Recognition Act 2004 (GRA), because they fail to achieve a fair balance between the rights of the spouse and the GRC applicant. The Bill is unnecessarily complicated as a result. Furthermore, if the unfair balance were to be retained, the time limit for the conversion of interim GRCs to full GRCs is unreasonably short.

7. Under the Matrimonial Causes Act (1973), the enforced gender-based disclosure requirement on GRC holders, prior to entering a marriage or civil partnership is discriminatory. This requirement does not apply to trans non-GRC holders. Moreover, no other identity group, other than trans, is targeted in terms of a highly invasive disclosure requirement.

8. We are extremely concerned there is no new 'fast track' application process for long term transitioned people, as originally provided by the GRA.

Schedule 5-4A (3)—the treatment of trans people in a civil partnership

9. GIRES takes the view that gender recognition is a personal issue and should not be assessed in any relationship context. The Bill, as proposed, removes the requirement for annulment of a marriage before a GRC is issued but a civil partnership must be ended before one or both parties can obtain a GRC. This is both wrong in principle and also discriminates against heterosexual couples who may wish to form a civil partnership. It is accepted that the civil partnership can be converted to a marriage and indeed some couples may wish to do so.

10. However, in ending discrimination against same legal sex couples, the Bill introduces discrimination against mixed sex couples. If government is unwilling to open civil partnerships to opposite sex couples, it is proposed that those who are in civil partnerships and wish to obtain a GRC should be allowed not to convert, on the basis that they met the requirements for a civil partnership at the time it was entered.

Schedule 4—Part 6—Regression of survivor's rights in occupational pension schemes as a result of gender recognition

11. The Bill provides an exception to avoid loss of wife's state pension on spouse's gender recognition in an existing marriage, but fails to avoid regression of wife's survivor rights in occupational pension schemes on recognition. Regression occurs because a wife's marital status switches from opposite sex to same sex, to apply more limited same sex rules. Whereas married women's survivor benefits are based on years accrued from 6/4/1978 onwards, public sector pension schemes only give survivor benefits to same sex couples from 6/4/1988 onwards (potential loss 10 years' rights) while significant numbers of private sector schemes only provide from 6/12/2005 onwards (potential loss 27 years' rights). While private sector schemes have discretion to retain wives' original survivor benefits on gender recognition, public schemes have NO discretion. Loss of wife's

survivor benefits on recognition may impose an impossible and incalculable condition of gender recognition, potentially denying significant amounts of, or all survivor benefits. (See examples in Annex A.)

12. Therefore, one stated aim of the government's equal marriage proposals, for spouses to obtain recognition in a subsisting marriage without prior annulment, will fail a significant proportion of individuals intended to benefit.

13. We feel the imposition of this obstacle upon recognition within marriage contravenes the transsexual spouse's Article 8 rights at least, while the proposed loss of wife's survivor rights is thought contrary to EU Council Directive 86/378/EEC of 24 July 1986 relating to occupational pensions. The true comparator of a wife whose husband undergoes gender reassignment and its ultimate conclusion, gender recognition, is the wife whose husband does not undergo gender reassignment/recognition. We therefore feel the proposed treatment of wives' survivor rights on gender recognition is unlawful. A comparison with female same sex couples is a spurious result of imposing existing civil partnership rules as a matter of administrative convenience. Such couples have not been previously married, neither party made extra contributions on account of survivor rights until 1988, neither party ever had pre-1988 survivor rights and their rights, when granted in 2005, were previously unprovided scheme liabilities.

14. The Minister's oral evidence of 12 February to Committee gave only two reasons for this treatment:

- a: it would impose extra administrative/regulatory burdens—We disagree and in any case refer to paragraph 91 *Goodwin v UK* (ECHR/2002/588) judgment which, in deciding that transsexual people have the right to legal recognition, stated in relation to the practicalities of recognition that “No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.” Therefore administrative/regulatory convenience is insufficient to negate these rights of transsexual people and their spouses.
- b. that it would necessitate intrusive questions to deceased transsexual spouses' wives to evaluate survivor benefits—We disagree again, as pension schemes should be able to identify benefits clearly when they are notified of any gender recognition in marriage. And, sadly, intrusive questions are already an everyday risk of being a transsexual person or their spouse, privacy being a primary reason for the GRA's enactment.

Schedule 3 Part 2—Inappropriate gender-specific language

15. Although the understanding was that legal gender was to be taken out of marriage law, the terms ‘husband and husband’ or ‘wife and wife’ will be used in equal marriage ceremonies. This may suit the gay and lesbian community. Such terminology will be inappropriate for many in a trans affected marriage, if these terms are employed on revised marriage certificates. A non-trans female spouse may be unwilling to consider her ‘ex husband’ as her wife despite a GRC award.

16. Such folk may be more comfortable considering themselves ‘spouses’. Trans affected marriages are not necessarily gay or lesbian relationships. There is no evidence to suggest that a spouse's sexual orientation changes on the partner's gender transition! In the context of trans affected marriages, the option to use the term ‘spouse’ should be a choice.

17. Discriminatory language with regard to trans people in relation to the Bill on religious grounds (use of the terms “husband” and “wife”) should not be allowed. In our view, religious discrimination against trans people on marriage is already sufficiently provided for in the GRA's conscience clause allowing Church of England priests to refuse to marry an individual whose gender is legally recognised under the GRA.

18. The Bill does not address the needs of the ‘non-binary’ community. These people have identities that are not completely congruent with the sex in which they were registered at birth. This will include those who have intersex conditions. Note those that do not fit the binary are not even covered under ‘gender reassignment’ in the 2010 Equality Act. If such people get married, the terminology used (husband/wife) will clearly be wholly inappropriate.

Schedule 5—Stolen marriages

19. Although Schedule 5 allows couples who ended their marriages under duress and formed a civil partnership to convert to a marriage, it will not be a conversion back to their original marriage (that some consider ‘stolen’). To quote one person:

“After a circuit judge annulled our marriage, we left the court in tears, holding hands. Over the next few weeks, we barely let each other out of sight. It felt as if something visceral had been torn away. It still hurts; the three and a bit years since haven't lessened that. The court even confiscated our marriage certificate, and not knowing they were going to, I never made a copy. As far as the state is concerned, our marriage never existed, and the only proof I have otherwise is a decree absolute.”

20. A reasonable person would surely agree that a great wrong has been done to such folk. Putting someone in a position where they must choose between their human rights and ending their marriage is incredibly cruel.

Whilst we applaud ending this cruelty for new couples, a mechanism for reinstating the original marriage, as far as possible, would go some way to make amends for the great distress caused that continues to be felt.

21. Furthermore, such folk paid the legal costs for their original marriage and their civil partnership and will no doubt be asked to pay further fees if they wish to convert their civil partnerships to a marriage. This is completely unfair and an important matter of principle.

22. Our recommendation is that any married couple who annulled for the award of a GRC and then formed a civil partnership within an appropriate time limit should be allowed, on request, to have their original marriage reinstated *ab initio*. Section 96 of the Civil Partnership Act included a mechanism for attempting to make these relationships as continuous as possible, under the somewhat clunky system which currently exists and suggests an appropriate time-limit. This should result in a marriage certificate issued in their current names, showing the original date of marriage, and the marriage should be considered to have been continuous.

Schedule 5 section 4—Family destabilisation/impact on GRC applicant due to the inappropriate balance struck between GRC applicant and spouse

23. Currently, and as proposed in the Bill, if an Interim GRC is awarded, the non-trans spouse is required to sign annulment forms etc to end the marriage. That spouse may not want the marriage to be ended or indeed may be openly hostile to the trans partner or uncontactable. Often, hostility is due to anger at the apparent ‘loss’ of the spouse on transition, even if they remain together, a type of bereavement process that needs time to play out. At other times, lack of spousal cooperation in the gender recognition process is an attempt to make the partner change their mind and ‘revert’. This all causes major stresses in the family and has a negative impact on children. All need time to adjust. Marriages that could have adjusted have been broken up; families unnecessarily destroyed. The immense pressure on the GRC candidate to rid themselves of an inappropriate gender label can only be understood by those in that position. This in itself is a factor that can and has destabilised and destroyed families.

24. As the spouse would continue to have (in effect) a permanent veto on her partner obtaining legal rights, the reason for this veto must be substantial to deny such legal rights. The GRC application can only be made after the person has transitioned to the opposite gender role for at least two years. The spouse thus has had at least two years to consider if they are comfortable continuing in a relationship with somebody who will be of the same legal gender. Indeed, even before the application is made, spouses will frequently be the same physical sex following the trans spouse’s gender reassignment surgery. If the non-trans spouse’s views were that deeply held, then they will already have had at least two years to leave/take steps to end the marriage. The Bill appears to presume that the non-trans spouse might be unfairly bounced from their current marriage into a legal same sex marriage. This is clearly not the case. The spouse has had plenty of time to take action in accordance with strongly held beliefs.

25. The consequence to the applicant of not awarding a GRC on the application alone, due to uncooperative/hostile/absent/unknown location spouses, has to be balanced against the rights of spouses who have a strongly held belief that same legal sex marriage is wrong but have not taken steps to remove themselves from that relationship.

26. GIRES remains convinced that a correct balance has yet to be achieved in the Bill in order to overcome the negative consequences to the applicant, spouse and children. Massive simplification of the Bill could be achieved leading to more efficient and faster application processes within the Gender Recognition Panel (GRP) by removing the provisions for Interim GRCs. We welcome the opportunity to review solutions with the Bill Team, which should include granting a full GRC based only on the trans person’s application, while simultaneously sending a formal notification of the grant to the non-trans spouse. That notification should enable the non-trans spouse to end the marriage or civil partnership within 6 months from date of issue Schedule 5 4A—Conversion of an Interim GRC into a GRC

27. GIRES opposes retaining Interim GRCs. However, if the government could make a convincing case for doing so, GIRES acknowledges that the Bill introduces the valuable principle of giving the couple time to adjust to their new circumstances when an application for a GRC has been made but one or both parties remain unsure if the marriage should continue. The Interim GRC is a certificate, which confirms that the applicant has met the requirements for gender recognition. We are unclear why the certificate is only valid for 6 months for use in initiating an annulment. However, a new use is proposed in the Bill as it can now be submitted to the GRP, with spousal consent, to facilitate a GRC award.

It should be accepted that the applicant does not cease to meet the requirements for gender recognition when the 6 month time limit expires. Given this, and the reality that family adjustment often takes many years, there should be no time limit imposed unless there is an overriding legal reason for invalidating the Interim GRC in the conversion to GRC process after 6 months. The effect here would be to reduce often immense pressure on the couple, to make a decision they may not be ready to take within 6 months or indeed 6 years. Families that might otherwise remain intact are being destroyed (at potential cost to the public purse) by having to make decisions before they are ready.

Matrimonial Causes Act 1973 Section 12(h)—Inconsistent treatment GRC/non-GRC holders

28. If a transgender person with a GRC does not disclose gender history then the other party could exit the relationship relatively quickly through nullity, rather than divorce, proceedings by relying on s12(h) of the Matrimonial Causes Act 1973.

29. If a transgender person without a GRC went through a ceremony of marriage without disclosing gender history, the other party could not rely on s.12(h) as it only applies to persons with a GRC. However, the other party could rely on s.12(c) which allows nullity proceedings where a party did not validly consent due to duress, mistake or unsound mind. The claim here would be that consent was lacking due to the other party's mistake—which would amount to a claim that there was a discrepancy between apparent gender and legal gender. Thus, irrespective of possession of a GRC, transgender people intent on marriage are singled out, compared to cisgender people at large, to bear this special (gender-based) disclosure requirement.

30. Accordingly, the focus should be on abolishing the requirement to disclose ie repeal Matrimonial Causes Act 1973 Section 12(h).

REINTRODUCTION OF FAST TRACK

31. When the GRA was enacted, a temporary Fast Track process enabled those who had been living in role for 6 years and had a formal diagnosis of gender dysphoria or had undergone genital reassignment surgery , to meet the evidence requirement for GRC award, provided they were unmarried. We think the Fast Track should be reintroduced for a limited period when the GRA is revised. The Fast Track process was denied, at the enactment of the GRA, to married folk who would have otherwise qualified. If the process was considered appropriate then, it is now similarly justified for long term transitioned married individuals. The provision of such a process within the Bill will cut its implementation costs by significantly reducing the GRP's workload.

32. GIRES is aware that many older married trans people will not be applying for a GRC as the effect of gathering information could 'out' them in a community in which their gender history is unknown. Many are worried by 'leaky' information systems in General Practice establishments and their lack of understanding of how to deal with sensitive information related to patients with a transsexual history. Many such establishments are totally unaware of the provisions of s.22 of the GRA.

Prepared by:

- Helen Belcher
- Jenny-Anne Bishop
- Sarah Brown
- Paula Dooley
- Christl Hughes
- Celia Macleod
- Jay McNeill
- Zoe O'Connell
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- Terry Reed
- Alex Sharpe
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Annex A

(see also separate Excel table of calculation)

Draft amendments to prevent regression of the survivor rights of a wife in an existing marriage, following a spouse's gender recognition.

A. Analysis

I have arrived at these amendments by using what I believe to be an up to date version of the Pension Schemes Act 1993 available at <http://www.dwp.gov.uk/docs/a5-1251.pdf> , updating this to see the effect of the amendments proposed in Schedule 4 Part 6 of the Marriages (Same Sex Couples) Bill, and then drafting amendments to the Act so updated that will prevent the regression of the wife's survivor rights following gender recognition. These amendments were arrived at by analysing each paragraph of Part 6 in turn as below, to arrive at the suggested text of amendments included at B below:

Sub paragraph 16—Draft amendment 1 below ensures that wives in same sex couples as a result of their spouse's gender recognition also benefit from the exception in Schedule 9 Para 18 Equality Act 2010 afforded to husbands and wives in opposite sex marriages.

Sub paragraph 17—I believe that no amendment is required as this paragraph functions only to extend guaranteed minimum payment provisions of Section 8 Pension Schemes Act 1993 to same sex couples in addition to husbands, wives and civil partners.

Sub paragraph 18—Draft amendments 2 and 3 amend Section 17 (3) and (4) respectively, to avoid placing the limitation to accrued years from the tax year 1988–1989 onwards on wives in same sex couples as a result of their spouse’s gender recognition. **Draft amendment 4** provides a definition of such wives. This seeks to follow the models provided in the Part 5 exceptions for such couples.

Sub paragraph 19—The current clause in the Bill ensures that same sex couples are afforded survivors’ rights. **Draft amendments 5 to 7** collectively ensure that wives in same sex couples as a result of their spouse’s gender recognition are included in the categories entitled under Section 24D (2) entitled to access pension rights accrued between 6 April 1977 and 5 April 1997, and that such wives are removed from the categories in Section 24D (3) whose entitlement is restricted to the period 5 April 1988 to 5 April 1997.

Sub paragraph 20—As explained in the Explanatory Notes to the Bill, Section 37 of the Pensions Schemes Act 1993 prohibits alterations to the rules of a contracted-out scheme unless the alteration is of a prescribed description and except in prescribed circumstances. Section 37(3) prohibits such alterations by schemes that were formerly contracted-out so long as any person is entitled to receive benefits for the period when the scheme was contracted-out. Section 37(4) limits the application of section 37(3) when the beneficiary is a widower or surviving civil partner. The effect of the amendment in paragraph 20 is that this limitation may also be applied when the person entitled to receive benefits under the scheme is so entitled because of being a survivor of a marriage with a person of the same sex. **Draft amendment 8** removes this limitation where the beneficiary is a survivor who is a wife who was in a same sex couple as a result of their spouse’s gender recognition.

Sub paragraph 21—I believe that no amendment is required as this paragraph functions only to extend to same sex couples the further provisions of Section 47 (1) Pension Schemes Act 1993 regarding the effect of entitlement to guaranteed minimum pension on payment of social security benefits.

Sub paragraph 22—I believe that no amendment is required as this paragraph functions only to extend the basis of re-valuation provisions of Section 84 Pension Schemes Act 1993 to same sex couples in addition to husbands, wives and civil partners.

Sub paragraph 23—I believe that no amendment is required as this paragraph functions a definition in Schedule 3 (1) Pension Schemes Act 1993 to add surviving same sex spouses to widows, widowers and surviving civil partners.

B. Suggested text of amendment

1. At Schedule 4 Page 34 Line 4, at end insert

“(c) a woman who is married to a woman who is her spouse where —

 - (i) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (ii) the marriage subsisted before the time when that certificate was issued.”.
2. At Schedule 4, Page 34, Line 22, after (4) delete “:after ‘partner’s’ insert ‘or surviving same sex spouse’s’.” and insert

“—

 - (a) after ‘partner’s’ insert ‘or surviving same sex spouse’s’;
 - (b) at the end insert ‘but this limitation does not apply to a surviving same sex spouse by virtue of gender recognition as defined in (4C) below.’”
3. At Schedule 4, Page 34, Line 21, insert

“(2A) In subsection (3) after ‘widow’s’, insert ‘or a survivor same sex spouse’s, where within (4C) below.’”.
4. At Schedule 4, Page 34, Line 22, at end insert

“(3A) After subsection (4B) insert

“(4C) A surviving same sex spouse is ‘a same sex spouse by virtue of gender recognition’ where she was married to—

 - (a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage subsisted before the time when that certificate was issued.”
5. At Schedule 4, Page 34, Line 29, leave out “is a man married to a woman, and the earner “ and insert “is a man married to a woman, or a woman within (4) below who is married to a woman, and the earner”
6. At Schedule 4, Page 34, Line 32, leave out “is a married woman, a man married to a man, or a civil partner, and the earner dies” and insert “is a married woman except within (4) below, a man married to a man, or a civil partner, and the earner dies”.
7. At Schedule 4, Page 34, Line 34, at end insert

“(4) A woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, whose marriage subsisted before the time when that certificate was issued.”

8. At Schedule 4, Page 34, Line 35, delete “, in subsection (4), for “widower or surviving civil partner of an earner” substitute “widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner.”.

and insert

“—

(a) in subsection (4), for “widower or surviving civil partner of an earner” substitute “widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner.”;

(b) at the end insert

“(5) The limitation in subsection 4 shall not apply to the survivor of a marriage with an earner of the same sex in which the survivor was married to—

(a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and

(b) the marriage subsisted before the time when that certificate was issued.”

Annex A

OCCUPATIONAL PENSION SCHEMES—SURVIVORSHIP BENEFITS OF WIVES OF TRANS SPOUSES

Examples of lost survivor benefits

<i>Sector</i>	<i>Public Retirement at age 55 eg police</i>	<i>Public Pension deferred in 1991 during period of self employment till retirement</i>	<i>Public Early retirement in response to deficit reduction</i>	<i>Private** Retired age 60</i>	<i>Private** Retired age 65</i>	<i>Private** Due to retire age 66***</i>
Joining date	05/04/1958	05/04/1976	05/04/1977	06/12/1972	06/12/1965	06/12/1971
Leaving date	05/04/1988	05/04/1991	05/04/2011	05/12/2012	05/12/2005	05/12/2021
Years in service	30	15	34	40	50	50
Pre 6/4/78 service	20	2	1	5.33	12.33	6.33
Service 6/4/78 to 5/4/88* (PUBLIC)	10	10	10			
Service from 6/4/88 (PUBLIC)	0	3	23			
Service from 6/4/78 to 5/12/2005 (PRIVATE)				27.67	37.67	27.67
Service from 6/12/2005 (PRIVATE)				7	0	16
PRE-RECOGNITION:						
Pension at current value (£)	20000	5000	30000	25000	10000	25000
Wife’s pension (£)	3333	2167	14559	10834	3767	10918
Basis of calculation	(10/30 x 20000 x 1/2)	(13/15 x 5000 x 1/2)	(33/34 x 30000 x 1/2)	(34.67/40 x 25000 x 1/2)	(37.67/50 x 10000 x 1/2)	(43.67/50 x 25000 x 1/2)
POST RECOGNITION:						
Wife’s pension following gender recognition (£)	0	500	10147	2188	0	4000
Basis of calculation	(0/30 x 20000 x 1/2)	(3/15 x 5000 x 1/2)	(23/34 x 30000 x 1/2)	(7/40 X 25000 X 1/2)	(0/50 X 10000 X 1/2)	(16/50 X 25000 X 1/2)

<i>Sector</i>	<i>Public Retirement at age 55 eg police</i>	<i>Public Pension deferred in 1991 during period of self employment till retirement</i>	<i>Public Early retirement in response to deficit reduction</i>	<i>Private** Retired age 60</i>	<i>Private** Retired age 65</i>	<i>Private** Due to retire age 66***</i>
% loss of pension	100	77	30	80	100	63
Annual loss (£)	3333	1667	4412	8647	3767	6918
Loss over 5 years (£)	16667	8333	22059	43234	18835	34588
Loss per week (£)	64.10	32.05	84.84	166.29	72.44	133.03

*Wives’ survivors rights were granted from 6 April 1978. 6 April 1988 was the date when survivors’ rights were equalised for widows and widowers to eliminate this aspect of sex discrimination in the UK’s provision of pensions.

**Based on schemes applying the minimum rights from 6 December 2005. The two third of schemes said to grant rights back to 1988 will be similar in impact to the public sector examples.

***Forecast based on current salary.

NB: only private schemes have discretion to be flexible. Public sector schemes have NO discretion.

February 2013

Memorandum submitted by The Rt Revd Dr Alan Wilson, Area Bishop of Buckingham (MB 30)

1. I am The Rt Revd Dr Alan Wilson, Area Bishop of Buckingham in the Church of England Diocese of Oxford. I hold three degrees in theology from the Universities of Cambridge and Oxford, including a doctorate in modern Historical Theology. I have served in my present post since October 2003.

2. I have since 2007 published a Blog, which I was interested and amused to see mentioned (albeit obliquely) by William Fittall in his answer to Chris Bryant’s Question 64. Undoubtedly Church of England bishops hold a variety of views on the various questions around equal marriage, but I am one of the very few who has been consistently articulating wholehearted support for this measure.

3. I felt Mr Fittall’s dismissal of my point of view, though understandable, underlined the difficulty some senior representatives of the Church of England seem to have in being heard, if they deviate from the party line.

4. I was interested that Mr Fittall should call any publication on a blog “private.” To date my blog has had over a million pressings since 2007. My views are personal, but not private! In order to help the committee to gauge the real state feelings among members of the Church of England more accurately, I would like to offer the following information about the responses I have received since making public my support of marriage equality, and the conclusions I draw from them:

5. I have received just over 500 messages of one sort or another, pretty much all so far as I can tell from Christians. This implies that most others in society have moved on from fretting about this subject, if not to full acceptance, to an acknowledgment that gay people are just people like them, and what people get up to in bed is their own business.

6. About 80% have been supportive. These include some 20–30 deeply personal testimonies from gay couples, telling of love and faithfulness, sometimes against terrible odds over many years. Legal recognition will not make these relationships stronger, but it will de-stigmatise them. Among practising Christians, I have received “Don’t tell my vicar, but...” and “not in my name” messages that imply a need for more openness, confidence and honesty, especially where clergy have attempted to whip others into shape behind a conventional party line. I would not characterize all Evangelical Christians as anti. Many of them are far more thoughtful, nuanced and even conflicted, with a strong Evangelical instinct that is not about last ditching a particular interpretation of the Bible but striving to be good news to real people. The vast majority of local Churches try to be personally welcoming to all.

7. Of the 20% opposed, about 90% can only be seen as expressions of crude prejudice and bigotry. The phrase “I am not homophobic, but...” seems to indicate “soft or hard homophobic statement coming up! But I’m not prepared to own it.” I need to say that the vast majority of these comments have been anonymous. Some of them are more genteel than others. I have been told that gay people are lice, animals, insects, should be aborted before birth, disgusting, perverted, sexually voracious, mass murderers and sub-human— all these for just being gay. It is simply false to claim there is no homophobia in the Church. There is plenty of it, apparently, and I fear that if Church leaders do not wake up and act to tackle it, the Church will become, even more than it already is, a last ditch for soft or hard prejudice that has now faded elsewhere in society.

8. Another anti trope has been “Bishop you are trying to be kind, but you are encouraging **BUGGERY!!!**” (the last word underlined in green biro till it goes through the paper.) A fair number of otherwise inoffensive Church people insist on defining gay people by what they imagine they must get up to in bed, with a prurience and obsessiveness that is disturbing.

9. Within the 10% of 20% more reflective unfavourable comment, I have made new friends, and discovered a capacity to engage with this among Christians, however reluctantly, that is impressive. Some messages were initially very hostile and angry with me. When I engaged with them on one positive point about which we might agree, the façade crumbled and we were able to have interesting and fruitful conversations.

10. I have enjoyed about half a dozen really thoughtful, helpful and reflective conversations with very Conservative Evangelical Christians — nuggets of gold amidst a steaming pile of more general railing and abuse.

11. I think I am tending towards two general conclusions about the core problem for most of my anti correspondents, which is not marriage but homosexuality in itself.

12. I have during this time returned to my college notes of the tiny number of Bible passages that could possibly bear directly on this subject. Many (many? there are only 5 anyway) are not entirely clear in their meaning, and none demand entirely obvious interpretation and application. Many simply use these “clobber texts” to construct a chain of sound bites that just happen to reinforce their basic instincts. There is a crying need for more rigorous reading of the text where homophobic readings used to be adequate to the needs of a homophobic society, with whose norms they easily conformed.

13. Either Homosexuality is seen as an anomaly or offence against nature, or a phenomenon within nature’s broad spectrum of sexual identities and thus part of Creation. Where my correspondents stand on this question seems to define where they position themselves on equal marriage.

February 2013

Memorandum submitted by Emeritus Professor James H. Grayson (MB 31)

1. Submitted by Emeritus Professor James H. Grayson, Ph.D.

2. INTRODUCTION

I write as an anthropologist, retired university lecturer, and an ordained minister of the Methodist Church in Britain. My comments are my own personal views and should not be construed to reflect the views of any organisation with which I am currently associated, or have been associated.

My concerns with the legislation as presently formulated are **not** principally concerned with its effects on the performance of religious rituals connected with marriage.

My concerns **are** principally about the effect of this legislation as presently formulated on society and free speech if it were to be made law without appropriate amendment.

3. SUMMARY OF CONCERNS

Examination of the proposed legislation indicates that the following three issues are not referred to in it:

- a. **Legal rationale.** There is no legal rationale provided for extending the meaning of the term ‘marriage’ to encompass same-sex partners given the existence of ‘civil partnerships’ which confer the same legal rights and protections as marriage.
- b. **Definition of ‘marriage’.** The proposed legislation as presently formulated does not provide any definition of ‘marriage’, yet it is clear that the inclusion of legalised same-sex relations within the definition of ‘marriage’ will alter profoundly the institution as it has been understood historically.
- c. **Legal Protection.** Although the legislation as presently formulated spends considerable time on the issue of protecting the right of the Church of England not to perform ‘same-sex marriages’, there is no protection provided for persons in the public sphere to hold, affirm and teach the traditional understanding of marriage. This issue is closely connected with item 3.b. stated above.

The bill would appear essentially to be an emendation of the existing legislation on marriage which has not taken into appropriate consideration the implied change in the meaning of the term ‘marriage’, and its effect on people who hold a traditional understanding of marriage.

4. DEFINITION OF MARRIAGE.

- a. **Universality of the Institution.** Marriage is a world-wide, historic institution which has been imbedded in the social life of all cultures for millennia. It is not specifically a religious institution although all major religions support the institution by providing ritual formalisation of the practice, and a theological or religious understanding of it.

- b. **Character and Purpose of the Institution.** Anthropologically, marriage has been defined as ‘a legally and socially sanctioned union between one or more husbands and one or more wives that accords status to their offspring and is regulated by laws, rules, customs, beliefs and attitudes that prescribe the rights and duties of the partners.’ (*The New Encyclopaedia Britannica* (1991), v 7, p. 871). This definition, which may be taken to be typical of the anthropological understanding of the nature of ‘marriage’, indicates that the pan-human institution of marriage is founded upon a relationship between a man and a woman essentially for the procreation and upbringing of children within the context of a unit—the family—which is sanctioned by law and custom. Marriage is thus rooted in the family as the core institution of society.

Marriage exists in a wide range of forms – monogamy (single partners of each sex), polygamy (single husband, multiple wives), polyandry (single wife, multiple husbands), and is set within an equally wide range of family descent structures – patrilineal, matrilineal, bi-lateral, and so on. The key point is that whatever the specific features of marriage in different societies are, it is a physical and social union between male and female. No contemporary or historical society of which I am aware has or has had an institution of formalised same-sex relations which is or was seen to be equivalent to or part of the institution of marriage.

5. EFFECT OF THE ABSENCE OF A DEFINITION OF MARRIAGE.

- a. The absence of any definition of marriage in the proposed legislation implies that the inclusion of same-sex relations within ‘marriage’ is solely a matter of the extension of the use of the term to cover an equivalent institution or relationship. Clearly for a substantial number of people this would not be the case.
- b. If this bill is passed without specific and precise legal protection being included for people who hold the view that marriage is only a relationship between a man and a woman, there is a clear possibility for people to be prosecuted, disciplined or stigmatised for holding this view.

As the bill would make it legal to say that same-sex unions are marriage, to say the opposite would be contrary to law. Anyone in a public office who continues to hold and state publicly the traditional and historic view of marriage as the definition of ‘marriage’ could be subject to punishment or harassment.

c. **Three Examples.**

- 1) If after passage of the bill, a teacher in a sex education class were to state that it was his/her opinion that only male-female relations are the basis of a marriage, the new law would provide a legal basis for them to be disciplined by school authorities or perhaps even to be taken to court. The proposed legislation as presently formulated provides no protection for such a teacher.
- 2) If after the passage of the bill, a university lecturer in anthropology (as I was before retirement) states in classes on ‘Marriage and the Family’ that male-female relations are the basis of a marriage, the new law again would provide a legal basis for them to be disciplined by the university administration, or taken to court, or subject to a campaign against their ‘bigotry’. The proposed legislation as presently formulated provides no protection for such a lecturer.
- 3) If after the passage of the bill, a registrar refuses on reasons of conscience to conduct a same-sex marriage, the bill will provide a specific, legally sanctioned reason for dismissing them or subjecting them to some form of punishment. The proposed legislation as presently formulated provides no protection for such an official.

6. EFFECT ON TERMINOLOGY ASSOCIATED WITH MARRIAGE.

As a universal and historic social institution, a rich vocabulary associated with marriage has been developed in every society over many centuries. Inevitably and because of the changes in practice which will be made, this bill would force changes in the definition and use (social and legal) of this vocabulary. Currently the phrasing in the proposed legislation does not appear to be sufficiently strong enough in protecting traditional usage. Two examples are:

- a) **‘Husband’ and ‘wife’.** The latter term literally means ‘woman’, and the former is a metaphor for a male. If a law is passed recognising same-sex relations as ‘marriage’, will the use of these terms in formal records of birth, marriage and death be eliminated either by law or administrative fiat? It is important to preserve the universally accepted definitions of these terms in order to preserve continuity in understanding to what is being referred. Although this issue is a matter of general concern, it is a particular concern for scholars in the areas of law, history and anthropology.
- b) **‘Father’ and ‘mother’.** Again, these terms have always referred to male and female respectively, except when used in a metaphorical sense. If same-sex relations are recognised as ‘marriage’, will the use of these terms on formal documents such as birth and marriage records be forbidden or eliminated? Again, this issue is a particular concern for scholars in the areas of law, history and anthropology.

7. OBJECTIONS MADE BY PROPONENTS OF THE BILL

Proponents of the bill broadly have argued in its favour by saying that:

- a) marital relations (marriage) are to be defined as ‘a loving sexual relation between partners’, and
- b) objections to the bill are examples of ‘bigotry’.

8. RESPONSE TO THESE OBJECTIONS.

- a) If marriage is to be defined solely or principally as ‘a loving sexual relation between partners’, such a definition could be used to promote or provide support for practices which have never been acceptable in Britain, such as polygamy, bigamy or incest.

Unless a strong definition of marriage is provided in the legislation, the un-amended law could undermine both the institution of monogamous marriage and intra-familial relationships. Marriage is the central building block of the family and legislation should not even inadvertently undermine it.

- b) Some proponents of the bill have asserted that opposition to it is bigotry. It cannot be the case that the affirmation of the understanding of marriage as understood historically and universally can be the basis for legal prosecution, discipline in the work place, or social stigmatisation.

As there are strong views on both sides of this issue, it is imperative that those people (teachers, lecturers and others) who hold, affirm and teach the traditional understanding of marriage are not made subject to prosecution, discipline or harassment.

10. SUGGESTIONS FOR EMENDATIONS.

- a) The legislation must be emended to include a clear definition of marriage.
- b) Persons who hold, affirm and teach the traditional view of marriage as a formalised relationship between a man and a woman could be protected by the addition of a clause along the lines of:

‘Regarding the provisions of the law as laid out above, nothing in this law shall infringe on the right of persons in positions of public responsibility to express views contrary to it, nor shall such persons be subject to prosecution or persecution for holding such views’.

Protection of the right of free speech is the cornerstone of a free and democratic society. Unless the proposed legislation includes protection for persons to hold and teach views supporting traditional concepts of marriage, it will undermine this basic freedom.

February 2013

Memorandum submitted by Rev’d Canon Rosie Harper (MB 32)

1. I am Rev’d Canon Rosie Harper and I work as a priest in the Church of England. I am also the chaplain to the Bishop of Buckingham, an Honorary Canon of Oxford Cathedral and a member of General Synod

2. I am frequently invited to contribute to discussions in the media, including recently on the panel of Any Questions on R4. I helped to lead a very successful National Church Project on marriage and believe that marriage is good for human flourishing

3. My reason for submitting this evidence is that the bill’s proposals deny my own freedom to follow my conscience. Equal marriage will become part of the law of the land and yet I will be legally restrained from acting in accordance with my religious beliefs. That which is lawful will be unlawful for me, even though the Church of England is the established by law.

4. The bill seems to be setting up two conflicting rights within one piece of legislation. The conscientious rights of those who refuse to marry same sex couples should of course be defended, but not by trampling on the conscientious rights of a sizable minority of their colleagues who wish to be free to follow their own convictions on this matter

5. I would also like to draw to your attention the plight of Anglican gay couples who long for a Christian marriage ceremony. A member of my own congregation told me recently that she has never felt so alienated from the church. She would never wish for any clergy person to marry her if they didn’t believe it were right, but is horrified at the legal locks put in place to prevent clergy who believe this is a Christian and moral good to be allowed to follow their consciences.

6. One or two people in my own parish have expressed dismay at my pro-equal marriage convictions, but once I began to explore the roots of their opposition with I was shocked by the unpleasantness of their responses which were motivated by disgust about homosexuality per se, rather than the concept of marriage.

7. The Church of England has not consulted within its own membership about the position they have presented to the government. They seem to be speaking mainly for themselves. The church has proved almost pathologically unable to have open and honest discussions about the subject and end up simply grandstanding. Along with many of my colleagues I wish to say: ‘not in my name’ After the latest statement issued by the church in December Newsnight was unable to find a single bishop willing to support the official line in public.

8. The proposed quadruple lock has placed the church in considerable disrepute in the public sphere. It widens the gulf between society and church considerably and it weakens the voice of the church about other moral issues.

9. An amendment which allowed the decision to marry a gay couple to be a genuine matter of conscience for the clergy person concerned would simply replicate the position we have regarding the remarriage of divorced

persons, a device that works perfectly well. I have yet to hear of anyone unwilling to marry a divorcee having been forced to do so or taken to a human rights court.

February 2013

Memorandum submitted by Care (MB 33)

CARE is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives.

CARE is represented in the UK Parliaments and Assemblies, at the EU in Brussels and the UN in Geneva and New York.

We are very concerned about the implications of the redefinition of marriage as proposed by the Marriage (Same Sex Couples) Bill in relation to both its impact on marriage and civil liberties. We outline our concerns below for the consideration of the Committee.

UNDERMINING THE CORE VALUES OF MARRIAGE AND THE NOTION OF EQUALITY

1. If same sex relationships are to be brought within the framework of marriage then they must meet the definition of marriage. Otherwise, they must be categorised as a different kind of relationship.

Two of the key aspects of marriage are:

- i. The centrality of commitment and faithfulness such that marriage requires exclusivity and fidelity. This is manifest in adultery—the ultimate breaking of faithfulness—being counted as grounds for divorce. In this way adultery is deemed incompatible with marriage, and faithfulness and commitment are guaranteed by marriage.
- ii. The centrality of sexual union such that its absence provides grounds for declaring a marriage void. The potential for a marriage to be consummated is integral to marriage, the absence thereof being grounds for a marriage to be nullified.

It is deeply disturbing that, under the terms of the Bill, same sex couples are not required to fulfil these criteria and yet are deemed married even as different sex couples are required to meet them. Three serious difficulties follow.

2. First, given that the proposal is that same sex relationships should not have to meet the definition of marriage it makes no sense to suggest that they should be categorised as marriage. They are different and should be categorised differently. Indeed, in failing to draw same sex relationships into the same substantive framework as marriage, the Bill very eloquently makes the case for civil partnerships which provide a legal framework for recognising same sex relationships but without the key marriage characteristics ie faithfulness, such that adultery is a ground for divorce, and consummation, such that non-consummation is grounds for a marriage being declared void.

3. Quite simply, if two things are the same and are treated differently then that is discrimination. However, if two things are different and they are treated differently then that is not discrimination. Therefore, under the current legal framework of marriage and civil partnerships, which recognises two different kinds of relationship, there can be no discrimination.

4. Second, the logical corollary of the above is that if two things that are in fact different are treated the same then an effective discrimination and inequality is created. That is precisely what is accomplished by this Bill, namely unequal marriage with one set of obligations between two expressions of ‘marriage’.

5. Third, and most importantly the provision of this logical incoherence and inequality actually erodes the nature of marriage. Infidelity constitutes the ultimate breaking of faithfulness and commitment and is therefore wholly incompatible with the identity of marriage, such that it is seen as grounds for divorce. The Bill, in its present form, provides that only heterosexual adultery counts as grounds for divorce. According to the terms of the Bill, someone who is sexually unfaithful to their same-sex spouse with another person of the same sex has not committed adultery. Legal experts have said that if adultery is dropped as grounds for divorce in marriage between people of the same gender that, in time, adultery will in practice be removed as grounds for divorce—with all that this means for faithfulness and commitment—for all married couples.¹³⁸ Thus the Bill places this strongest and most vital expression of faithfulness and commitment in marriage at risk.

6. The redefinition of marriage for same sex couples would thus have the effect of changing the definition of marriage for everyone—the tens of thousands who may enter same sex marriage and the 24 million different sex couples already married. This would be a quite extraordinary and unsettling legacy for a Prime Minister who has spoken so much about his desire to support commitment and to challenge the broken Britain phenomenon by strengthening family life which has, at its heart, marriage.

¹³⁸ <http://www.telegraph.co.uk/news/politics/9827596/Gay-marriage-bill-opens-door-to-abolition-of-adultery.html>

7. In our view, the Governments proposals in this area and their potential implications flagrantly undermine the values of faithfulness and exclusivity in marriage. Sexual fidelity has long been a major demand of the marriage bond. The deep commitment of one spouse to another must be promoted in order for marriage as an institution to strengthen and flourish. Indeed, in 2010 the Prime Minister said that the Government should recognise the importance of commitment in marriage.¹³⁹ However, these particular proposals undermine such commitment.

8. Under the terms of the Bill non-consummation will only be a ground for annulling a marriage between two people of the opposite sex, not a marriage between two people of the same sex. A key feature of the understanding of marriage since time immemorial has been the necessity of sexual union for the validity of a marriage. The Government has failed to recognise this under the terms of the Bill. If sexual union is removed as a key feature of the understanding of marriage, as the Government seem to be proposing, then the richness and depth of the meaning of marriage is reduced. Marriage becomes little more than a bond of companionship and attachment. If sexual union is not perceived as a vital part of a marriage then it is unclear what in the future will prevent siblings or good friends from entering into a marriage.

9. By not applying the rules of adultery and non-consummation to marriages between people of the same gender the Government has also failed to introduce proper equality. This inequality is manifest in a number of other ways in the Bill. Under the terms of the Bill couples of the same sex should be able to convert their civil partnership to a marriage without any new ceremony. This therefore leads us to question the fundamental difference between the already existing legal relationship of a civil partnership and the new institution of marriage between two people of the same sex. If marriage between two people of the same gender is supposed to be an entirely new legal relationship, as it is for couples of the opposite gender, then surely there should be a very definite ending of one legal relationship (the civil partnership) and a very definite start of another (marriage).

10. The way in which the Government have undermined core values of marriage and failed to create equality between marriages between people of the opposite sex and marriages between people of the same sex is strikingly evident. The Government have failed to show that marriage between people of the same sex is as valid as, and equal to, marriage between two people of the opposite sex. We are deeply concerned that this will have very damaging effects on the institution of marriage in the years to come.

11. In addition, the clear failure to make marriage between two people of the same gender the same as marriage between two people of the opposite gender highlights the fact that relationships between heterosexual couples and relationships between homosexual couples are categorically different and should be treated that way. Trying to make all relationships the very same introduces inconsistencies and incoherence as the Government's proposals show.

12. In light of some of these comments it is perhaps no surprise to see that marriage rates in the Netherlands and Spain have dropped since same-sex marriage was introduced in those countries.¹⁴⁰

LACK OF PROTECTION FOR EMPLOYEES AND TEACHERS

13. The Bill does not protect employees from section 149 of the Equality Act. Section 149 requires public authorities, which include local authorities, to have 'due regard' to the need to 'remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.' Sexual orientation is a protected characteristic under section 149 (7). Public authority employees who disagree with the definition of marriage proposed in the Bill are likely to face difficulties if they speak out against, or feel unable to promote, the new definition of marriage.

14. We would strongly recommend introducing a principle of Reasonable Accommodation into the Equality Act 2010, ensuring that there is freedom of conscience for employees who disagree with the Government's new definition of marriage. People should be able to express their views on the subject of same sex unions without fear of being punished or being dismissed from their jobs.

15. There have already been cases of people losing employment because of their views on marriage. In 2011 Adrian Smith, a housing manager at Trafford Housing Trust—which is not even a public authority subject to section 149—was demoted and had his salary slashed by 40% after he said on his personal facebook page that marriages between people of the same sex in church was 'an equality too far.' That this should happen before same-sex marriage is even legalised is deeply troubling. Further, Mr Smith was only awarded £100 compensation despite the considerable distress and financial loss caused.¹⁴¹ There is no useful precedent set by this case for the people for whom there is principal concern, namely those working for public authorities.

16. We do not believe that the Bill, in its current form, affords teachers who refuse to endorse the new definition of marriage sufficient legal protection and adequate freedom of thought, conscience and religion. Indeed, it is clear that a considerable number of teachers are concerned about the Government's proposals

¹³⁹ <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100602/debtext/100602-0003.htm>

¹⁴⁰ See <http://www.marriagedebate.com/pdf/iMAPP.May2011-rev.pdf> and An Introductory Course in MATLAB, published by Universidad Carlos 11 De Madrid, September 2010, Alba, M. Franco-Pereira

¹⁴¹ <http://www.dailymail.co.uk/news/article-2234252/Vindicated--ruined-In-historic-victory-Christian-demoted-work-writing-Facebook-opposed-gay-marriage-church-tells-battle-come-terrible-price.html>

and the impact they could have in schools. A recent poll conducted by ComRes shows that more than 40,000 teachers say they will probably refuse to teach about ‘the importance of’ same-sex marriage. Furthermore, 56% of teachers believe any colleague who takes such a stance risks damaging their career.¹⁴² A senior source in the Department for Education has already expressed serious concern about the threats to the religious liberty of Christian teachers. Regarding what will happen to Christian teachers who feel unable to teach about and promote the new definition of marriage he said there ‘is an inherent uncertainty about such matters’ and that the final decision on such questions might ultimately be taken by the European Court of Human Rights.¹⁴³

17. In recent years, we have seen—on several occasions—homosexual rights trump religious rights in the European Court. Lillian Ladele, a registrar from Islington, was forced out of her job because she felt unable, for faith reasons, to officiate at civil partnership ceremonies. She requested that other colleagues without a faith objection could manage the same cases. However, the employer was not willing to accommodate her. In January 2013 the European Court found that Miss Ladele’s human rights had not been violated.¹⁴⁴

18. Section 403 of the Education Act 1996 requires teachers to teach about the ‘nature of marriage and its importance for family life and the bringing up of children.’ If marriage is redefined it seems that the new definition of marriage, and its importance for family life and the bringing up of children, will have to be taught about. There are already storybooks in British primary schools such as ‘King and King’ and ‘Tango Makes Three’ that explicitly promote same sex unions. Some schools have endorsed the idea of LGBT History Month. It is unclear what will happen to teachers who, because of religious convictions or deeply held beliefs about the nature of marriage, do not feel able to endorse the new law or to use such materials. John Bowers QC in his legal opinion says that section 403 (1A) provides ‘a legitimate basis for schools or LEAs which wish to promote a particular vision of equality to require all teachers to teach materials which endorse same sex marriage.’

19. Mr Bowers advises that unless the Education Act is amended there would be a duty on teachers to positively portray the new notion of marriage and its importance for family life.¹⁴⁵ We endorse this view and consequently urge the committee to ensure that there is reasonable accommodation for teachers who do not wish to promote the new definition of marriage. If this were not to happen we envisage a situation where many teachers will be reprimanded or even lose their job because of their position on same sex unions. It is important to note that having a belief in “traditional marriage” is not covered in employment law under the protected characteristic of religion and belief. As such the position for teachers who do not wish to promote the new definition of marriage is currently most unstable.

20. The Bill says nothing about the situation for religious schools. It would appear that if marriage is redefined such schools would be compelled to teach a definition of marriage that is contrary to their own understanding of marriage. We would advise an amendment that provides, very clearly, that education in the area of relationships and family life should be able to reflect the ethos of the school and its understandings of relationships and family life.

21. There is also concern for parents and pupils who do not agree with the new definition of marriage. There is nothing in the Bill that ensures that parents would have the right to withdraw their children from lessons that teach, and possibly promote, the new definition of marriage.

LACK OF PROTECTION FOR RELIGIOUS ORGANISATIONS AND INDIVIDUALS

22. We also believe that there are very real dangers for religious liberty. Aidan O’Neil QC, in his legal opinion, says that the protections afforded to the Church of England are unsustainable because the Church has a legal obligation to marry a couple where at least one of the partners lives in the parish. Although the Marriage (Same Sex Couples) Bill amends the Equality Act 2010 to exclude discrimination claims against religious organisations or their employees who decline to conduct, or be involved in, a religious marriage of a same sex couple it cannot ensure these protections will guard against complaints against them to the European Court. There is every danger that the European Court will find the provisions in the Bill incompatible with the European Convention under Article 8 (the right to respect one’s privacy and family life) read with Article 14 (prohibition of discrimination).

23. There are also concerns for non-Anglican or Roman Catholic churches who wish to continue to marry different sex couples but do not wish to marry couples of the same sex.¹⁴⁶ Many of these churches rely on the approval of local authorities to officiate weddings as the church premises belong to the local authority. A local authority, under the duty imposed by section 149, could refuse a church permission to conduct weddings on their premises on the grounds that the church does not wish to conduct marriages between people of the same sex.

24. In addition, there are many churches throughout England and Wales that hire facilities belonging to a local authority. It is quite foreseeable that a local authority could refuse a church contracts, grants or facilities based on the church’s decision not to endorse the new definition of marriage.

¹⁴² http://www.comres.co.uk/polls/Teacher_Poll_Results_WEIGHTED_1_Feb_2013.pdf

¹⁴³ <http://www.telegraph.co.uk/news/politics/9825341/Government-powerless-to-protect-teachers-from-sack-over-gay-marriage.html>

¹⁴⁴ <http://www.bbc.co.uk/news/uk-19467554>

¹⁴⁵ John Bowers QC The Marriage (Same Sex Couples Bill) Advice

¹⁴⁶ Aidan O’Neil QC legal opinion

A DEEP UNCERTAINTY ABOUT THE CONSEQUENCES OF THE BILL

25. The first country to legalise marriage between people of the same sex was the Netherlands in 2001. Only ten other countries have legalised marriages between people of the same sex. Consequently, there is little evidence to draw upon regarding the implications of redefining marriage.

26. The proposals laid down by the Government were not in any of the main parties election manifestos. The Conservative party's Contract for Equalities spoke only of considering same sex marriage and was published just 3 days before the 2010 election, a long time after postal voting had begun. It is fair to say then that the public have not properly had the opportunity to have their voices heard on this matter. No poll has clearly shown that the majority of the public actually want this change. Indeed, a number of polls indicate that the majority of the public are against the plans.¹⁴⁷ A poll conducted in January 2013 showed that almost six out of ten peers believe that the Government should stop its plans to redefine marriage until there is greater certainty that this is something that the public want.¹⁴⁸

27. In the midst of this deep uncertainty about the implications of the Bill and a lack of clear demand from the public at large we urge the Committee to spend more time considering the proposals laid down in the Bill and the implications they could have for religious groups and indeed society at large. Regardless of the rights or wrongs of the substance of the Bill it is indisputable that redefining marriage is a hugely significant move and will change the landscape of family life. The Committee must be entirely convinced the change it will bring will be a positive one for all groups in society and that people who do not agree with the new definition—whether they are public sector employees, teachers, parents or religious ministers—are properly protected.

SUMMARY

28. We recommend, at the top of the Bill, a clear and positive clause that will provide sufficient protection for those people who do not agree with same sex unions. We understand that the vast majority of people supporting the newly proposed definition of marriage do not, in any way, want to do away with the freedom for people to disagree with the newly proposed definition of marriage. However, we have seen in recent years cases of intolerance towards those who do not endorse same sex unions. We need to ensure that this does not spill over to a more widespread intolerance. Furthermore, although we trust that the Committee and Parliament as a whole want to safeguard those people who disagree with the newly proposed definition of marriage, we are very aware that a Bill that does not properly protect those people could have very harmful consequences.

29. The Government's plans fail to bring marriage between people of the same sex on to the same level as marriage between people of the opposite sex. As we have outlined the plans in the Bill create inconsistency, incoherence and inequality. The Government have said that marriage is grounded in 'the principles of long-term commitment and responsibility' and defined it as 'two people who love each other making a formal commitment to each other.'¹⁴⁹ If this is all the Government perceive marriage between two people of the same sex to be then it is unclear why civil partnerships are not sufficient.

February 2013

Memorandum submitted by the Quakers (MB 34)

1. INTRODUCTION

1.1 Quakers support the Marriage (Same Sex Couples) Bill as a way of extending Quaker marriage to Quaker same sex couples. We are pleased that it does so in a way that would not incur the disproportionate charges that have been quoted to our local meetings for registering Meeting Houses as places for the conduct of Civil Partnerships in religious premises. This memorandum is offered as supplementary evidence to my oral evidence of February 14th 2013.

1.2 The Bill provides in its Clause 5 for a right to 'opt in' to conduct religious ceremonies. We are satisfied that the relevant governing authority for these purposes is correctly defined as 'the recording clerk for the time being of the Society of Friends in London.' We hope that, in time, other denominations will feel able to 'opt in' but Quakers would not support any legislation that compelled an individual to act in a way that is contrary to his or her conscience.

2. QUAKER WEDDING PROCEDURE

2.1 Quaker weddings have their origin in the persecution of the seventeenth century. Quakers devised their marriage procedure to combine a sense of pastoral care and oversight with the need to demonstrate to civil authorities that their procedure was a safeguard against clandestine marriage.¹⁵⁰

¹⁴⁷ YouGov/ Sunday Times Survey Results, 8-9 March 2012, page 7

¹⁴⁸ <http://www.politics.co.uk/news/2013/01/08/lords-roadblock-ahead-for-gay-marriage>

¹⁴⁹ HM Government, Equal Marriage: The Government's Response, December 2012 Ministerial Foreword

¹⁵⁰ Quaker Marriage, Edwards H Milligan, 1994

2.2 Current Quaker wedding procedure is set out in Chapter 16 of our Quaker Faith & Practice 16.04:

“Quaker marriage procedure is not an alternative form of marriage available to the general public, but it is for members and those who, whilst not being in formal membership, are in unity with its religious nature and witness.”

2.3 A Quaker wedding takes place in silence during which any present may speak in ministry. During the course of silent worship the couple stand, take each other by the hand and exchange declarations of commitment to in prescribed words:

‘Friends, I take this my friend XXX, to be my husband/wife, promising through divine assistance (or with God’s help) to be unto him/her a loving and faithful husband/wife, so long as we both on earth shall live.’

2.4 The couple then sign the Quaker marriage certificate which is read aloud by the registering officer. During the remainder of the meeting those present, if moved to speak, may support the couple with vocal ministry. After the meeting a civil marriage certificate is completed by the couple, two witnesses and the registering officer. All present at the meeting sign the Quaker wedding certificate. Quaker marriages are seen not as a merely civil contract but as a religious act. The civil and religious aspects of the wedding are united in this form of worship. Quakers marry each other in the presence of God. Those present witness the marriage and by participating in the meeting agree to support it.¹⁵¹

3. HISTORY OF QUAKER MARRIAGE

3.1 Quaker marriages have been conducted since the late 1650s. Quakers worked to design a regular form of marriage certificate from 1677.¹⁵² A Quaker wedding certificate signed by those present and kept by the monthly meeting was considered legal evidence of marriage by secular authorities. Lord Hardwicke’s Marriage Act 1753¹⁵³ first gave implicit statutory recognition to Quaker marriages and exempted them from a requirement of the general law that marriages be solemnised in an Anglican Church. Quaker marriages were explicitly recognised in the Marriage Act 1836. This together with the Registration Act 1836 provided for a system of state registration of marriages that still applies in England and Wales. The Marriage Act 1949 continues to make special provision for Quakers, enabling them to appoint their own registering officers for registering marriages according to Quaker usage, without the need for a civil registrar to be present.

4. QUAKER DECISION TO SUPPORT SAME SEX MARRIAGE

4.1 For many years Quakers have been considering the significance of same sex relationships. In 1963, a booklet ‘Towards a Quaker view of sex’¹⁵⁴ affirmed the equal value of loving same sex relationships. Our 1995 book of ‘Quaker Faith & Practice’ (effectively the constitution of the Yearly Meeting of the Religious Society of Friends (Quakers) In Britain) adopted a passage from the booklet as follows:

“It is the nature and quality of relationship that matters....the same criteria seem to us to apply whether a relationship is heterosexual or homosexual.”¹⁵⁵

4.2 Since Yearly Meeting in 2009 Quakers have been seeking to celebrate same sex marriages in Meeting Houses in exactly the same way as we celebrate heterosexual marriages.

4.3 The text of Minute 23 of 2009 Yearly Meeting reads:

“We are being led to treat same sex committed relationships in the same way as opposite sex marriages, reaffirming our central insight that marriage is the Lord’s work and we are but witnesses. The question of legal recognition by the state is secondary.”

The minute went on to ask Meeting for Sufferings, our standing representative body, both to revised our religious practice and to engage with government to seek a change in the law.

“We therefore ask Meeting for Sufferings to take steps to put this leading into practice and to arrange for a draft revision of the relevant sections of *Quaker faith and practice*, so that same sex marriages can be prepared, celebrated, witnessed, recorded and reported to the state, as opposite sex marriages are. We also ask Meeting for Sufferings to engage with our governments to seek a change in the relevant laws so that same sex marriages notified in this way can be recognised as legally valid, without further process, in the same way as opposite sex marriages celebrated in our meetings.”¹⁵⁶

4.4 Quakers in Britain welcome the Marriage (Same Sex Couples Bill) as giving effect to our Minute of June 2009 and appreciate the steps that have been taken to accommodate our values and beliefs. Quakers have

¹⁵¹ For a fuller explanation regarding same sex marriage see ‘We are but witnesses’, Quaker Committee for Christian and Interfaith Relations, Friends House, September 2009

¹⁵² Quaker Marriage, Edward Milligan, 1994

¹⁵³ 26 Geo II c 33

¹⁵⁴ Towards a Quaker view of sex, by a group of Friends, 1963 p 38 - 39

¹⁵⁵ Quaker Faith & Practice, 22.15

¹⁵⁶ Minute 25, Britain Yearly Meeting 31 July 2009

throughout our history placed a high value on individual conscience. We accordingly affirm the religious liberty of those who do not wish to conduct same sex marriages, not to be compelled to do so when they become lawful. We consider it is the role of the state to guarantee the right to religion, conscience and belief in an impartial manner. We therefore support the ‘opt in’ provisions in the Bill.

5. BACKGROUND INFORMATION

5.1 Quakers, known formally as the Religious Society of Friends, have their origin in the mid seventeenth century. Since their foundation Quakers have had a strong commitment to equality and worked for peaceful and effective responses to violence and social injustice. Quakers currently have 14,031 adult members and 8,711 adult attenders in Britain (i.e those in sympathy but not formal membership). There are 478 worshipping communities (Local Meetings) organised into 71 Area Meetings in Britain.¹⁵⁷

February 2013

Memorandum submitted by Mr & Mrs R Whitehead (MB 35)

A summary of what is contained in our submission is as follows:-

Paragraph 1.1 Who we are

Paragraphs 2.1-2.3 Background—benefits of traditional marriage

Paragraphs 3.1-3.10 Protections for individuals and organisations

Paragraph 4.1 Terminology

1.1 We are a Christian couple who have been married for 19 years. We have 3 children of primary school age.

2.1 Traditional marriage provides the most stable framework for society and has been respected by State & society for generations. If redefined it will change it for all of us, with values which have stood for generations watered down to accommodate minority views. We can be tolerant of the rights of others and still protect traditional marriage.

2.2 Civil Partnerships provide same-sex couples with similar legal rights to marriage, so there is no need to legislate for same-sex ‘marriage’ as a matter of ‘equality’. The ECHR ruled governments are not required to legislate for same-sex ‘marriage’; it is not a human right. Protection of traditional marriage & family is a legitimate reason for a difference in treatment. Equal does not mean the same.

2.3 Marriage is a life-long commitment between a man and a woman, geared towards procreation and the best environment for raising children: a biological mother and father in complementary roles. Same-sex unions deny a child either a mother or father and should not have the same backing from the State, name or legal status.

3.1 Religious freedom must be respected and churches and priests protected by law so that they are not forced to conduct these ceremonies against their conscience and the beliefs of their organisation. Churches must be allowed to practice what they believe and have control over what is acceptable on their premises.

3.2 The threat to religious freedom for individuals must be understood, taken seriously and protected so that conscience is respected.

3.3 Protection must be provided for schools so that policies continue to be decided within the ethos of the school and in consultation with parents and Governors, so that what children are being taught in school is in line with the ethos of the school.

3.4 Parents must continue to have the right to bring their children up according to their faith and moral standards, and permission provided for them to exclude their children from any lessons which teach same-sex marriage.

3.5 It is vital that protection is provided so that teachers have the right not to be forced to teach about same-sex marriage if it is against their conscience.

3.6 Protection must be provided for those who work in other professions—eg hoteliers, counsellors, registrars, wedding photographers, caterers, etc—whose conscience prevents them from extending their services to same-sex couples.

3.7 Protection must be provided for couples who believe in traditional marriage who wish to adopt or foster.

3.8 Protection must be provided for those who wish to have their children/grandchildren (eg if the parents have died) adopted and wish them to remain in a traditional family headed by a husband and wife.

3.9 Protection must be provided to prevent harassment of individuals who believe in traditional marriage, as part of protecting freedom of speech.

¹⁵⁷ Tabular statement of membership compiled for Yearly Meeting, Friends House, London 25 – 28 May 2012.

3.10 Similar protection must be provided for clergy so that they are able to preach according to the beliefs and morals of the church.

4.1 The terms ‘husband and wife’ and ‘mother and father’ must remain, for the many couples for whom these terms are relevant and do not wish to see them changed.

February 2013

Memorandum submitted by Equality Network/Scottish Transgender Alliance (MB 36)

SUMMARY

We are an LGBT equality organisation in Scotland, and this submission is concerned only with the impact of the bill on Scots law and on people living in Scotland. We expect a bill for devolved aspects of marriage equality in Scotland to be introduced in the Scottish Parliament later this year.

We welcome the policy of introducing marriage equality, and the Marriage (Same Sex Couples) Bill. Generally, we strongly support the provisions of the bill. However, we have identified eight concerns or suggestions for improvements to the bill:

- The availability and cost of conversion of civil partnership to marriage, for residents of Scotland who registered their civil partnership in England and Wales (paragraph 6 below).
- The availability of gender recognition without divorce for people resident in Britain who married in Northern Ireland (para 7).
- The potential costs of the proposed two-step process for gender recognition for people in a civil partnership, which requires them to convert temporarily to a same-sex marriage first (paras 8 & 9).
- The availability of a route to gender recognition for people living in Britain in a civil partnership registered in a foreign country, without needing to dissolve that civil partnership first (paras 10 & 11).
- The situation of couples who previously dissolved their marriage solely so that one of them could obtain gender recognition, and the possibility of restoring the continuity of their dissolved marriage once same-sex marriage is available (paras 12 & 13).
- The availability of gender recognition for married people who transitioned gender a long time ago, and who may not have access to as much medical documentation as people who transitioned more recently (paras 14 to 17).
- Discrimination between same-sex and mixed-sex marriages in benefits provided by private sector occupational pension schemes (paras 19 to 21).
- The negative impact on the accumulated pension benefits of a married couple, when one of the couple is granted gender recognition (paras 22 to 24).

Background

1. The Equality Network is a national charity working for lesbian, gay, bisexual and transgender (LGBT) equality and human rights in Scotland. The Scottish Transgender Alliance is based within the Equality Network and focusses on trans equality. This submission is concerned with the effects of the Marriage (Same Sex Couples) Bill in Scotland.

2. Our policy work is based on wide consultation with LGBT people across Scotland. In 2009, 85% of LGBT people we surveyed told us that equal marriage was a priority for them, and we began a major campaign for equal marriage in Scotland that year. Since then we have worked with the Scottish Government to ensure that the development of legislation for equal marriage for Scotland (the Marriage and Civil Partnership (Scotland) Bill) is informed by the needs of LGBT people.

3. Marriage, civil partnership and gender recognition are devolved matters in Scotland. However, they each have implications for reserved matters such as pension regulation and equality law. We therefore welcome that the development of the Marriage (Same Sex Couples) Bill and the Marriage and Civil Partnership (Scotland) Bill have proceeded in parallel and with much cooperation between the UK and Scottish Governments.

4. Since they are devolved matters, it will be the Scottish bill that introduces same-sex marriage in Scotland and gender recognition without divorce for people who married in Scotland. The Scottish bill is currently out in draft for public consultation, and we expect it to be introduced in the Scottish Parliament around the summer. It is possible that the UK legislation may come into effect a little before the Scottish legislation, and the UK bill rightly takes account of that.

Treatment of England & Wales same-sex marriages in Scotland (schedule 2)

5. Paragraph 1 of schedule 2 to the bill provides that, if the UK legislation comes into effect before the Scottish legislation, same-sex marriages under the law of England and Wales may be treated as civil partnerships under the law of Scotland. This treatment will be provided for by the Secretary of State by order (sch 2 para 1(1)). Since civil partnership is devolved to Scotland, it is right that such an order requires the consent of Scottish

Ministers (para 1(5)). After the Scottish legislation comes into effect, same-sex marriages under the law of England and Wales will be treated as marriages in Scots law (effectively from the date of the original marriage). This is appropriate in our view.

Conversion of civil partnership to marriage (clause 9)

6. The bill provides that civil partnerships registered in England and Wales may be converted into same-sex marriages. It is important that this conversion is available to people resident in Scotland who registered their civil partnership in England and Wales. The conversion arrangements will be set out in regulations (clause 9(1)). Given that there are many couples who would have preferred to marry in the first place, rather than enter a civil partnership, and that the existing segregated (marriage/civil partnership) system has discriminated against them, we hope that the conversion process will not involve a large fee. We hope also that it can be done by post (or email), so that couples resident in Scotland do not have to return in person to England or Wales to convert, which would be expensive and burdensome. We expect that conversion to marriage of civil partnerships registered in Scotland will be provided for by the Scottish bill, for people resident in any part of the UK.

Gender recognition (schedule 5)

7. The bill provides for gender recognition without dissolution of marriage, if the non-applicant spouse consents, for marriages solemnised in England and Wales, and for overseas marriages. This will be available to residents of Scotland. Gender recognition without dissolution for marriages solemnised in Scotland will be provided for by the Scottish bill, and we expect it to apply to people living anywhere in the UK. Gender recognition without dissolution of marriage will then be available to UK residents who married in any part of the world except Northern Ireland. It is a matter of serious concern that, uniquely, people who married in Northern Ireland will be unable to obtain gender recognition without dissolving their marriage. We hope that the Northern Ireland Executive and Assembly will address this as soon as possible.

8. We have three other concerns about the gender recognition provisions. Firstly, for people in civil partnerships, if only one partner is trans, gender recognition without dissolving the civil partnership is not possible unless the civil partnership is first converted to a same-sex marriage under the provisions of clause 9. This results in a two-step process: first convert the civil partnership to a same-sex marriage, and then obtain gender recognition, which renders the marriage a mixed-sex marriage.

9. We are concerned about the burdens that this two-step process would impose on people, including on those living in Scotland who registered their civil partnership in England and Wales. Currently, the fee for applying for gender recognition is zero, £30 or £140, depending on income. If there is a fee involved in converting a civil partnership to a marriage, and if it is a requirement of that conversion process for the partners to attend in person (as suggested by clause 9(4)(d)), then the costs of gender recognition will be very much increased. Given that it has been established that the full gender recognition fee of £140 would be inappropriate for those earning under the upper threshold (£28,415), and that gender recognition should be free for those earning under £18,948, it would be very unfair if a significant extra cost was added on top. It may also be distressing for trans people to have (albeit temporarily) to enter a same sex marriage in the “wrong” gender, on the way to the mixed-sex marriage in the gender they identify as. A preferable alternative would be for the conversion of the civil partnership to a mixed-sex marriage to proceed in a single step, at the same time as the award of full gender recognition.

10. The other difficulty presented by these provisions is that clause 9 does not allow conversion to marriage for civil partnerships registered under the law of other countries. Some foreign jurisdictions provide for such conversion under their own law, but others do not. For people in civil partnerships from countries that do not provide conversion, gender recognition will still not be possible without dissolving the civil partnership first, and then marrying as a mixed-sex couple after gender recognition. This creates a period during which the couple’s relationship has no legal recognition, and is no improvement on the current situation.

11. We would hope therefore that a solution could be found that would allow an overseas civil partnership to be converted to a mixed-sex marriage under English law on the issue of a full gender recognition certificate, without the need to dissolve the civil partnership first. This could either be done by allowing overseas civil partnerships generally to be converted to same-sex marriages under English law, before gender recognition is granted, or (preferably, for the reasons outlined above) by providing for simultaneous grant of gender recognition and conversion of the overseas civil partnership directly to a mixed-sex marriage.

12. Secondly, we are concerned about the people who have already dissolved their marriage in order to obtain gender recognition, when they would have preferred to continue their marriage. It is likely that people in that situation will have registered a civil partnership to replace their lost marriage, after they received gender recognition. They will in future be able to convert that civil partnership to a marriage under clause 9 of the bill, and that marriage will in effect be backdated to the date they registered the civil partnership. However, that will still leave them in a position where they have been married twice, with an unmarried gap between those marriages. The first marriage was as a mixed-sex couple, before gender recognition, with that marriage dissolved contrary to their true wishes, in order to obtain gender recognition. The second marriage was as a same-sex couple after gender recognition, with a gap between the two marriages, during which they lost legal protection.

13. Clause 9 already operates retrospectively, to allow the same-sex marriage resulting from a converted civil partnership to be treated as having started on the date of registration of the civil partnership (which of course may predate the commencement of the bill). We would hope therefore that clause 9 could be amended to provide, where a couple dissolved their marriage to obtain gender recognition and subsequently registered a civil partnership, that on converting that civil partnership to a marriage, that marriage could be treated as having started at the start of their original marriage, in effect restoring the continuity of their marriage.

14. Thirdly, we are concerned about the position for trans people who transitioned a long time ago, and who would therefore find it difficult to assemble the same level of medical evidence for the Gender Recognition Panel as a recently transitioned person could. The Gender Recognition Act provided (in section 27) a two-year transitional arrangement for long-term transitioned people, defined as people who had lived in the acquired gender for at least six years. They were able to obtain gender recognition with only one medical report, rather than two, and from a medical practitioner who did not have to be an expert gender specialist. The transitional arrangement also enabled applicants to apply based on evidence of having undergone treatment to modify sexual characteristics, as an alternative to providing evidence of a diagnosis of gender dysphoria. This was valuable because obtaining confirmation of a diagnosis of gender dysphoria can be extremely difficult after a long period of time. The transitional arrangement expired in 2007.

15. However, there will be some trans people who transitioned a long time ago who were unable to take advantage of that transitional arrangement, because they did not want to dissolve their marriage. In our view, once same-sex marriage is possible and they can potentially obtain gender recognition without dissolving their marriage, they should have the opportunity of using the arrangements for gender recognition for long-term transitioned people that were originally available when the Gender Recognition Act was introduced.

16. Furthermore, it has become clear that long-term transitioned people are still coming forward for gender recognition who had not previously heard about it. The longer a person has been transitioned, the less likely they are to have heard about the availability of gender recognition, because the less likely they are to be in contact with trans organisations. We understand that this has caused an increase in workload for the Gender Recognition Panel and long delays in handling such applications, because it is harder for such people to obtain two medical reports. It also causes a great deal more difficulty for the applicant and may prevent them from obtaining gender recognition at all.

17. We therefore consider that it would be in the interests of trans people and of the Gender Recognition Panel, if the original rules for allowing applications by people who have been transitioned for at least six years, with one medical report only and on the basis of having had treatment to modify sexual characteristics, could be reinstated on a permanent basis.

Equality Act amendments (schedules 4 and 7)

18. The bill makes a number of amendments to the Equality Act 2010, which is a reserved matter for Scotland. By virtue of clause 17(5), these amendments apply to Scotland. The amendments made by paragraphs 38 to 40 of schedule 7 provide that, in general, less favourable treatment of same-sex married people, compared to mixed-sex married people, is unlawful discrimination on grounds of sexual orientation. There are exceptions in paragraph 41 (and for England and Wales in clause 2(5)) for religious freedom. We agree with these provisions.

19. Paragraph 15 of schedule 4 also amends the Equality Act. It provides that occupational pension schemes are not required to treat same-sex marriages equally to mixed-sex marriages. A survivor's pension for a bereaved spouse in a same-sex marriage may at the discretion of the pension scheme be based on the deceased spouse's pension contributions only back to 5th December 2005. In contrast, survivor's pensions in a mixed-sex marriage are based on the deceased spouse's contributions since 1978 for a widow's pension, and since 1988 for a widower's pension.

20. This means that "equal marriage" is not equal as respects survivor's pensions. The pension provided by the same scheme to a bereaved married person, married on the same day and with the same spousal contribution history, may be many thousands of pounds less per year if the marriage was same-sex than if it was mixed-sex. We appreciate that survivor's pensions also differ between widows and widowers, but that is no reason for allowing a much bigger difference in the case of same-sex marriages. We believe strongly that pension schemes should be required to base survivor's pensions for same-sex marriages on contributions since 1988. This would be in line with the policy already proposed by the UK Government for public sector pension schemes.

21. We recognise that perhaps two thirds of private sector pension schemes already choose to base civil partnership survivor's pensions on contributions since 1988, and will probably do so for same-sex marriage also. However, equality law has never been targeted at the majority who choose to provide equality voluntarily, but exists to deal with the minority who do not. We note also that the Employment Tribunal has recently found, in the case of *Walker v Innospec* (case number 2411316/2011, judgment issued 13th November 2012), that basing a civil partner's survivor's pension only on contributions since 2005, rather than 1988 as is the case for widowers' pensions, is a breach of EU employment equality law. That ruling is currently being appealed.

Gender recognition and pensions

22. The problem of pension discrimination is particularly acute for trans people. Where, under the provisions of the bill, a trans person obtains gender recognition without dissolving their marriage, the marriage will switch

from being, legally, a mixed-sex marriage to a same-sex marriage. The dates from which pension contributions will count towards survivor's pensions will instantly switch from 1978 for the original husband's contributions and 1988 for the original wife's, to 1988 for both (in public sector and some private sector schemes), and to 2005 for both in private sector schemes that only provide the minimum benefits allowed under the Equality Act 2010.

23. The result will be an instant drop in accumulated pension rights for one or both spouses, significantly reducing the available pension, in some cases to a small fraction of what would originally have been paid. This will price gender recognition out of the reach of some trans people who are married. The bill sets out to protect the marriages of trans people and their spouses, so that couples can safely choose to obtain gender recognition. However, the drop in pension rights will make "protected marriage" a myth for some couples.

24. We recognise that the UK Government has taken steps in the bill to protect state pension rights for married couples when one obtains gender recognition. However for the reasons stated in the preceding two paragraphs, we think it is vital that the bill includes a general rule protecting occupational pension rights of married couples when one of them obtains gender recognition. There will be no significant cost to this, since the protected pension rights will simply be those that would have been payable had the person not applied for gender recognition, and therefore represent no additional or unplanned cost to pension schemes.

February 2013

Memorandum submitted by Adrian Smith (MB 37)

SUMMARY

If the Marriage (Same-Sex Couples) Bill is to become law, it must include very firm legal protections for the individual right of conscience. This is to protect the millions of people who support the current legal definition of marriage as being between one man and one woman. In particular, employees must be protected from being punished at work for holding to this view—which is what happened to me.

1. My name is Adrian Smith and I live in Bury. For almost 20 years I worked as a Housing Manager first at Bury Council and then at Trafford Housing Trust (THT) where I progressed to gold level within my role in recognition of the quality of my work. I have left THT and I am now involved in charitable work in Africa.

2. I am making this submission because I am concerned to learn that the Marriage Bill does not make any provision to protect the conscientious objections of people who genuinely and reasonably disagree with the concept of same-sex marriage.

3. I fear that, without clear legislative protections, people will find themselves in difficulty at work and in other public settings, simply for holding the view that marriage is between a man and a woman. This, of course, has been the view enshrined in law for a very long time and it would be quite wrong for people to be punished for holding this view. However, my own experience has taught me that there is a very real risk.

4. I was demoted by Trafford Housing Trust, and had my salary cut by 40%, all because I said on my personal Facebook page that gay weddings in churches would be "an equality too far". I posted a link to a BBC news story and added those four words by way of comment. The postings were made at home in my own time and as far as I was concerned I was simply posting a link to a news item for friends within church circles who I thought would be interested.

5. I was using my own computer, doing it outside work time, on a page that was not visible to the general public. Yet my bosses at work still saw fit to punish me.

6. A work colleague—who was also a Facebook friend—read the post. Someone in the Equality and Diversity department found out about it. A few days later I was called into a meeting where I was shown a copy of the post and asked what my motivation was for posting it.

7. I was told that the issue was that the comments were in the public domain and there had potentially been a breach of THT's policies and procedures. I asked what specific policy I had breached. I was left with the impression that they did not have any particular policy in mind but would look to find one that would fit the situation.

8. Following the meeting I was suspended from work on full pay pending an investigation. They later said the suspension was for comments that could have breached THT's Code of Conduct and Equal Opportunities Policy and have the potential to be seriously prejudicial to the good reputation of THT. The policy said conduct outside work hours and away from the premises of the Trust was covered. Reference was also made to retaining accreditation from an LGBT group which awarded THT a kite mark for the way it delivers services to LGBT people.

9. I was repeatedly called 'homophobic' by those pushing for me to be disciplined at work. I tried reasoning with my bosses, but they dug their heels in. They said my Facebook post constituted 'gross misconduct' for which I should be dismissed. However, because of my loyal service they decided not to dismiss me but to demote me to a non-managerial position. That meant a 40% reduction in pay.

10. I was left with no option but to go to court to clear my name. It took the better part of two years, which was a living nightmare for my family and me.

11. In November the High Court ruled in my favour. But the Court did not have the power to order my reinstatement so I was left in a demoted job which carried a lower salary. I only received £98 damages as my claim was for breach of contract and not a claim for unfair dismissal. It was beyond my financial means to bring an unfair dismissal claim before an Employment Tribunal within three months from when I lost my job. Thankfully I found a charity that agreed to fund my High Court case. Without them I would not have been able to clear my name as the costs of my case exceeded £30,000.

12. I have since left my job under a compromise agreement to focus on Christian charitable work. I shouldn't have been treated like an outcast, and my family shouldn't have had to suffer like they did.

13. In my fight for justice I received support from many diverse individuals and groups including Peter Tatchell.¹⁵⁸ He obviously doesn't agree with my beliefs, but he does believe in freedom of expression.

14. I believe there is an intolerance against people who have traditional beliefs like me. Sadly this intolerance is at its worst in the public sector. I'm worried that if marriage is redefined, there will be more cases like mine in the courts. In my case the judge ruled in my favour, but if the law of marriage is changed, maybe others won't be so lucky.

February 2013

Memorandum submitted by the Catholic Bishops' Conference of England and Wales (MB 38)

INTRODUCTION

1. This memorandum sets out the current concerns of the Catholic Bishops' Conference of England and Wales regarding what we consider to be the adverse effects of the Bill, in the form agreed by the House of Commons at Second Reading and now being considered in Committee, on the religious freedoms of the Catholic Church, Church-related institutions and bodies, and individuals.

2. It takes into account, and responds to, the letter the Secretary of State has sent to Archbishop Smith, dated 1st February 2013, for which we are most grateful. To avoid unnecessary repetition, we refer to the Catholic Church in what follows simply as 'the Church.'

3. We take with the utmost seriousness the Secretary of State's commitment set out in the *Impact Assessment* that the Government published to accompany the Bill. This states: '*There will be no requirement for any religious body to marry same-sex couples if they do not wish to, nor will there be any requirement for a religious organisation to permit the marriage of same-sex couples on their religious premises, if they do not wish to allow this.*'

4. The statement continues: '[T]o meet [this] objective ..., no religious body will be required to marry or permit the marriage of same-sex couples on its premises if it does not wish to' The *Impact Assessment* goes on to commit the Government to '*ensure that protections are in place for religious bodies who do not want to perform same-sex marriages, not just from successful legal claims, but from the threat of litigation.*'¹⁵⁹

5. We are most grateful for these commitments. Regrettably, we do not consider that the assurances provided by the Secretary of State are yet sufficiently credible to assure us that these commitments have been met.

6. Whilst the opposition of the Church to the principle of the Bill is well known, the House of Commons has, by a majority, now accepted the principle of the Bill, and we do not seek to re-open that debate of principle at this time. The changes we seek are not intended as 'wrecking' amendments but as good faith efforts to address our concerns over the human rights implications of the Bill as it is currently drafted, rather than to question the principle of the Bill.

7. We do not say that all or, indeed, any of the problems we identify are *certain* to occur. We consider, however, that the concerns we identify are sufficiently *credible risks* that Parliament should be informed about, debate, and address them. We would be more than happy to be assured that we are mistaken, or that the problems we identify are less significant than our assessment of the Bill has led us to believe.

8. This *Memorandum* is in three parts: the first part sets out several general principles that we consider should be taken into account in considering the implications of freedom of religion for the Bill, and Parliament's responsibilities in this context; the second part sets out the Church's concerns regarding the adverse effects of the Bill on the 'institutional' aspects of freedom of religion; and the third part sets out the Church's concerns on the freedom of religion of individuals.

I. GENERAL CONSIDERATIONS

1. Freedom of religion and belief

9. Since many of our detailed concerns, as set out below, involve issues of freedom of religion and belief, and since public discussion surrounding the Bill seems to indicate differing understandings of what freedom of

¹⁵⁸ http://www.petertatchell.net/free_speech/Adrian-Smith-Victory-for-free-speech-&-fair-play.htm

¹⁵⁹ *Impact Assessment, Marriage (Same Sex Couples) Bill, 17 January 2013, page 5.*

religion requires, we hope it will be helpful if we clarify initially what we mean by freedom of religion and what we think it requires.

10. There are three aspects to the idea of freedom of religion and its relationship to the public sphere. Each of these three dimensions of freedom of religion and belief is engaged in considering the Bill now before the Committee. Our understanding of the idea of freedom of religion is informed by, but not limited to, judicial interpretations of Article 9 of the European Convention on Human Rights.

11. First, religion is as an aspect of an individual's identity and belief system. Freedom of religion and belief in this sense is conceived as an individual right, and the issue is how far the choices that an individual makes, based on this set of religious beliefs, are protected or constrained by law. Freedom of religion and belief, in this sense, encompasses two elements: the freedom to believe what one's religion teaches, and the freedom to manifest that belief in certain actions.

12. Religious freedom also has a second, associational (or 'institutional'), dimension. Freedom of religion and belief in this sense involves the freedom of individuals to come together in formal or informal ways, to practice their religion in common with each other, and to manifest their beliefs collectively. This relationship might (or might not) be formalized by the formation of a church. Seen in human rights terms, the issue becomes one of what rights the religious community or association or church has, when it acts in a way that impinges on the public domain.

13. There is also a third aspect of freedom of religion and belief: 'freedom *from* religion and belief', or at least freedom from a set of religious *or other beliefs* imposed as an exercise of state authority. During the Second Reading of the Bill, several Members of Parliament seemed to be under the misapprehension that the Church is seeking to impose its religious views on the State. That is not the case. Equally, we hope that the State will not seek to impose its views on the Church, or on individuals who dissent from the State's policies.

14. It is, of course, the case that none of these features of freedom of religion and belief is absolute. This is true in two senses. First, other aspects of the public good will play a legitimate role in limiting freedom of religion in particular respects. Second, the three aspects of freedom of religion identified may on occasion conflict with each other. How to reconcile these three aspects of freedom of religion with each other, and with the public good more generally is, we understand and accept, enormously difficult.

15. The reconciliations and compromises that Britain has adopted in the past are now under considerable strain. We are now at a cross roads, and two different models of accommodation are possible. The first approach is pluralistic. Under this approach, religion is present in the public as well as private spheres of activity, and is even to some extent encouraged in the public domain, not least because religious belief is seen as making an important contribution to public debate and public discourse.

16. The alternative model adopts the view that the purpose of freedom of religion and belief is essentially only there to protect private choices, and views the participation of religions, and those who are religious, in the public sphere with suspicion. We consider that the pluralistic model is to be preferred, but we realize that others will disagree.

17. We consider the Parliamentary consideration of this Bill is an important moment in British life, one not often encountered, when the choice as to which approach is to be preferred is now presented in a stark manner. We have set out, we hope clearly, our preferred approach, and we suggest below how these principles apply to the detailed consideration of the Bill that the Committee is now commencing.

2. Need for clarity on the face of the Bill

18. Leaving aside the issue of *which* approach to freedom of religion is to be adopted, there is an additional vital issue, which is *who should decide* which model is to be adopted in British law.

19. We suggest that the choice is squarely one that the British Parliament should make, and that Parliament's responsibility in making these choices should not be evaded by leaving these issues to the domestic courts, as the Secretary of State in her Letter appears to us too willing to do.

20. We realize that this means that hard choices will be required by Parliament, but it is Parliament's responsibility to make these hard choices. It is a truism that whilst the Executive proposes, and the Queen-in-Parliament enacts legislation, it is the courts that are responsible for interpretation of that legislation. But Parliament is able, and has the responsibility, to influence this interpretation by clear and unambiguous drafting.¹⁶⁰

21. We consider that clarity on the face of this Bill is particularly important given that the legislation is likely to provide the legal framework for marriage for many generations to come. We cannot rely on the courts to give

¹⁶⁰ Unfortunately, in the past, the Church has accepted Ministerial assurances that turned out to be worthless. The most important example of this was during the passage of the Human Rights Bill when detailed proposed amendments to protect freedom of religion were withdrawn on the assurances of the then Secretary of State that what became section 13 of the Act was sufficient protection. As is now well known, section 13 has become a dead letter in practice, due to the failure to provide sufficiently explicit and unambiguous guidance to the courts as to Parliament's intentions. Mark Hill QC, Russell Sandberg, and Norman Doe, *Religion and Law in the United Kingdom*, at page 61: 'In practice, it seems that the section is a dead letter: section 13 hardly features in higher court judgments concerning freedom of religion.'

any weight to Ministerial assurances in the long term if the provisions of the Act itself are not crystal clear in reflecting those assurances.

22. Nor do we consider that the churches can any longer rely on previous presumptions at common law that the courts will not intervene in the internal affairs of the churches. The Secretary of State has stated in her letter, in general terms, that: ‘*We consider that the right of a religious authority to act in accordance with its own teaching, especially when the law specifically says that it can, is beyond any doubt*’ (emphasis added). We disagree.

23. Whilst those assurances may have been convincing in the past, we no longer consider that they are convincing, in light of judicial decisions over the past decade.¹⁶¹ We do not complain that the approach of the judiciary has changed, but we urge Parliament to take this significant change into account in considering the concerns we identify in this *Memorandum*, and not to rely on outdated assumptions of judicial empathy for religious autonomy

3. Issues concerning the European Convention on Human Rights

24. Much of what we suggest below, by way of necessary amendments, is to meet issues that arise under domestic British law, such as under the Equality Act 2010. The European Convention on Human Rights plays two rather different roles in the context of discussions on the Bill. First, the Secretary of State sees the Convention (particularly Article 9) as establishing a shield, providing strong protections for freedom of religion and belief, so that many of our concerns are groundless. Second, concerns have been raised that the Convention might be used as a sword to attack protections for freedom of religion that the Bill seeks to incorporate.

25. We address both these issues below when dealing with specific issues, but here we seek to explain our general approach to both these issues.

26. Turning to the first issue, concerning the role of Article 9 in providing protection for freedom of religion. The Secretary of State has consistently argued that Article 9 of the ECHR will serve as a strong protection of the Church’s and individual’s freedoms of religion and belief. We disagree. In practice, Article 9 has proven to provide very weak protection indeed, both when being applied by the European Court of Human Rights, and (as a consequence) when being applied by British courts under the Human Rights Act.

27. The weakness of Article 9 lies not just in the narrow approach that the European Court of Human Rights has taken to the interpretation of what a protected ‘*manifestation*’ of religion covers, but also because freedom of religion and belief is often ranked as significantly less weighty than other rights when it comes into apparent conflict with them.¹⁶²

28. When claims are made, therefore, that Article 9 provides strong protections, we suggest that these claims be taken with a large pinch of salt, unless ‘freedom of religion’ is interpreted very narrowly indeed, effectively protecting religion (and religious institutions and individuals) only when they have been relegated to the private sphere of activity. As we have said, that is not our view of freedom of religion and belief.

29. Just as we consider that it is initially Parliament’s responsibility to make hard choices, rather than simply leaving it to the domestic courts, so too we consider that it is vital that these decisions be addressed initially at the national level rather than simply leaving it to the European Court of Human Rights to address, and resolve, these issues. The Court has consistently made it clear that the best possible approach is that clear and proportional choices should be made at the national level, which may then be subject to scrutiny. The more that States, such as the United Kingdom, suggest that the ‘*margin of appreciation*’ should apply, the greater the obligation that hard choices are confronted initially at the national level, rather than evaded.

30. Lest there be any confusion, we should also point out that the European Convention on Human Rights provides a *minimum* standard with which the United Kingdom must comply; it provides a floor, not the ceiling. The Convention, and the limited protection that Article 9 provides, should not be regarded as all that Parliament should seek to guarantee, as the Secretary of State occasionally seems to imply. Parliament clearly has a responsibility to comply with the minimum standards that the Convention requires, but it also has a responsibility to consider whether British law should go further in certain respects than the Convention requires. We suggest that this is particularly the case as regards the protection of freedom of religion in the context of this Bill.

31. Turning now to the issue of whether the Convention can be used to attack the protections incorporated in the Bill for religious freedom, before we consider more detailed issues there is a general consideration that we urge Parliament to take into consideration. The area of human rights law has been one of the most dynamic and fluid areas of legal development in Britain, and in Europe generally, not least over the past fifteen years. This is because both the British and European courts consider human rights law to be a ‘*living tree*’, the interpretation of which develops over time to accommodate changing mores.

¹⁶¹ In the *JFS* case [2009] UKSC 15 the Supreme Court held that a Jewish religious school could no longer admit pupils to the school on the basis of Orthodox Jewish religious principles (*halacha*) because these religious principles were held to be racially discriminatory, despite explicit exceptions in legislation protecting schools from being found to be discriminating on religious grounds.

¹⁶² See, e.g. Lewis, ICLQ (2007) 56(2) 395 at 398: ‘*the margin granted to States when restricting ... consensual homosexual conduct in private (under Article 8) has been much narrower (and hence the intensity of scrutiny and level of protection afforded by the Court has been higher) than in cases involving religious manifestation and expression (under both Articles 9 and 10).*’

32. What may appear, therefore, to be ‘*inconceivable*’¹⁶³ interpretations of human rights and equality law are unlikely to remain so for long, as mores change. Again, we do not complain that this is the case, but Parliament must legislate taking this fact into account, rather than presuming that currently ‘*inconceivable*’ interpretations will continue to be ‘*inconceivable*’.¹⁶⁴

33. We now turn to setting out our detailed concerns about the Bill. We have used the structure of the current Bill so far as possible, identifying the particular Clause under which the particular concern might best be considered.

II. ‘INSTITUTIONAL’ FREEDOM OF RELIGION ISSUES

4. Clause 2(1): the protections for religious organisations against ‘*compulsion*’ to opt-in

34. The Government has sought to reassure religious organisations that they will not be required under any circumstances to conduct same sex marriages if they object to them, and we have welcomed the Government’s intention to protect religious organisations.

35. Clause 2 of the Bill sets out one of the main ways in the Government has sought to protect religious organisations, by providing that religious organisations may not be ‘*compelled*’ to opt-in, and by providing that religious organisations may not be ‘*compelled*’ to conduct same sex marriages.

36. Clause 2, subsections (1) and (2) provide as follows:

- (1) A person may not be compelled to—
 - (a) *undertake an opt-in activity, or*
 - (b) *refrain from undertaking an opt-out activity.*
- (2) A person may not be compelled—
 - (a) *to conduct a relevant marriage,*
 - (b) *to be present at, carry out, or otherwise participate in, a relevant marriage, or*
 - (c) *to consent to a relevant marriage being conducted,*

where the reason for the person not doing that thing is that the relevant marriage concerns a same sex couple.

37. Whilst we welcome the recognition that protections are necessary, we do not consider that these provisions adequately address the problem, because it is entirely unclear what the protection from being ‘*compelled*’ means in these circumstances. It is, arguably, quite limited in the scope of its protection.

38. The limited case law that is available, in which protection from ‘*compulsion*’ applies, seems to indicate that a protection from ‘*compulsion*’ may be very narrow in scope, essentially only providing protection from the imposition of *criminal* punishment.¹⁶⁵

39. We assume that the Government intends to provide greater protection than this, although this has not been made explicit. The Government’s apparently broader intention is indicated by the fact that the exception to the Equality Act 2010, providing that it is not contrary to section 29 of that Act to refuse to solemnize a same-sex marriage, is headed: ‘*no compulsion to solemnize etc*’ (emphasis added).

40. In introducing this specific and limited exception to Section 29, however, the Government has introduced another uncertainty into the meaning of ‘*compulsion*’: if it is necessary to provide explicitly on the face of the Bill for an exception to section 29, then we have to assume that without such an explicit exception, the protection against compulsion would not by itself have been enough to ensure such an exception.

41. What the government intends the protection against compulsion to cover is therefore left entirely unclear. Does it protect against any legal penalties (not just criminal penalties) being imposed as a result of a decision not to opt-in? Does the protection against ‘*compulsion*’ protect a religious organisation from being treated less favourably by a public body that objects to the religious organisation’s decision not to opt-in? Does the protection against ‘*compulsion*’ protect a religious organization from legal action taken against it in connection with its decision not to opt-in? We do not know.

42. Instead of relying on the uncertain term of ‘*compulsion*’, we suggest that this blanket protection is no substitute for, and therefore should be supplemented with, targeted protections on the face of the Bill directed at preventing specific, credible risks of unacceptable pressure to opt-in. The government has appeared to accept the necessity of doing so in the context of section 29 of the Equality Act. We suggest additional amendments.

¹⁶³ Letter to the Editor, *The Times*, 4 February 2013 (by Baroness Kennedy, Lord Lester, and Lord Pannick). This letter is considered further below.

¹⁶⁴ One example must suffice: in the space of just six years the European Court of Human Rights has moved from considering prohibitions on adoption by an unmarried, homosexual individual not to be a violation of the Convention in *Fretté v. France* (26 Feb. 2002) to accepting that it was a violation in *E.B. v. France* (22 Jan. 2008).

¹⁶⁵ See, e.g. *V v. C* [2002] CP Rep 8 (Court of Appeal, Civil Division), in which the meaning of compulsion was considered in the context of the privilege against self-incrimination.

5. Clause 2(5): the exception to Section 28 of the Equality Act 2010 is too limited

43. We have seen that Clause 2(5) inserts an exception to Section 29 of the Equality Act 2010 into that Act, and we have suggested that in doing so it has introduced further confusion as to the meaning of ‘*compulsion*’.

44. That problem aside, there are other significant issues that arise from the proposed exception. First, it is unclear which particular provisions of Section 29 are thought likely to give rise to successful litigation if an exception is not included. Broadly speaking, Section 29 does two, rather different, things. It prohibits discrimination by a ‘*service provider*’, and it prohibits discrimination ‘*in the exercise of a public function*’.

45. It is unclear, therefore, whether the Government considers it necessary to provide an exception to Section 29 because the solemnization of a marriage, etc is regarded as the provision of a ‘*service*’, or because it is considered to involve the exercise of a ‘*public function*’. The Explanatory Notes do not appear to provide any explanation.

46. This is important because the proposed exception to Section 29 of the Equality Act 2010 only applies to the range of activities listed in Clause 2(2), not Clause 2(1). It is unclear why this is so, and what the implications are of limiting the exception in this way.

47. It may be that the Government considers that an exception relating only to the activities listed in Clause 2(2) is necessary because it is only those activities that involve the likelihood of intentional discrimination on the grounds of sexual orientation, but that seems an entirely unconvincing explanation. The exercise of activities listed in Clause 2(1) is likely to be influenced by exactly the same considerations.

48. Or it may be that the Government considers that the activities listed in Clause 2(2) involve the provision of a ‘*service*’, and that the activities listed in Clause 2(1) do not. That is the more likely reason, but it would be useful if the Government were to confirm that this is their understanding.

49. If that is the Government’s understanding, however, then a different problem arises. Section 29(6) also provides:

‘A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination’

50. Even assuming that a religious organization would not be considered to be a ‘*service provider*’ for the purpose of the activities referred to in Clause 2(1), the question arises whether these activities could nevertheless be considered to involve the exercise of a ‘*public function*.’ If they do involve the exercise of a public function, then the religious organization deciding not to opt-in would be at risk of a successful discrimination claim, by virtue of section 29(6).

51. As we shall see, the issue of whether decisions by religious authorities to opt-in are ‘*public functions*’ arises not only in this context, but also in the context of the operation of the Human Rights Act 1998, and common law judicial review. We will return to this issue below.

6. Clause 2(5) fails to address the implications of the Public Sector Equality Duty

52. Under section 149 of the Equality Act 2010, most public authorities, such as local authorities, are under a duty to have ‘*due regard*’ to the need to ‘*advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.*’ In particular, public authorities must have ‘*due regard*’ to the need to ‘*remove or minimize disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.*’

53. The Bill appears to do nothing to prevent public authorities from penalising a decision by a religious organisation not to opt-in to same sex marriage. It is not at all clear that Clause 2(1) protects religious organisations from such less favourable treatment.

54. In its response, the Government appears to have misunderstood our concern about the use of section 149 of the Equality Act 2010 as narrower than it is. The Government states that our concern is that ‘*a public authority [should] not use a religious organisation’s opposition to marriage of same sex couples as a reason for deciding not to enter an agreement or partnership with that organisation.*’ Put more precisely, our concern is that the Bill does nothing to prevent religious organisations which do not opt-in to same sex marriage from being treated *less favourably* by public authorities, *for example* by refusing to award public contracts or grants to religious organisations, on the basis that the public authority is given discretion to do so under section 149.

55. We agree with the Secretary of State that the public sector equality duty is, of course, a duty to have ‘*due regard*’, that this ‘*would not make unlawful an otherwise wrong or oppressive act*’, (possibly, although not necessarily) that it ‘*applies to religion or belief in the same way as to sexual orientation*’, and that the treatment that we are concerned that public authorities might engage in ‘*would be vulnerable to challenge by the religious groups on other judicial review grounds.*’ This is all (relatively) common ground.

56. However, since the enactment of the first public sector duty in 2001, there has been extensive litigation, which has significantly expanded the discretion of public authorities to which the duties apply. In particular, the courts have consistently interpreted the duty of ‘*due regard*’ more robustly than the Government acknowledges by interpreting it as a duty to further *equality of opportunity*, and not just as a duty to avoid discrimination. Public authorities have, in practice, used this discretion to pursue broad equality aims, including by denying

public contracts to organisations that the public authority regarded as unsuitable (on equality grounds) for the public authority to be associated with, and this appears to be entirely legal.

57. Whilst accepting that the equality duty expands the discretion of public authorities, the Courts have also been reluctant to second guess the discretion of public authorities where allegations have been made that more weight should have been given to a particular ground of equality.¹⁶⁶

58. The fact that the public sector duty now imposes duties on multiple grounds (race, gender, sexual orientation, religion, etc), means that public authorities have a significant discretion how best to balance these grounds if they are perceived to clash; it is not be at all clear that the public authority's exercise of its discretion to make clear its opposition to a Church's decision not to opt in to conducting same sex marriage by refusing to enter into contracts with that body would be unreasonable or otherwise *ultra vires*.¹⁶⁷

59. The Secretary of State is careful not to state that a judicial review of a public authority that engaged in this less favourable treatment would be *successful*, just that the decision would be '*vulnerable to challenge*' (emphasis added). The failure to reassure us that the actions of the public authority would be clearly *ultra vires* fuels our concerns even further.

60. The Secretary of State's bland assertion that '*In our view, similar reasoning would apply in such a case as arose in Wheeler v Leicester City Council*', the only substantive argument that is made by the Government, is not in any way reassuring. The *Wheeler* case was decided in 1985 before any of the modern public sector duties at issue were enacted; the first of the modern duties was not enacted in Britain until after the Stephen Lawrence Report in 2001. The *Wheeler* case was not, therefore, an interpretation that squarely addresses the problem we raise.

61. Even if it were to be established that the actions of the public authority were *ultra vires*, such a clarification would only be as a result of a judicial review being taken by Church-related bodies, which would be time-consuming and expensive. If the government agrees that the less favourable treatment should be *ultra vires*, then the appropriate approach is to make this clear on the face of the Bill, thus avoiding unnecessary litigation. We fail to understand why the Secretary of State '*[does] not think it would be helpful to make legislative changes to the public sector equality duty*', when a narrowly tailored amendment is possible that would resolve the problem, without adverse consequences for the public sector equality duty more generally.

7. Clauses 4 and 5: decisions whether to opt-in may be reviewable under the Human Rights Act 1998, and 'ordinary' judicial review

62. Unlike the (limited) exceptions dealing with Section 29 of the Equality Act, no exception is provided in the Bill regarding the provisions of the Human Rights Act 1998. We shall see that there is an issue regarding the liability of the Government under the European Convention on Human Rights in Strasbourg, but there is also (separately) the question of liability of religious authorities under the Human Rights Act 1998 in the domestic courts. The issue we consider here is whether a decision by a religious authority not to opt-in is reviewable under that Act in the domestic courts.

63. There are two key questions that arise under the Human Rights Act in this context. The first is whether there is an arguable case that the discretion accorded to religious authorities to opt-in involves the exercise of a *public function* for the purposes of the Act. The second is whether there is an arguable case that the discretion accorded to religious authorities exercising a public function to opt-in breaches of the substantive provisions of the European Convention on Human Rights included in the Human Rights Act, given that the Bill permits religious authorities to discriminate on grounds of sexual orientation. We shall consider the '*public function*' issue now, and deal with the substantive issue subsequently.

64. For the sake of convenience, it will be assumed that if a decision to opt-in involves the exercise of a public function under the Human Rights Act this will effectively also determine the similar issue arising in 'ordinary' judicial review and under Section 29 of the Equality Act (as mentioned above), although even that assumption is not beyond doubt.

65. It seems highly unlikely that, in general, the Catholic Church would be regarded as a '*public authority*' for the purposes of the Human Rights Act. However, as is well known and legally uncontroversial, bodies that are not, generally, public authorities may nevertheless become subject to the Human Rights Act if they are regarded as '*hybrid*' bodies, that is, if they exercise some *public functions*. In such a case, the exercise of the *public function* is subject to the Human Rights Act, whilst the exercise by the body of its other (non-public) functions will not be covered by the Act.

66. The relevant question is whether, given that the Catholic Church conducts marriages that are both religious and civil, this makes the Church a '*hybrid*' public authority in the sense that it is carrying out a public function,

¹⁶⁶ The Courts have made it crystal clear, as Aikens LJ said in *R (Brown) v Secretary of State for Work and Pensions* [2009] PTSR 1506 that: 'the weight to be given to the countervailing factors is a matter for the public authority concerned, rather than the court, unless the assessment by the public authority is unreasonable or irrational ...' [at para 82]. See, most recently, *R (Coleman) v London Borough of Barnet Council and Another* [2012] EWHC 3725 (Admin) for a review of the authorities.

¹⁶⁷ The Government has argued before the European Court of Human Rights, as recently as last September, in the *Ladele* case, that the decision of Islington Borough Council to prefer to follow one aspect of its equal opportunities policy (on sexual orientation) even where this conflicted with another aspect of its equal opportunities policy (on religion) was nevertheless entirely legitimate.

namely conducting civil marriages. If this is the exercise of a public function, we suggest that this could render the Church's decision not to opt-in to conduct same-sex marriages challengeable. The gloss in Clause 11(1) (which provides that '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') may strengthen that argument.

67. The Secretary of State has responded as follows: '*In our view, the decision to opt-in or not is not a public function—it is not a function of a public nature. The fact that it would enable a religious organization subsequently to undertake a function that is arguably of a public nature (ie the legal solemnization of same sex marriages) does not make any conduct prior to that also a public function. So we do not think these decisions would be susceptible to a claim under the Human Rights Act.*'

68. Regrettably, we are unconvinced. The Government acknowledges that the legal solemnization of same sex marriages is '*arguably of a public nature.*' We have suggested to the Government (and the Government has not indicated that we are incorrect), that the solemnization of opposite-sex marriages may also be '*arguably of a public nature*', for the same reasons. Indeed, we suggest that it is clear that there is very little doubt that these are public functions.

69. We are strengthened in this regard by the speech of the Minister who was responsible for presenting the Human Rights Bill in the House of Commons, the Home Secretary (Mr Jack Straw):

Mr. Straw. (...) Before I speak on the amendments, it may be helpful if I say how the Government think that the Bill will operate in relation to the Churches. Much of what the Churches do is, in the legal context and in the context of the European convention on human rights, essentially private in nature, and would not be affected by the Bill even as originally drafted. For example, the regulation of divine worship, the administration of the sacrament, admission to Church membership or to the priesthood and decisions of parochial church councils about the running of the parish church are, in our judgment, all private matters.

In such matters, Churches will not be public authorities; the requirement to comply with convention rights will not bite on them. We do not believe that, for example, the Church of England, the Church of Scotland or the Roman Catholic Church, as bodies, would be public authorities under the Bill. I was asked to clarify that by many people, not least the Cardinal Archbishop.

On the occasions when Churches stand in place of the state, convention rights are relevant to what they do. The two most obvious examples relate to marriages and to the provision of education in Church schools. In both areas, the Churches are engaged, through the actions of the minister or of the governing body of a school, in an activity which is also carried out by the state, and which, if the Churches were not engaged in it, would be carried out directly by the state.

We think it right in principle—there was no real argument about it on Second Reading—that people should be able to raise convention points in respect of the actions of the Churches in those areas on the same basis as they will be able to in respect of the actions of other public authorities, however rarely such occasions may arise.

(...)

Mr. Andrew Rowe (Faversham and Mid-Kent)

The Church has the power to marry in a way that the state recognises, but the choice to get married in a church is entirely voluntary. Does that not alter the case?

Mr. Straw

The hon. Gentleman makes an interesting point. There was a time when one could get married only in church but, these days, marriage is a matter of civil law—it is the exercise of a public right. The Churches are standing in the stead of the state in arranging the ceremony of marriage, which is recognised not only in canon law, but in civil law. In that instance, the Church is performing a function not only for itself, but for civil society.¹⁶⁸

70. We suggest that it does not seem at all unlikely that the step that allows a religious organisation to move from the exercise of one public function (solemnizing opposite sex marriages) to the exercise of another public function (solemnizing same-sex marriages), would also be regarded as the exercise of a public function, particularly since that step (opting-in) is itself provided for in legislation.

71. The idea of what constitutes a 'public function' in these circumstances is, however, notoriously uncertain. The Joint Committee on Human Rights stated the problem as follows:

'We are concerned that, as the law stands, the only guidance that can be given on the important issue of whether a body should be considered a functional public authority for the purposes of the HRA is to seek further "specialist legal advice". It is currently impossible for the Government, or any other body, to provide comprehensive and accessible advice on the application of the Human Rights Act. We consider that this represents a serious failure to achieve the aspiration of a human rights culture in

¹⁶⁸ Hansard, House of Commons, 20 May 1998, at cols 1017-18.

*which Convention rights are secured for individuals without the need for formal legal proceedings or the involvement of legal advisers.*¹⁶⁹

72. We suggest, therefore, that there remains at least a significant risk that religious organisations that conduct legally-recognised opposite sex marriages could be regarded as exercising a ‘public function’ for the purposes of the Human Rights Act 1998. This could result in legal challenge to a decision not to ‘opt in’, thus limiting the breadth of the discretion of those religious organisations.

73. The Government argues that making a specific statement on the face of the Bill that religious authorities are not (for these purposes) exercising public functions would be unhelpfully confusing. The Secretary of State has written to us that: ‘*To make a specific statement of the sort you have requested [that the Bill provide explicitly that a decision whether to opt-in is not a public function] might, ..., risk creating doubt about whether other decisions made by religious organisations are also public functions.*’ We disagree.

74. We consider that we have identified a significant threat; even if litigation may ultimately be successfully resisted, it would only be after significant costs had been incurred. Religious organisations should not be exposed to such costs, and more explicit protections are therefore needed. An amendment on the face of the Bill is necessary.

8. Clauses 3 and 4: The substantive issues under the Human Rights Act, and the European Convention

75. This leaves the question of the substantive issues under the Convention and the Human Rights Act to be considered. It is of vital importance that we clarify precisely what we consider the substantive legal risks are under the substantive provisions of the ECHR (that is, leaving aside the question of ‘public function’).

76. We should first be clear what we are *not* suggesting. We do *not* suggest that the European Court of Human Rights ‘*would require a faith group to conduct same-sex marriages in breach of its own doctrine*’ in the stark way in which the issue was framed in their Letter to *The Times* by Baroness Kennedy QC, Lord Lester QC, and Lord Pannick QC, and quoted to that effect by the Secretary of State in the House of Commons at Second Reading.

77. We agree with the thrust of that Letter, not least because a ‘faith group’ as such would not be before the European Court, since the Court only decides cases against Member States, not against private groups, and therefore the Court could not itself require a faith group to do anything.

78. That technical point aside, we agree more broadly that a challenge to a Member State’s decision to allow churches to continue not to conduct same-sex marriages would probably not be a breach of a positive obligation under Article 12, as things stand today, because the Court has held that there is no right to same sex marriage under Article 12.

79. However, the Secretary of State and the authors of the Letter to *The Times* give too much weight to the supposed finality of the European Court’s decision in *Schalk and Kopf v Austria* to support their conclusion that such an event is ‘*inconceivable*’. Although the decision of the Court was that there was no right under Article 12 to same sex marriage, the case developed the Court’s case law in at least two important respects.

80. First, marriage rights contained in Article 12 are now clearly not restricted to opposite-sex couples ‘*in all circumstances*’. The Court held:

‘Regard being had to Article 9 of the [EU] Charter [of Fundamental Rights], therefore, the Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex. Consequently, it cannot be said that Article 12 is inapplicable ... However, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State’ (emphasis added).¹⁷⁰

81. This is hardly a firm *guarantee* of future non-interference, as it appears to indicate that if there is a significant change in the European consensus on the matter, the legal interpretation may change. It is also the case that this area of litigation is likely to expand considerably in the near future. There are already at least two cases before the Court at the moment, in which the Court may develop the law further.¹⁷¹

82. Second, and in some ways of even more importance, the Court now recognizes that same-sex couples can establish family life, under *Article 8* of the Convention. There is, therefore, the opportunity to argue that same sex marriages may come within the ambit of the right to family life, even if it does not come within the ambit of Article 12.

83. These points aside, there is a key reason for an increased risk under Article 12 read with Article 14 as regards the United Kingdom specifically. This is because, by changing the law on ‘*marriage*’ as such, the Bill opens up the prospect that a *discrimination* claim could succeed because the claimed discrimination would then come ‘*within the ambit*’ of Article 12.

¹⁶⁹ Joint Committee on Human Rights, *The Meaning of Public Authority under the Human Rights Act*, HL Paper 77; HC 410 (Session, 2006-7), at page 47.

¹⁷⁰ At paragraph 61.

¹⁷¹ *Chapin & Charpentier v. France* (No. 40183/07) (communicated), and *Fedotova & Shipitko v. Russia* (No. 40792/10).

84. In any event, we suggest that the stark way in which the Letter to *The Times* framed the issues under the Convention in relation to this Bill is not particularly helpful, and certainly not exhaustive. There are at least two substantive questions that arise.

85. The first issue is whether there is an arguable case that a religious authority *exercising public functions* in a discriminatory manner (as described above) would itself be acting unlawfully under the Convention in *domestic* litigation under the Human Rights Act.

86. The second issue is whether, in instituting the system of ‘*protections*’ in the Bill that explicitly permit religious authorities to discriminate, the *United Kingdom* would itself be acting unlawfully under the Convention in breach of its positive obligations by facilitating (and in the case of the Church of England, by requiring) *discrimination* by a third party, even if the activities of the religious authorities are not themselves regarded as involving the exercise of a public function.

87. We consider that there *is* an arguable case, a significant *risk* at least, that the protections provided by the Bill are incompatible with the Convention, under Article 8 alone, or (more likely) under Articles 8 and/or 12 read with Article 14, on the ground that the Bill adopts a discriminatory regime.

88. The Government has argued that the chance of a successful challenge to the protections accorded in the Bill under the ECHR is low on the basis that Article 9 (protecting freedom of religion) would protect the safeguards. But the recent judgments by a Chamber of the Court of Human Rights illustrate well that the right to freedom of thought, conscience and religion in Article 9 does not provide adequate protection when there is a clash between it and equality on the basis of sexual orientation.¹⁷² The Government cannot therefore argue convincingly that the Court would necessarily accept the safeguards put in place to protect the position of religious organisations that decided not to opt-in, should a challenge be brought.

89. There is simply no precedent from the Court of Human Rights on the acceptability under the Convention of balancing religious protections with sexual orientation equality *in the context of a same sex marriage law that has been introduced by a Member State*. Previous case law has involved the question *whether* Member States must introduce same sex marriage, not *how* it legislates for same sex marriage once it has decided to introduce same sex marriage.

90. A similar issue arises in the context of abortion: the Court has never held that a Member State must introduce a law permitting abortion, but it has held in several cases that once a Member State introduces a law permitting abortion it must be applied in a fair way.

91. We also know from the case law that the Court often accords Article 9 rights relatively little weight, and accords a Member State a considerable margin of appreciation in deciding how to protect *that* right. Much greater weight is given to equality on the basis of sexual orientation, and the margin of appreciation is correspondingly significantly reduced. Differences in treatment based on sexual orientation can be justified only with very considerable difficulty, as indicated by the case law of the Court.

92. It is also important for Parliament to understand that, where challenges are made under the Human Rights Act in *domestic* courts, the margin of appreciation does not in any event apply, and therefore the issue of proportionality is likely to be directly addressed by the domestic court, with the uncertainty that such an assessment almost inevitably introduces. The proposed ‘*protections*’ may turn out not to be safeguards at all.

93. It is possible for Parliament to clarify that under the Human Rights Act the religious authorities exercising the discretion not to opt-in are not exercising a public function, and that would at least minimize the likelihood of litigation directed against the Church under that Act. If it fails to do so, then we have suggested that there is a significant risk of litigation directly against these religious authorities.

9. Clause 11: the effects of Clause 11(1) and (2) are unpredictable

94. Clause 11 of the Bill states:

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

95. We consider that this is a piece of lazy drafting. We understand that the Government’s intention is to provide, as the default position, that same sex marriage is for all legal effects the same as marriage between a man and a woman. Officials have not, apparently, had the time to assess exactly what the precise effect of this, and so (rather than taking the time to go through all of the existing legal provisions relating to marriage, deciding which are to be changed and which are not on a statute by statute approach) the Government has come up with this blanket approach. No one seems clear exactly what the effect of this provision will be, and we suggest that this is not a sensible basis on which to legislate.

¹⁷² *Eweida and Others v United Kingdom* (Application nos. 48420/10, 59842/10, 51671/10 and 36516/10). A registrar (Ms. Ladele) was disciplined after she refused to carry out civil partnership ceremonies but she failed in her application to the ECtHR under Article 14 taken in conjunction with Article 9. Mr. McFarlane (a counsellor) was dismissed after colleagues became concerned that he would not provide sexual therapy to same sex couples given his religious beliefs. Mr. McFarlane failed in his application both under Article 9 and Article 14 in conjunction with Article 9.

96. To take what might be thought to be a topical example: section 47 of the Criminal Justice Act 1925 abolished the common law presumption of coercion of a married woman by her husband, and substituted instead a statutory provision which provides that:

'... on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.'

97. What is the effect of Clause 11 on this provision? It is unclear. In another part of the Bill, Schedule 3, paragraph 5 (which applies only to new legislation and therefore, technically, does not apply here), 'husband' is defined as including a man who is married to another man; and 'wife' includes a woman who is married to another woman. If this is the appropriate interpretation to apply to the 1925 Act, what is the effect? Does it mean that the defence provided in section 47 will apply to both parties of a marriage between two women, but neither party of a marriage between two men? Or does it mean that the defence will not apply at all in a same sex marriage?

98. This is simply an example of the difficulties that Clause 11 may give rise to, given the uncertainties that it creates. When we raised the problem of uncertainty with the Government, the response has been that we should identify where the effect of this provision might be problematic and that they would seek to introduce specific exceptions. We have responded that this is unacceptable, as it places the obligation and burden on us to identify all the problems ahead of time, and that we have neither the time nor the resources to do this.

99. We suggest that to incorporate such a broad provision is an inappropriate substitute for the detailed, rigorous, and extensive inquiry that should have been conducted before the legislation was introduced. Inadequate thought has been given to the repercussions of such a significant change, no doubt because of the rushed way in which the legislation was prepared.

100. This provision is likely to lead to costly litigation, the need for continuing *ad hoc* parliamentary engagement, or both. Given the constitutional importance of this proposed change of law, such a clause (with extensive and unknown consequences that may detrimentally affect a number of people and institutions) is unacceptable.

10. Schedule 1: Effect of the Bill on buildings shared for religious purposes

101. An issue arises over the status of buildings that are shared between Churches, one of which allows same-sex marriage, the other of which does not. Some may not want to have religious marriages between opposite sex couples conducted in buildings in which same-sex marriages are also conducted. Schedule 1 addresses the issue by requiring, in effect, that each of the Churches sharing such building may exercise a veto over the use of the building to conduct same-sex marriages. All sharers would be required to give consent to the registration of a building for the solemnization of same sex marriages before any one sharer could conduct such a marriage there. We consider that this is likely to may cause problems in practice, because it may result in informal arrangements being put under pressure, to the detriment of ecumenical dialogue and co-operation.

102. The Secretary of State has responded as follows: *'We accept that a change of this sort brings tensions with it, even between well-intentioned people determined to overcome differences. But inevitably we must make some provision for shared premises We think that the approach we have taken is preferable to the alternative, which would be to allow any sharer to conduct marriage of same sex couples whatever the views of other sharers.'* The Secretary of State is, however, *'confident that religious groups will work together, where these issues arise, to find ways of dealing with difficulties in particular situations.'*

103. We are not reassured, unfortunately. We remain of the view that the regime set out in Schedule 1 may well cause some sharers not to wish to share premises with other organisations that are not in favour of same sex marriage.

11. Schedule 7, Part 2: Sex education in Catholic schools and the Secretary of State's guidance

104. The change in the definition of marriage may have an adverse impact on schools because the Secretary of State is under a statutory duty to issue guidance on *'the nature of marriage and its importance for family life and the bringing up of children'* under Section 403 of the Education Act 1996. The statutory change in the definition of marriage may therefore result in religious schools being compelled, or considering themselves under a compulsion, to teach a definition of marriage contrary to their own understanding and thus impact on previously accepted and protected religious freedoms.

105. This concern is reinforced by the possible effect of Clause 11(1) of the Bill, which provides, as we have seen that *'In the law of England and Wales'* which will include section 403 of the Education Act 1996, *'marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples.'* The *'nature of marriage'* in section 403 must, therefore, be read subject to this new provision. This interpretation is strengthened by the provisions of Clause 11(2) that *'The law of England and Wales (including all England and Wales legislation whenever passed or made) has effect accordance with subsection (1).'*

106. This appears to mean, therefore, that the duty on the Secretary of State to issue Guidance is effectively amended to require the Secretary of State to issue guidance on *'the nature of marriage between opposite sex and same sex couples and its importance for family life and the bringing up of children.'* Section 403 appears to envisage, therefore, that the Guidance should not only ensure that schools describe the nature of marriage

defined in this way, but also that schools should teach ‘*the importance ...*’ of marriage defined in this way, which may imply endorsement, or even promotion of this understanding of the meaning of marriage.

107. The Secretary of State has responded to these concerns as follows: ‘*My officials are continuing to discuss this and other points with their counterparts at the Department for Education. We remain of the view that there is no need to provide additional protection as the Bill will not in itself make any change to the way teachers teach. But we do recognize, of course, that when providing factual information about marriage to pupils, schools will need to reflect the fact that marriage in England and Wales is open to both opposite sex and same sex couples. And as now, as part of sex and relationship education, schools will continue to teach pupils about the nature and importance of marriage for family life and bringing up children.*’

108. Unfortunately, this response does not directly address our concerns regarding the question of the effect of the Bill on the Guidance that the Secretary of State issues. We have had separate discussions with officials in the Department for Education. From these, we understand that it is the Department’s view: that the statutory duty to provide Guidance on sex education and to teach the importance and nature of marriage will continue; that the Department does not consider that there is anything in the Bill that will require a change to the existing Guidance issued in 2000; and that this Guidance will continue with a broad remit—the Government will not stipulate the detail of what schools are expected to teach.

109. We welcome these assurances, and we would be grateful if the Secretary of State could confirm that these also reflect her understanding of the Government’s position. We consider, however, that it would nevertheless be important to address two different concerns on the face of the Bill, the first relating to the effects of the Bill on the *existing* Guidance, the second relating to *future* Guidance.

110. First, we are concerned that it be made clear that in discharging their functions regarding sex education, governing bodies and head teachers must not only have regard to the Secretary of State’s guidance, but also to the character and designation of the school, as is implied in the reassurances provided by the Department for Education. We want to ensure that the existing Guidance is not interpreted in the way we fear.

111. This is not, however, the full extent of our concerns. We are also concerned, second, how a *future* Secretary of State might see his or her responsibility when issuing Guidance, and attempt to lay down the content of the curriculum in the way we fear. We consider it vital, therefore that the Bill be amended to prevent this Guidance from requiring that teaching must promote or endorse an understanding of the nature of marriage, where that is contrary to the character and designation of the school.

112. In addition, we have raised concerns about certain interest groups using any new legislation to challenge schools with a religious character. In discussions with the Department for Education, we were assured that the Government will be helpful in making clear that harassment of religious organisations in this way would not be acceptable, that that this will be led by the Government Equality Office. We look forward to this, and ask the Secretary of State to state publicly that this is the Government’s position, and to issue a statement to this effect.

12. Protection against ‘the threat of litigation’

113. We noted above that we place considerable importance on the Government’s commitment to ‘*ensure that protections are in place for religious bodies who do not want to perform same-sex marriages, not just from successful legal claims, but from the threat of litigation*’ (emphasis added). We understand that this is no idle promise, but a substantive commitment. The reason is clear. As the Government itself has itself recently recognized,¹⁷³ judicial review ‘*comes at a substantial cost*’ to respondents, including the ‘*effort of defending the legal proceedings*’, and the potentially ‘*negative effect on decision makers*,’ sometimes leading decision makers ‘*to be overly cautious in the way they make decisions, making them too concerned about minimising, or eliminating, the risk of a legal challenge*’.

114. In light of the Government’s commitment to ensure protections are put in place from ‘*the risk of litigation*’, we look forward to hearing the Government’s proposals as to how it intends to meet this commitment. We ask that serious consideration be given to indemnifying religious authorities in relation to any exposure to legal costs and expenses incurred in the course of legal proceedings brought against them in their capacity as religious authorities exercising the power to opt-in or opt-out of same sex marriage provision.

III. INDIVIDUAL FREEDOM OF RELIGION

13. Clause 2(4): the protection for individuals against ‘compulsion’ to conduct same-sex marriages is too limited

115. Clause 2(4) seeks to allow individuals connected to a religious organisation which has opted-in to same sex marriages to refuse to conduct or be present at a same sex marriage ceremony. This has the potential to generate conflict and the religious freedom of individuals will (under the Bill) be accorded greater weight than the institutional autonomy of religious organisations. Were this protection to be accorded to individuals outside the religious sector as well, we consider that this interference would be justified. The fact that this is directed only at religious organisations is disturbing.

¹⁷³ Ministry of Justice, *Judicial Review: Proposals for Reform* (December 2012), at paragraphs 34-35.

116. It is unclear why the protection proposed for those with conscientious objections to same sex marriage only applies to protect clergy or others *within churches* whose relevant governing body has opted-in to conduct same-sex marriages from being obliged themselves to conduct such a marriage. Clause 2(4)(a) provides explicitly that the protections do not extend to include ‘*a registrar, a superintendent registrar or the Registrar General*’. The government thus seeks to protect individuals from being ‘*compelled*’ to conduct same sex marriages even if their religious organisations have opted-in; but it has failed to protect individuals in *other* circumstances, where the *state* is involved.

117. We suggest that carefully tailored protections are needed for individuals who have a conscientious objection to same sex marriage in other contexts, in particular in the context of registrars who have a conscientious objection to conducting same-sex civil marriages. Suitable protection should be accorded to those working in the religious *and* public sectors. Individuals should be able reasonably to excuse themselves from activities that relate to same sex marriage without fear of being reprimanded or losing their jobs, as is currently the case of abortion.

14. Schedule 7, Part 2: Equality law, employment law, and teachers’ freedom of expression

118. We consider that there is a danger that teachers will be limited in their freedom of expression both inside and outside school as far as discussion of same sex marriage is concerned. It is imperative that freedom of expression and the freedom of thought, conscience and religion, is not inappropriately limited, when individuals are teaching, or where teachers publicly express dissenting views in other contexts regarding same sex marriage.

119. We fear that criticism of same-sex marriage by teachers in the school context could be considered to be unlawful discrimination based on sexual orientation. The problem is that even though a claim for ‘*harassment*’ is excluded in the schools context, so far as sexual orientation is concerned, claims for ‘*discrimination*’ are not. By analogy with the judicial interpretation of ‘*discrimination on the grounds of sex*’ as including some conduct that would also fall under ‘*harassment*’,¹⁷⁴ the use of offensive language may be held to amount to sexual orientation discrimination. Also, under EU law, the Court of Justice has held that, in some circumstances, offensive statements may amount to discrimination.¹⁷⁵

120. We further consider that the practical effect of the recent decision in *Smith v Stafford Housing Trust*¹⁷⁶ means that it is also necessary to include a similar amendment to ensure that a teacher would not be disciplined, dismissed, or otherwise suffer a disadvantage due to voicing such criticisms.

121. The Secretary of State has responded to these concerns as follows: ‘*Our clear understanding is 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 or context which resulted in discrimination against, or a detriment to, a particular pupil or group of pupils. The same is true of discussion or criticism of same sex relationships generally. We believe the existing provisions within the Equality Act are sufficient to protect teachers. Nothing in the Bill affects people’s ability to hold and express their belief that marriage should be between a man and a woman. Teachers are perfectly entitled to give their own view, or that of their faith, in appropriate context and in a balanced and respectful way. We therefore do not think an amendment is necessary.*’

122. We welcome this clarification of the views of the Secretary of State but we consider that she may be overly optimistic; the trend of the case law has been such as to create a chilling effect on teachers, and it is important to counter this explicitly. One of the ways in which this can best be achieved is by putting the Secretary of State’s reassurances on the face of the Bill, ensuring freedom of expression in the education context by protecting discussions of same sex marriages from being regarded as unlawful discrimination, or otherwise subject to dismissal or disciplinary proceedings.

15. Schedule 7, Part 2: Freedom of expression: Incitement to hatred

123. Individuals should be able reasonably to express views that relate to same sex marriage without fear of criminal prosecution under legislation criminalizing incitement to religious hatred and incitement to hatred on grounds of sexual orientation. In particular, we consider that appropriately tailored amendments should be introduced into sections 29J and 29JA of the Public Order Act 1986. These clauses provide a ‘*beyond doubt*’ statement to ensure that discussions related to sexual orientation (or religion or belief) do not in themselves constitute offences of hatred on grounds of sexual orientation (or religion or belief).

124. We suggest that it is appropriate to make clear that adopting a dissenting position on the acceptability of same sex marriage should also be protected in a similar way, ensuring that this would not constitute an offence. Freedom of expression is one of the hallmarks of a democratic society and it is central to achieving individual freedoms. It deserves to be protected explicitly.

125. The Secretary of State has responded as follows: ‘*We are currently discussing with the Home Office and Ministry of Justice the possibility of amendments to the protection of freedom of expression clauses in section*

¹⁷⁴ *Stewart v Cleveland Ltd* [1996] ICR 535, especially at page 542 at B-D.

¹⁷⁵ Case C-54/07, *Firma Feryn*.

¹⁷⁶ [2012] EWHC 3221, especially at paragraphs 105-107.

29J and/or 29JA of the Public Order Act 1986 which you raised with us. We were not able to complete these discussions before introduction of the Bill. (...) We will continue these inter-departmental discussions as the Bill progresses.’ We welcome these discussions and look forward to learning the results.

16. Schedule 7, Part 2: Freedom of expression: Public Order Act

126. We also recommended that a similar ‘for the avoidance of doubt’ provision should be introduced into section 5 of the Public Order Act 1986. Section 5 provides, in relevant part:

- (1) A person is guilty of an offence if he—
 - (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
 - (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Our concern is that, particularly in light of the *Hammond* case,¹⁷⁷ there is a strong likelihood that the expression of views in public against same sex marriage might be held to be ‘insulting’ under the Act, with a consequential chilling effect on public speech.

127. We are aware that the Government has recently announced a decision to accept the Lord’s amendment to the Crime and Courts Bill that would remove the concept of ‘insult’ from that offence. The Secretary of State has indicated in her letter that, in her view, ‘this amendment should provide the additional protections you are seeking in that context. However, I would be grateful for your views and whether or not you think any further amendment is necessary.’

128. We consider that this may well be the case. We would prefer, however, that the issue be debated in Committee, in order to allow the Secretary of State to express her reasons more extensively.

CONCLUSION

129. We accept that the adverse effects of the Bill on religious freedom which we identify are, in the main, unintended and that the Government wishes to address our concerns in good faith. We look forward to working co-operatively with the Government and Parliament in seeking to resolve our concerns.

February 2013

Memorandum submitted by Elder Dr P M Woodley on behalf of Hyde Heath Chapel (MB 39)

I represent a small village Chapel holding to reformed evangelical Christian beliefs.

I wish to object to the above bill because I do not believe it has been sufficiently well thought through in terms of its wider impact on society. Nor do I believe it contains sufficient and sustainable safeguards for the traditional conservative Christian view of marriage. I believe that there is no real need for this bill since I understand that the provision of Civil Partnerships provides couples with a legal status similar to that of marriage. I can see no advantage in redefining marriage to include the arrangements currently provided by civil partnerships and which will do an immense amount of harm to the church of Christ Jesus our Lord and God, and those who seek to obey God. For example, I have already heard of Churches that feel they will have no alternative but to stop conducting marriage ceremonies because of the fear of being forced to conduct similar services for same sex couples, contrary to their understanding of the Bible, and contrary to their stated beliefs. As a small Chapel we would be in a similar situation; we would not be in a position to face expensive litigation. Whilst the Bill may seek to provide protection at present, legal views are being expressed that the provisions will not be sustainable in the courts, particularly in European Courts. Our view would thus have to be formed on the basis of the likelihood of legal challenge rather than on the basis of what the Bill actually provides. The exclusion of main denominations, such as the Church of England, whilst likely to have repercussions, could also serve to put the attention on smaller independent churches by those determined to pursue their own agendas.

Similarly there is considerable fear being expressed by some, that committed Christians, eg Teachers, Chaplains, will be forced into situations where they are required to support same sex marriage contrary to their religious beliefs, or face disciplinary action, and possibly even dismissal. Thus Christians would unnecessarily face huge moral dilemmas and this could lead to an erosion of membership of Churches holding firmly to the conservative Biblical position. The proposals could thus undermine the freedom of speech, or of conscience. Examples already exist of legal action being taken against Christians who seek to maintain a reasonable Christian witness in society.

I believe, like many others I meet, that we have seen an erosion of respect and protection for Christian views in this country; and that despite the enormous contribution devout Christians have made to our society over the centuries. There seems to be a general pressure to appease the, sometimes more extreme views, of other religions, and minorities in society, at the expense of the traditional views of Christians. The proposals

¹⁷⁷ [2004] EWCH 69 (Admin).

contained in the above bill will thus further marginalise conservative Christians and isolate them unnecessarily in our society. The traditional view of marriage is based on God's provision for mankind and includes within it a picture of the headship of God over mankind. Whilst I recognise that this view is not universally shared, I am deeply concerned that the proposals will open up situations which will ultimately bring about legal conflict with, or bring about discrimination against those who seek to obey God. If we are to retain religious freedoms for Christians who hold to the traditional conservative views, then the above legislation needs to be substantially re-thought and amended, or withdrawn.

February 2013

Memorandum submitted by Peter Henderson (MB 40)

Dear Parliamentary Committee

I am unable to accept the assurances that there will be nothing for Christians to fear, once Gay Marriage is introduced in law in the UK. 75% of Christians would tell you that over the past ten years our atheistic, humanistic society is increasingly marginalizing and discriminating against Christians. Since Civil Partnerships came in there have been scores of cases—mostly handled by Christian Concern- where Christians are all the time being discriminated against simply because of acting on their Christians beliefs and refusing to counsel clients on gay relationships and other matters of conscience regarding gay issues.

1. When the Bill is passed I want it to be the toughest you have ever produced against Christianophobia, promoting the total freedom of speech and freedom of conscience in every instance for every Christian universally.

I want all Roman Catholic Adoption Agencies to be provided with funds to re-open again, since they were discriminated against because their conscience told them it was wrong for them to allocate, for adoption, children to gay couples.

2. I would like Christian Concern to be remunerated million of pounds of court costs they have had to pay out because of ongoing discrimination by both British Courts and the European Court of Human Rights.

3. I would like the government to agree to cover all legal costs of: anyone who is discriminated against any Christian because they refuse to carry out Gay Marriages in Churches or other premises; those who will lose their jobs in the Register Office for refusing to carry out Gay Marriages; those who will lose their job as school teachers for refusing to teach Gay Marriage; It should be easy and you should be most willing to OFFER to pay these costs, since you have assured us all it won't happen, hence you have nothing to lose.

4. That you negotiate an agreement with all the European Countries, that in all cases heard by the European Court of Human Rights:

No-one in any member country will be discriminated against because they refuse to carry out Gay Marriages;

No-one in any member country will lose their job in the Register Office for refusing to carry out Gay Marriages;

No-one in any member country will lose their job as school teachers for refusing to teach Gay Marriage.

5. I would be grateful if every MP in the country were instructed to investigate every case of the rapidly growing malaise of discrimination against their Christian Constituents. This inequality and bigotry and discrimination against Jesus Christ and every member of His family has GOT TO STOP! It is mushrooming enormously now to an epidemic proportion. This is a Christian Country. Our Queen is the Defender of the Christian Faith. The Church of England is the State Church. In law courts, every convict and witnesses has to swear on the Bible. The wisest man that every lived declared that "Righteousness exalts a nation, but sin is a reproach to any people." I am praying that God will bring all of you into a personal relationship with His Son, Jesus Christ and that you will follow an enlightened conscience and that the Holy Spirit will grant you wisdom, knowledge and understanding of His purpose for all of our lives, know that one day all of us will give an account of our lives to him, the Judge of all the Earth.

6. I want our government to refuse to carry out the secret hidden agenda of Europe mentioned in the attached link.

7. Also it must be written in stone in all legislature that parents have the legal right to keep their children away from all classes where Gay Marriage is being taught.

8. To urge all the judges in the land to stop placing the rights of Christians at the bottom of the pile. Everybody's else's rights are always deemed more important than the rights of Christians. We are fast losing our right of conscience and the freedom of speech—an issue over which this nation fought two world wars. And this trend is call progress????

February 2013

Memorandum submitted by W. R. Mohon (MB 41)

Summary. After the details of the writer's interest and expertise regarding the *Marriage (Same Sex Couples) Bill*, this submission addresses the need for sound arguments, the inappropriateness of the concept underlying the title of the Bill, the uniqueness of marriage as a union of one man and one woman, the fallacy of equality in the Bill, the failure to address the significance of children, the importance of truthfulness and the lack of confidence that this Bill can guarantee justice for those who hold to the uniqueness of marriage. Several conclusions are given.

1. *Personal.* My interest in this Bill is as an ordained Presbyterian minister whose ordination vows include upholding the unique institution of marriage. As to expertise, I trained for the Christian ministry and also completed an MA in theology by social ethics research. I have many years of pastoral experience in urban and suburban contexts.

2. *Argumentum ad hominem.* This submission rejects the fallacy of argumentum ad hominem where the argument is directed against a person rather than what is maintained. It is granted in logic that a statement cannot be shown to be false merely on the ground that even a bigot or criminal advances it. This point needs to be made because some have conducted the debate as though arguments can be dismissed by attacking the reputation of those making them. Members of the Public Bill Committee will appreciate that it is the arguments that must be considered.

3. *Title.* The title of the Bill, *Marriage (Same Sex Couples) Bill* implies an invalid starting point. It is necessary to distinguish between unions and marriage. Though all marriages are unions, it does not follow that all unions are marriages. Marriage is a union of a distinctive kind. The term 'marriage' is a synonym of 'matrimony'. The proposed civil union is a state-recognized commitment between two males or two females for a time. This does not constitute marriage. Marriage is a divinely ordained life-long commitment between one man and one woman joined together by matrimonial vow for purposes of procreation, purity and mutual support.

4. *Differences.* Comparing the two definitions reveals important differences, which demonstrate that, although marriage can be categorized as a union, a same sex union cannot be categorized as a marriage. These two unions are not of the same kind and do not equate to one another. They differ in origin, nature, duration, formalization and purposes.

5. *Marriage has a distinctive origin.* The origin of marriage is Divine prescription. The UK recognizes marriage but it did not create it and it does not own it. The recognition of marriage continues beyond the dissolution of states. The origin of civil unions is with the State that legislates them into existence and they have no existence independent of the legislation.

6. *Marriage has a distinctive nature.* It is not a union of *self-defined "commitment"* as some imagine but a union of *pre-defined duties* that include such things as financial support, procreation and complete faithfulness to one spouse. So, for example, marriage is between one man and one woman to the exclusion of all others and marital unfaithfulness by one party is a ground for the offended spouse to obtain a divorce. This duty of exclusive conjugal love formed part of the teaching of Jesus 2000 years ago before these Isles had representative government.

7. *Marriage has a distinctive duration and formalization.* Marriage is solemnized by matrimonial vows of life-long fidelity and in a Christian context these are taken by both bridegroom and bride pledging themselves to one another in the sight of the Triune God, Father, Son and Holy Spirit.

8. *Marriage has distinctive purposes.* These purposes of marriage are procreation, mutual support and purity.

9. *One purpose of marriage is procreation.* Wilful refusal by a spouse to consummate a marriage is a breach of the matrimonial vows and in English law a ground for nullifying the marriage. Though marriage does not always result in offspring because of involuntary biological factors, the absence of children does not invalidate the marriage but neither does it change the purposes of marriage. In connection with procreation it is evident that the male and female complement one another and are not the same or even equal contributors. The female cannot lay claim to the husband's priority in begetting. The male cannot enter into the wonder of motherhood in bearing, bringing forth and nursing the suckling. The man and the woman must stand in awe at the completeness arising from their different contributions to the fruition of their matrimonial union.

10. *A second purpose of marriage is mutual support.* The relationship of mutual support within marriage is of a distinctive kind. There are two equal parties but their roles are different. In the beginning the woman was described as a helpmeet. According to the Apostle Paul, husbands are to love their wives and wives are to obey their own husbands. This God-given distinction reflects the relationship between the Saviour and his church. In Ephesians 5.22—26, Paul writes: "Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so let the wives be to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word." These requirements underline an important distinction of the marriage bond. The man and the woman are not the same but complement one another.

11. *A third purpose of marriage is purity.* According to the Christian tradition, founded upon the Bible, God recognizes only one undefiled bed, namely, that of matrimony as defined herein.

12. *Inequality.* It is evident from the foregoing that no legislature can make same-sex unions equal to marriage for the simple reason that they are not the same. Such civil unions do not equate to marriage or matrimony in the following respects. (1) As same-sex unions are not between one man and one woman they can never attain to the complementary aspect of the ongoing matrimonial relationship. The resources that the wife brings into a marriage are different in various respects from those brought into the marriage by the husband. The combination of the male and female contributions excels that of two of the same sex. This is just a fact of life arising from the distinction of the sexes and is of common experience. (2) Same-sex unions cannot have a consummation such as we find in marriage and adultery in such a context becomes meaningless. (3) Same-sex unions cannot lead to procreation by the exclusive contribution of the two parties to the union. It is biologically impossible. (4) The Christian Church cannot remain faithful to Scripture and accord recognition of same-sex unions as pure in the sight of God because they fall outside of the exclusively approved relationship defined in Scripture. (5) Same-sex unions cannot be established by vows of faithfulness before the Triune God because the union is not instituted by God. (6) Same-sex unions cannot reflect the union between Christ and his Church represented in Scripture as a bridegroom—bride relationship.

13. *Children.* *The Marriage (Same Sex Couples) Bill* fails to correctly address the place of children in the family. Adoption is a wonderful institution that reflects God's love to sinners in taking those who repent of sin and believe in Jesus Christ into the bosom of his love as adopted in Christ. A wonderful bond of love is possible between adopted children and their adoptive parents. There are, however, stories of adopted children who, as adults, have gone in search of their biological mother, such is the strength of the bond established by procreation. We need not doubt that many adopted children have had a more loving home than they would have had but we must not overlook the fact that adoption remains the exception and not the rule for family life. The latter is, by Divine decree, intended to be and to be seen to be the natural outcome of matrimony and the ordinary development from it.

14. *Honesty.* Atheists, secularists and others will understandably, find it difficult to relate to the voice of faith and devotion to God. It is easy to assume bigotry or other dark motives for what is in fact faithfulness to something believed to be true. For a Presbyterian minister to break ordination vows solemnly taken to uphold, among other things, the unique institution of marriage would rightly result in removal from office. Similarly, for church members to go against their consciences and promote or endorse unions that have no Divine sanction would be sinful. It is regrettable that this Bill is entitled *Marriage (Same Sex Couples) Bill* because this is a contradiction in terms. It is in fact a deception that will lead to divisiveness and disillusionment. It will result in division, as Christian ministers have to explain that the legal category of Marriage is not the Christian definition of Marriage. It will lead to disillusionment as it becomes clearer that same sex unions are not of the same order as marriage and that in the legislation "Marriage" is a euphemism for "union" and has been robbed of almost all of its meaning in order that it might be used in the context of this Bill, where it means little more than a committed relationship. There is a measure of unkindness involved in promising what cannot be bestowed.

15. *Justice.* The promises of protection for those who hold to traditional marriage are not convincing. Grave injustices have already taken place in connection with civil partnerships. The cases of the civil registrar, Lillian Ladele and the counsellor Gary MacFarlane are now well known. They provide evidence that either Parliament intended the oppression of conscience experienced by them (and the present Government certainly resisted their cases at the European court) or Parliament cannot guarantee protection of conscience for ministers and Christian employees. It is now well known that the judiciary is the ultimate arbiter of equality. Judicial interpretation, not parliamentary debate, ultimately decides outcomes. Additionally, we do not now have a supreme judicature and our highest authorities are subject to the decisions of EU judges. Mark Hill, QC, for example, has questioned the soundness of the European judges in the Ladele case. For this reason, promises of protection, without the wide consultation required for green or white papers are meaningless. The process that the Government has followed is unsafe. The legal advice of Aidan O'Neill, QC has shown that this Bill could have serious consequences in both church and employment contexts.

16. *Conclusion One.* The Bill is *confusing* and will undermine social order. It combines under the title "Marriage" two unions that are of a completely different kind, marriage, which involves prescribed duties regarding spouses and children; and same sex union, which is no more than an undefined commitment by two persons. Marriage and same sex unions have different origins, nature and purposes. All that they have in common is that they are "committed relationships" but these relationships are not identical or even similar. Even in the one thing that they have in common, committed relationship, there is no similarity between the relationships because the root complementary relationship of male and female is totally absent in same sex unions.

17. *Conclusion Two.* This Bill is *divisive*. It is divisive because it necessitates Christians being much more robust and public in their defence of marriage as taught within Christianity. Same sex couples wrongly interpret this as homophobia.

18. *Conclusion Three.* The Bill is *shortsighted*. It totally fails to relate marriage to children and the family contradicting many centuries of evidence concerning the importance of family responsibilities for the welfare of nations. The Bill appears, as if out of nowhere, without any connection with our national identity as a family friendly nation intent upon responsible stewardship with respect to children.

19. *Conclusion Four.* This Bill is *dangerous*. The results of this Bill are totally unpredictable with respect to ministers of religion, churches and hard-working committed employees who could find their jobs imperilled by their inability to endorse or promote same sex unions. Experience has already shown that courts at home and abroad, rather than the legislature, determine the implications of equality.

20. *Conclusion Five.* This Bill is *undemocratic and unjust*. It ignores the interests of over half of the population, who remain concerned about its implications for the preservation of marriage as a caring context for husband, wife, children and in a measure grandchildren. The Government is rushing this bill through Parliament on the votes of the main opposition party without even pausing to explain to the public its long-term implications. Indeed it would appear that it has not even attempted to assess what they might be.

21. *Conclusion Six.* This Bill *lacks legitimacy* and should be dropped. The lack of normal Parliamentary process including manifesto statement, success at the polls on the basis of correct understanding of what is entailed, and proper consultations will ensure that a large section of the public will never be reconciled to the bill as legitimate legislation.

22. *Conclusion Seven.* In the interests of justice, the Government should adopt the substance of Mr Edward Leigh's Ten Minute Rule Bill to amend the Equality Act to make "marriage" a protected category so that those who believe in marriage as herein described will not be penalized for their beliefs.

February 2013

Memorandum submitted by Ronnie Devine (MB 42)

Dear Chairman

I wish this to be circulated to all members of the committee considering the Marriage (Same Sex Couples) Bill 2012–13, under your chairmanship.

I have watched extracts of your evidence sessions.

When the witnesses represent parties that are in favour of equal marriage there is a calm, and meaningless debate, with some pertinent questions from members.

Once you get hold of witnesses in favour of maintaining the existing definition of marriage, they are treated with vehement hatred, by some members of the committee. I note also that the sessions are brought to a prompt and premature end, before the final question has been answered.

Has it not yet dawned on Her Majesty's Government that the marriage bond is not yours to redefine? It is becoming increasingly clear in this society of declining moral standards that marriage between a man and a woman is the strongest bond there is.

I would like to take this opportunity to remind all members that until right principles of good and evil are recognised in an honest and unselfish manner, and upheld in Government, there will be disappointment and decline in society, a treadmill of disaster after disaster, broken household after broken household, with all the issues that they breed.

I have a few questions in my mind:

Why does the promotion of the traditional view of marriage bring out bitter antagonism from those in favour of same sex marriage?

How can you claim free speech when you unreasonably vilify any witnesses in favour of the traditional definition of marriage?

February 2013

Memorandum submitted by the Mothers' Union's (MB 43)

1. Mothers' Union is a grassroots Christian organisation with 4 million members living in 83 countries. Our members work to support family life through fellowship, practical support and campaigning. Mothers' Union has responded to previous Government consultations on marriage and civil partnerships.

2. Mothers' Union is concerned that this Bill will not be given the due consideration needed, during Parliamentary time. To make such a fundamental change to the orthodoxy of marriage as an exclusive, lifelong commitment between one man and one woman deserves rigorous deliberation, especially to consider potential unintended consequences and we believe the standard Parliamentary timeframe will not allow for this.

3. Mothers' Union welcomes the 'opt in' approach, which allows organisations and religious celebrants to solemnise same sex marriages if they so choose, whilst creating no obligation or legal requirement on anyone to do so. We believe this is an important position to maintain and would not advocate the Government moving to a system that allowed no opt out—as much as marriage does not 'belong' to the church, neither does it 'belong' to the state. The praxes by which faith groups choose to solemnise and support committed couple relationships

should subsist within the jurisdiction of those particular groups. Each religious body should be allowed to determine their own doctrinal and ethical beliefs and practices as otherwise religious freedom is not maintained.

4. We are not wholly assured that the protections for those not wishing to solemnise same sex marriage will be robust enough to withstand legal challenges. The need for so many ‘locks’, particularly for the Church of England, suggests that there will be significant attempts to unpick them; and as the Second Church Estates Commissioner asserted during the Bill’s second reading, “there is no way in which any of us can know just how robust these protections will be until they are tested in the courts.”¹⁷⁸

5. We are also concerned that these protections fail to take into account the wider marriage-related services and activities offered by religious organisations, for example marriage preparation and support. According to their doctrine, such bodies may maintain the definition of marriage as being between one man and one woman; but it is not clear whether such an action would risk being subject to any form of legal action.

6. Whilst Church of England clergy are exempt from these proposals, we wonder how the wider Church of England might be impacted. For example, could a local authority rightfully refuse to fund a CofE run youth project on the basis that the church it was connected to would not solemnise same sex marriages and that this conflicted with the local authority’s own equalities or contracts and tenders policies?

7. Mothers’ Union has concerns about inconsistencies within the Bill relating to equality. Whilst the discourse framing this Bill is that extending marriage to same sex couples is a matter of furthering equality, the proposals do not confer the same marriage and divorce rites on same sex couples as they do on opposite sex couples. It is seemingly inconsistent that the Government wishes to redefine the meaning of marriage, yet is not proposing to redefine the meaning of adultery in order to permit divorce for same sex couples on such grounds. We wonder why the Government is prepared to change the definition of some words but not others. We would also question why same sex couples are not to be afforded the same right to, and expectation of, fidelity within their married union. As the Minister for Women and Equalities commented, marriage contains the promises of responsibility and commitment, and this is why the Government believes same sex couples should be able to call their lifelong commitment marriage.¹⁷⁹

8. A further inconsistency is that civil partnerships will remain open only to same sex couples. Whilst Mothers’ Union would not necessarily advocate making civil partnerships available to opposite sex couples, this ‘exclusion’ of opposite sex couples from civil partnerships is surely, if we are to use the rationale put forward by the Government, a form of inequality and discrimination.

9. We also have concerns about the long term consequences of deconstructing the orthodoxy of marriage. If Parliament is prepared to deconstruct the definition of marriage, for the want of allowing people who love each other to have their relationship recognised as marriage, then it needs to be prepared to decide what other tenets of marriage should or should not be deconstructed; for example how many people may enter the same marriage or at what age. Parliament needs to have a solid argument to defend its position if it does not wish to change further tenets of marriage, and to justify why, for example, those who wish to marry more than one person, or a close relative, should not have that same right to formalise such a relationship in marriage.

10. Our final concern is for the freedom for those who believe marriage is—and will forever be -intrinsicly between a man and a woman, to express such a view. Already, this belief is being labelled as homophobic and even likened to Nazism—whether or not the belief is expressed with any hatred, derogatory or discriminatory intent. We do not believe this view of marriage is inherently homophobic, no more than we believe the current view and definition of civil partnership is heterophobic. We urge Parliament to give this issue serious consideration. Experience from Canada, where same sex marriage has been lawful for ten years, has demonstrated that those adhering to the traditional definition of marriage have been subject to investigations by human rights commissions and received penalties.¹⁸⁰

February 2013

Memorandum submitted by Robert Williams (MB 44)

1. **Introduction**—I am an Ordained Free Christian Minister and have carried out, by such authority, Bible preaching, teaching and all the ordinances of the Church. My experience as a Pastor and Counsellor also allows me to feel confident in submitting views for consideration in this very serious issue of marriage. My approach will be from a Scriptural perspective since the Bible, inspired by GOD, is the only true way to formulate LAW.

2. **Marriage**—or the coming together of **Man & Woman**, was set out in the “Handbook of Life” (The Bible) which was inspired by the Creator GOD of all flesh.

¹⁷⁸ Sir Tony Baldry MP, Hansard 5 Feb 2013: Column 145 <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130205/debtext/130205-0002.htm>

¹⁷⁹ Maria Miller MP, Hansard 5 Feb 2013 : Column 127 <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130205/debtext/130205-0001.htm>

¹⁸⁰ Bradley Miller, *Same-Sex Marriage Ten Years On: Lessons from Canada* <http://www.thepublicdiscourse.com/2012/11/6758/>

Genesis 2:24(NKJV) ²⁴ Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh.

This is a fact and whilst there may well be unbelief concerning this, it does not alter or change the truth of GOD. The argument that “society has moved on” and the Bible is seen as outdated (dubious in the extreme), does not alter GOD’S Plan and Purpose for humankind.

Malachi 3:6(KJV) ⁶ For I am the LORD, I change not;

Hebrews 13:8(KJV) ⁸ Jesus Christ the same yesterday, and today, and for ever.

Society does not “move on”, they just “move away into chaos”; millenniums and centuries of varying types of government throughout the world has never realised peace, security, compassion, selflessness, or full care for people. Currently the world is at its most dangerous and fragile state—that as a result of society “moving on” from The Masters Divine Knowledge!

Marriage, according to the handbook of life, is between a Man and a Woman **and who is mere mortal ‘man’ to change that?**

3. **The Gay Issue**—is not a “gender issue” but one of perverted self-indulgence. We are speaking about less than 1% of the population, but an aggressively challenging cult. With the exception of a few unfortunate people who were born with a physical gender problem, that has required medical intervention, the remainder are quite capable of natural sexual behaviour between male and female but they choose to live an un-natural lifestyle.

4. **The Bill** is not necessary, since those choosing same sex partnerships already have the opportunity to partake in a Civil Marriage. The Church has always had the freedom and the right to refuse a church ceremony to a couple, for example where divorce has been involved. What special rights do the Gay Community have over and above others?

The “quadruple lock” is not an answer; whilst this may be a safeguard in this nation, it will undoubtedly be overridden by the “real power of government in Europe”. Already the Commission and the Judiciary of Europe are finalising plans for a similar redefinition of marriage, citing some other Euro nations existing changes and therefore requiring European-wide legislation.

5. **Freedom of Speech** Those organisations representing ‘gay rights’ have themselves stated they see no reason to have such re-definition; however, as in society generally, there are always the aggressively active minority within who will use all opportunities to “test the system”, so no doubt it will be taken outside the United Kingdom into Europe for the final decision. But given this will be the end result, where then do those who oppose the Bill take their case?

The horrendous legal battles raging in Canada over this very issue should make our government, Ministers and politicians recognise the “beast” they are creating. Even before the Bill becomes Law, there have been challenges in the British Courts about our religious beliefs and freedoms, which were shown to be non-existent. Inevitably this Bill will place Churches, the teaching profession and many others in a vulnerable position open to the full force of the Law in Europe for having a different and opposing view.

6. **What has changed?** Homosexuality, lesbianism, bestiality have been carried out in society for centuries, millenniums even, and has been constantly condemned by the Living GOD and Creator of Humanity. His Inspired Word, the Bible, is not just a Religious Holy Book used by Christianity, **but the blueprint of His plan and purpose for human life,(believers and unbelievers), past, present and future.**

Leviticus 18:22–24 (KJV)²² **Thou shalt not lie with mankind, as with womankind: it is abomination.** ²³ **Neither shalt thou lie with any beast to defile thyself therewith: neither shall any woman stand before a beast to lie down thereto: it is confusion.** ²⁴ **Defile not ye yourselves in any of these things: for in all these the nations are defiled which I cast out before you:**

What Our Sovereign GOD calls “an abomination”, the Bill wishes to adopt as a general rule! Just a vociferous few of that abomination have set the politicians in a frenzy of action, on what will be legal mayhem.

7. **The Law** in Great Britain, throughout most of history, has been based on the Bible pattern. It is the reason this very small island has been such a powerful force in the world for so long. Because we have followed the Bible Statutes, we have been blessed and taken that blessing throughout the world. Only since Governments (of all parties) have systematically legislated to remove the 10 Commandments from Law has this nation deteriorated to a place of spiralling into chaos.

8. **Summary** I make no apology for approaching a response to this Bill from a Biblical viewpoint, **because the whole “re-definition of marriage” is a direct challenge to the Almighty GOD of Creation.** For this reason we should approach it in fear and trembling. Many Bible-believing people are being set up for legal punishment, for believing what has been an accepted fact for centuries and millenniums; now for the sake of a very tiny minority, they will have their freedom of speech and even freedom itself denied. GOD’S Law will always be above the Law of mere mortal beings.

Therefore, because of my Biblical belief I have to accept GOD’S Law before and above mere mortal ‘mans’ legal cobbling together of statute.

Earlier legislation on Sunday trading and abortion, for instance, was unacceptable for a Bible believer and a sad time when it became Law. However, those opposing that legislation retained the right to protest and express opposing views, and currently still do. I and all my fellow Christians in this country can personally retain a Sunday Sabbath, I can counsel against any woman having an abortion—my freedom to do this still remains.

This Bill, as currently drafted, and with the then inevitable interference of Europe, will leave me with no opportunity to oppose a church ceremony for gay couples without suffering major consequences to my freedom. Those who Our GOD considers “an abomination” will have their freedom of right and expression, whereas I will be denied it.

Hebrews 10:30–31 (KJV) ³⁰ For we know him that hath said, Vengeance belongeth unto me, I will recompense, saith the Lord. And again, The Lord shall judge his people. ³¹ It is a fearful thing to fall into the hands of the living God.

February 2013

Memorandum submitted by John Etherton (MB 45)

This Submission is from an NHS General Practitioner with an interest in Marriage issues.

INTRODUCTION:

Position:

NHS General Practitioner; founder of Meridian Surgery, Peacehaven, East Sussex BN10 8NF (1986).

Relevant background:

Provider of Primary Care since 1982, including family planning, counselling services, and the teaching of general practitioners in training. Council member, Faculty of Sexual and Reproductive Healthcare, RCOG 2007–2010.

Relevant qualifications:

MRCGP—special interests include evidence-based medicine; preventive medicine; medical ethics; effects of changing sociological norms on family life.

MSB CBIol (Chartered Biologist)—special interests include scientific basis of human and animal sexuality; evolution.

OVERVIEW:

1. The most important issue in this debate, which has been virtually absent to date, is the necessity for societies and cultures to have a foundation upon which to base laws and social norms. Today, these follow cultural drift without reference to our Judeo-Christian heritage or any other values base, with consequences that have become apparent during the last generation. Drifting values became enshrined in law with unforeseen adverse consequences, especially the loss of freedom for those who base their own values and lives on our original heritage. The Bill in its present form establishes a precedent for additional variations which may include incestuous marriage, paedophilic marriage and polyamory.

2. Due to the haste with which the Bill has proceeded, Parliament has not been able to appreciate the overarching cultural and sociological significance of this Bill. A more detailed examination of fundamentals is recommended during the Committee and Report Stages, so that the Third Reading can take an informed stock of the implications before it proceeds to the Upper House. Ideally it would be delayed and reintroduced after more detailed analysis, when MPs would be better informed.

3. This document recommends retaining the original status of *traditional marriage* alongside provision for the parallel and separate entity of *same sex marriage*. This will preserve Equality and Diversity across the entire debate, and no individual or pressure group can claim inequality or discrimination. Just as Disability is subdivided into groupings, *Marriage* will be subdivided into traditional marriage and same sex marriage. *Statutes will refer to “Marriage (traditional and same sex)”, and sub-sections will treat these two variations along different threads.*

SUMMARY:

1. Significance of the Marriage (Same Sex Couples) Bill:

This provides for the most significant alteration to the Statute Book for decades, as it devolves upon the redefinition of marriage. Marriage has been the bedrock of society for millennia, and is a basic tenet of the 6 main faiths (representing 66% of the 2011 Census population).

2. Semantic considerations of the phrase “same sex marriage”:

There has been a semantic apposition of the phrase “same sex” to the word “marriage” without reference to an in-depth analysis of its meaning and implications. The phrase “same sex marriage” has, by common usage, desensitised the population to the enormity of the proposed redefinition of marriage, and become common parlance in a very short period of time. MPs have not been objectively informed by the Government Equalities Office (GEO) (1) about the cultural foundations of marriage and the implications of replacing these foundations with a new set devised during the past 15 years. MPs have been swayed by superficial considerations centering on the culturally recent Equality and Diversity mandate. This observation is borne out by viewing the Hansard recordings of the submissions and responses during the Public Bill Committee examination (2).

3. Safety of the redefinition of marriage:

The proposed legislative change appears to be unsafe, and untested internationally for any significant period of time. No country legislated in favour of this until into the 21st Century. The precedent set by the Bill for bodes uncertainty for future freedoms of conscience, expression and faith.

4. The role of the Prime Minister:

Under pressure from (a) the GEO, (b) the extremely powerful, vocal and well organised LGBTIQ agenda lobbies (3), and (c) his wife (4), David Cameron has changed his original stance (5) and adopted a fixed personal agenda with but one outcome envisaged. The briefings for MPs (eg 6) reflect a partisan view and do not fully inform. MPs are too busy to devote time to researching every Parliamentary issue, and are naturally going to toe the line on what they are assured is a balanced and well researched view. It is regrettable that he should virtually absent himself from a packed House debating an issue that was his own brainchild, and which has caused more tension and opprobrium on all sides than any other matter in recent years.

5. Recommendations:

1. The Bill should be placed on hold pending a study of the 11 nations who have already approved similar legislation; and then re-opened for debate.

2. The redefinition of marriage will then be re-examined in the absence of the haste associated with the passage of the Bill at present. This will allow for informed opinion and ideally would incorporate a national referendum. This approach will be an example to the wider world..

3. If the new concept of same sex marriage is added in Statute, a distinction should be retained to differentiate within the category of Marital Status. Thus, *Marital Status clauses* will list: **“Single/Traditional Marriage/Same Sex Marriage/Civil Partnership/Divorced/Separated/Widowed”**. This will assist organisations who require accurate sociological information about individuals in order to provide the optimal service for them.

6. The Royal Assent:

Submission of this Bill for the Royal Assent will place The Queen in an invidious position, as the redefinition of marriage runs counter to the statutory requirements for the Coronation Oath (7) which she assented to. It would be advisable to await her succession, at which time the Coronation Oath could be subject to scrutiny by the GEO.

Further details on the above points:

Note—references to the LGBTIQ agenda are in bold type to emphasize the influence of this sociological phenomenon across the debate on same sex marriage.

Point 1:

Significance of the Marriage (Same Sex Couples) Bill:

The Marriage (Same Sex Couples) Bill provides for the most significant alteration to the Statute Book for decades, as its foundation rests upon the redefinition of marriage, the bedrock of society, thus creating a **secular replacement foundation for marriage**.

1. The Bill is unlike almost any other Bill in recent decades because it devolves upon a foundational cultural change affecting the bedrock of society (countless references, eg 8) and alters a basic tenet of all the main faiths (9–14), accounting for 66% of the population (2011 Census).

2. It is unwise to expedite a change of this magnitude under the umbrella of Equality and Diversity, without extending to MPs and voters the courtesy of an *extensive consultation period*, allowing for proper research and debate across all sectors of our culture.

3. I wrote to the Prime Minister about the Bill on 12th December 2012. The official (standard) reply sent from the GEO (15) was phrased in such a way as to give no room for discussion. Details:

1. The letter presented as a *fait accompli* indicating no room for manoeuvre. It implied an imposition of Statute with caveats (eg the “quadruple lock”) in an attempt to protect the large numbers of people who

will have personal and professional difficulties when the outworking of the Bill cuts across their long held beliefs and values, and begins to affect employment law etc.

- II. The letter's introductory potted history of marriage fails to cover the quantum leap from traditional marriage to same sex unions (and fails to comment on the progression to 3-way partnerships etc. that are now seen in states which have adopted this; see *Point 4*).
- III. The tenor of the letter betrayed a governmental approach reminiscent of the imposition of cultural changes which authoritarian regimes and dictatorships have employed in the (not so distant) past across the world.

Point 2:

Semantic considerations of the phrase "same sex marriage":

There has been a persistent and glib semantic apposition of the phrase "same sex" to the word "marriage" without reference to an in-depth analysis of its meaning and implications.

1. The phrase "same sex marriage" has, by common usage, desensitised the population to the enormity of the proposed redefinition of marriage, and become common parlance in a very short period of time.

- I. MPs have not been objectively informed by the GEO about the cultural foundations of marriage and the implications of replacing these foundations with a new set devised during the past 15 years. They (and advocates of the Bill including major internationals such as Reuters) have been swayed by superficial considerations centering on the culturally recent Equality and Diversity mandate, whose values are intensively promoted by the GEO. This observation is borne out by viewing the Hansard recordings of the submissions and responses during the Public Bill Committee examination (2). A similar provision applies to the establishment of the GEO itself, which has driven the Bill at the request of the Prime Minister. Little, if any, attention has been paid to the foundational basis of the underlying ethics of the GEO. As far as one can tell, the values espoused by this highly successful and very well organised Department are driven by the Equality and Diversity agenda—which in turn is driven ultimately by the ***LGBTIQ agenda*** with little reference to the centuries of tradition, legal history and religious ethic which together constitute our great heritage. Milestones in the development of ***a secular replacement foundation for marriage*** include landmark Statutes such as the Sexual Orientation Regulations (16), the Gender Recognition Act (17) and the Civil Partnership Act (18). (It is not within the remit of this submission to document the origins of the ***LGBTIQ agenda***).
- II. A typical example of an incompletely informed view is that of my own MP (19). He and the powerful figures within the GEO have been informed almost exclusively by the ***LGBTIQ agenda*** which has developed within our culture over the past 2 decades, and now forms a fundamental reference point throughout the legislative process and influences every aspect of life.
- III. The ***LGBTIQ agenda*** features in every official document in all the professions in the sections covering inclusivity, discrimination and disclaimers. Its most powerful proponent organisations have succeeded in co-badging the headed notepaper of many public and private organisations. The Equality Act 2010 embodies 3 major *statutory instruments* protecting discrimination in employment on *grounds of religion or belief, sexual orientation and age*. However, the status granted to the ***LGBTIQ agenda*** currently outweighs that granted to the other areas of discrimination, and is applied widely—not just within employment. Any dissent based on centuries of tradition or faith tenets going back millennia, is dismissed under the banner of the Equality and Diversity mandate, and challenged using the courts.

2. The difficulties raised by adopting the ***LGBTIQ agenda*** as a caveat underpinning all documentation and guidelines may be illustrated thus:

- I. The reply I received (15) from the GEO (following my letter to the Prime Minister) stated: "*Opening up marriage to all couples will strengthen the vital institution of marriage, and help ensure that it remains an essential building block of society*".
- II. *Comment:* a stone building block (marriage) cannot have its constitution altered (by radically redefining it)—it will crumble, and the edifice above (society) will disintegrate. Thus the argument is fundamentally flawed.
- III. Countless studies have shown that society is at its most stable, with children doing best overall, when society is based on traditional marriage consisting of opposite sexes joined in matrimony and raising their own family (eg 8).

3. Employing semantic shift to gratify minorities who already have every legal provision in place, is not only profoundly undemocratic and discourteous to the majority, but is an untested route (see Point 3, below). There is no legal advantage whatsoever in Equal Civil Marriage compared to Civil Partnership (18; first paragraph). Allowing—without an adequate consultation period—the ***LGBTIQ agenda*** to trump the long-established status of the vast majority by caving in to highly organised and exceptionally powerful and influential minority pressure groups is a discourteous and retrograde cultural step.

Point 3:

Safety of the redefinition of marriage:

The proposed legislative change has been untested internationally for any significant period of time, and appears to be unsafe therefore.

1. No country legislated in favour of this until into the 21st Century.
 - I. Since 2001, 11 countries ([Argentina](#), [Belgium](#), [Canada](#), [Denmark](#), [Iceland](#), [Netherlands](#), [Norway](#), [Portugal](#), [Spain](#), [South Africa](#), [Sweden](#)) have allowed same sex marriage .
 - II. Several sub-national jurisdictions (parts of [Brazil](#), [Mexico](#) and the [United States](#)) have allowed same sex marriage.
 - III. Similar Bills are pending in [Andorra](#), [Colombia](#), [Finland](#), [France](#), [Luxembourg](#), [Nepal](#), [New Zealand](#), [Taiwan](#), the [United Kingdom](#), [Uruguay](#), and parts of [Australia](#), [Mexico](#), and the [United States](#).
2. Safety concerns, and uninformed public perception:
 - I. A Daily Telegraph journalist recently reflected the popular view thus: “*The fact is that society’s attitudes have fundamentally changed since the word marriage was defined as being solely between a man and a woman. And this is reflected by changes in laws across the world, not just here in Britain. The reality is that the definition of the word marriage simply is being changed and that is a process which will continue. This seems to us to be an entirely good thing which does nobody any harm. It does nothing more than give gay couples the same choice as heterosexual couples to express their love for one another in this way. And in our view, that should be a matter for them and not anybody else*”. The informed and objective response to this type of comment is embodied in **Point 2**, above.
 - II. Several organisations have expressed serious concern over the precedent set by the Bill (and the preceding ones that prepared the ground) in creating **a secular replacement foundation for marriage** based on the **LGBTIQ agenda**. These include:
 - III. *Religious documents*: The **LGBTIQ agenda** does not end with equal marriage. Enshrined within, and central to, the tenets of the 6 main faiths, are passages referring to items within the new **LGBTIQ agenda** which are expressly forbidden. These are currently referred to by proponents of the **LGBTIQ agenda** as “Hate Literature”. It will be necessary to devise a new Bill (eg “*Equality in Religious Mandate*”) ordering the extraction of Hate Literature from these ancient writings. Following this, revised Equality Versions of the Koran, the Bible and the Torah would become mandatory. This has implications for the freedoms of the 37,010,101 people who hold a religion (England and Wales 2011 census). Attempts to force marriage equality onto Sharia Law may unleash the violent opposition commonly seen when the Koran is defaced.
 - IV. *Additional variations on Marriage*: The precedent set by the adoption of **a secular replacement foundation for marriage** may lead in due course to polyamory, incestuous marriage, and paedophilic marriage. The secular imperative makes no provision for barring such routes. Brazil recognises three-way relationships under civil partnership laws (20).

Point 4:

The role of the Prime Minister:

1. On 3 May 2010, just three days before the last general election—Mr Cameron stated to Adam Boulton on Sky News that he was “not planning to change the definition of marriage” (5). His election manifesto was silent on this issue.

- I. He changed his stance on becoming Prime Minister under pressure from the GEO (1), the extremely powerful, vocal and well organised **LGBTIQ agenda**, his wife (4) and in the face of opposition from his mother (21).
- II. He has adopted a fixed personal agenda with but one outcome envisaged. He has persistently referred to “when” not “if”, thus implying that the Government Consultation (22) always had but one outcome in his view.
- III. The briefings for MPs reflect a strongly partisan view and do not fully inform (eg 6). MPs are too busy to devote time to researching every Parliamentary issue, and are naturally going to toe the line on what they are assured is a balanced and well researched view.
- IV. He appeared to regard his Bill as an add-on to existing equality legislation, to be got out of the way as conveniently as possible leaving the Government free to get on with the truly important matters of state—while failing to recognise **Points 1,2,3** above. He appeared to assume that his Bill would easily pass in a free vote, by relying in advance on votes from the very MPs who oppose him on other matters on the benches. It is regrettable that he should virtually absent himself from a packed House debating an issue that was his own brainchild, and which has caused more tension and opprobrium on all sides than any other matter in recent years. It has to be said that this does not engender respect from his Party and from thinking people.

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- V. There is a real risk that his Bill will undermine the ancient and tested foundations upon which his current and future hard work rests.
2. The Prime Minister's own party blog, ConservativeHome (Dec 28, 2012), published findings that overall, apart from the first 2, made disappointing reading for the Tory leadership (23).
 3. Equalities Minister Maria Miller and her GEO hold a view on Marriage which is superficial and fundamentally flawed. It is a foundation-less opinion that follows sociological drift. It takes no account of millennia of historical and cultural factors, and centers on recent and controversial minority views of this ancient institution. A balanced perspective on this can only be achieved by lifting the historical concept of Marriage out of the morass of the Equality and Diversity juggernaut and the vigorously promoted *LGBTIQ agenda* and studying it objectively.
 4. The commonest justification for pressing for a redefinition of Marriage is the aggregate of much quoted phrases such as "marriage is an evolving institution/society has to move on/aiming for equality across all sectors of society". All this is in defiance of the observation that cultures which operate with no tested foundations, or a rejection of existing stable foundations (such as our Judeo-Christian heritage, espoused by The Queen (7) at her coronation) drift into sociological disaster in the long term. Examples may be found all the way from the fall of the Roman Empire to the fall of the Third Reich.

Point 5:**Recommendations:**

1. The Bill should be placed on hold until such time as the implications and repercussions upon society have become manifest in the 11 nations who have already approved similar legislation; and then re-opened for debate.
2. The complicated issues raised by the redefinition of marriage will then be re-examined in the light of a thorough analysis of the findings, and become subject to due Parliamentary process (in the absence of the haste which the Coalition initially imposed upon the Lower House). Part of this process will be a more representative survey of informed opinion across the UK and ideally will incorporate a fully informed national referendum. This approach to a fundamental change in law will be an example to the wider world, and provide a more objective reference point for other countries examining the same issue.
3. Following debate, if the new concept of same sex marriage is added in Statute, a distinction should be retained to enable organisations (eg insurance companies, the NHS, the Services) to continue to differentiate within the category of Marital Status. Thus, just as Discrimination clauses in official documents now list: "Race, Religion, Sexual Orientation etc.", Marital Status clauses will list: "Single/Traditional Marriage/Same Sex Marriage/Civil Partnership/Divorced/Separated/Widowed". This will appear little different to before, and will greatly assist insurance companies, the NHS, and other organisations who require accurate sociological information about individuals in order to provide the optimal service for them.

Point 6:**The Royal Assent:**

Submission of this Bill for the Royal Assent will place The Queen in an invidious position, as the redefinition of marriage runs counter to the statutory requirements for the Coronation Oath (7) which she assented to 60 years ago. The epitome of courtesy and respect in this regard may be to defer the Bill until there is a change of monarch, at which time the Coronation Oath could be subject to scrutiny by the GEO and Parliament.

Final Remarks:

1. From the cultural aspect, the Marriage (Same Sex Couples) Bill provides for the most significant alteration to the Statute Book for decades, with implications for the freedoms of people of all faiths and none. There is more to this than meets the eye.
2. Absent from this debate is the necessity for societies and cultures to have a *tested foundation* upon which to base laws and social norms. Today in the UK, the latter follow cultural drift without reference to our Judeo-Christian heritage, and this is associated with annually deteriorating sociological statistics. Drifting values become enshrined in law with loss of freedom for those who base their own values and lives on our original heritage. Creating a *secular replacement foundation for marriage* may lead in due course to polyamory, incestuous marriage, and paedophilic marriage.
3. Just as disability is subdivided into groupings, a redefinition of Marriage should be subdivided into traditional marriage and same sex marriage. New Statutes should refer to "*Marriage (traditional and same sex)*", with sub-sections treating these two variations along different threads.
4. The Prime Minister is 100% committed to fundamentally redefining the ancient and God-ordained institution of Marriage, dismissing this as simply a minor issue that has to be got out of the way ASAP, leaving time for matters of state that really count (without taking account of the issue of foundations). It is time that our leaders took stock of the erosion of our foundations before they disintegrate, and our once-great culture descends

into what the Apostle Peter referred to in Roman times as “a flood of dissipation” (1 Peter 4:4)—with appalling long term social consequences.

REFERENCES AND ENDNOTES:

1. Government Equalities Office: <http://www.culture.gov.uk/equalities/index.aspx>
2. Public Bill Committee video recordings: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=12589>
Public Bill Committee transcripts: <http://www.publications.parliament.uk/pa/cm201213/cmpublic/marriage/130212/am/130212s01.htm>
3. LGBTIQ stands for Lesbian/Gay/Bisexual/Transgender/Intersexed/Questioning. This potentially confusing acronym reflects the internal politics of social movements around issues of sexual orientation and gender identity. It conveys symbolically and rhetorically the desire to achieve a high degree of political unity among groups with diverse, potentially conflicting, legal and policy issues:
<http://lawprofessors.typepad.com/lgbtlaw/2007/08/introduction---.html>
4. Cameron’s wife encouraging the redefinition of marriage: <http://www.christian.org.uk/news/camersons-wife-is-driving-force-behind-gay-marriage/?e010213>
5. Cameron not planning to change the definition of marriage: <http://www.pinknews.co.uk/2010/05/04/david-cameron-not-planning-to-legalise-gay-marriage/>
6. Equal marriage mythbuster briefing for MPs: http://www.culture.gov.uk/images/publications/Equal_Marriage_Mythbuster.pdf
7. Statutory requirements for the Coronation Oath: <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-00435.pdf> page 4, paragraph 3 and page 7, second half of paragraph 3
8. An example of a succinct lay comment is at <http://www.telegraph.co.uk/women/mother-tongue/9245973/The-village-can-help-but-children-raised-by-a-mum-and-dad-do-best.html>
9. Marriage a basic tenet of Buddhism: http://en.wikipedia.org/wiki/Homosexuality_and_Buddhism
10. Marriage a basic tenet of Christianity: http://en.wikipedia.org/wiki/Christian_views_on_marriage
11. Marriage a basic tenet of Hinduism: http://en.wikipedia.org/wiki/Marriage_in_Hinduism
12. Marriage a basic tenet of Islam: http://en.wikipedia.org/wiki/Marriage_in_Islam
13. Marriage a basic tenet of Judaism: http://en.wikipedia.org/wiki/Jewish_views_on_marriage
14. Marriage a basic tenet of Sikhism: http://en.wikipedia.org/wiki/Anand_Karaj
15. Direct Communications Unit 30th January 2013 ref CMS223511: copy available on request
16. Most of the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act (Sexual Orientation) Regulations 2007 (SORs) were revoked in October 2010 as the main provisions of the Equality Act 2010 commenced. See: [http://en.wikipedia.org/wiki/Equality_Act_\(Sexual_Orientation\)_Regulations](http://en.wikipedia.org/wiki/Equality_Act_(Sexual_Orientation)_Regulations) based on <http://www.legislation.gov.uk/uksi/2003/1661/contents/made> and <http://www.legislation.gov.uk/uksi/2007/1263/contents/made> The implications of the SORs for our cultural heritage were outlined at: Six years later these have become apparent with the current Bill. The criticism by the Feb 2013 Public Bill Committee of the “Wrecking Clause” attempts in 2007 fails to acknowledge that the latter were intended to protect religious and other freedoms.
17. Gender Recognition Act: http://en.wikipedia.org/wiki/Gender_Recognition_Act_2004 based on: <http://www.legislation.gov.uk/ukpga/2004/7/contents>
18. Civil Partnership Act: http://en.wikipedia.org/wiki/Civil_Partnership_Act_2004 based on: <http://www.legislation.gov.uk/ukpga/2004/33/contents>
19. *Sussex University debate on Equal Marriage addressed by Simon Kirby MP 25–1–13*: Introduction: Mr Kirby has been a vocal supporter of such a change in the law, and in his capacity as Parliamentary Private Secretary to Hugh Robertson, Minister of State for Culture, Media and Sport, has been closely involved in preparing the ground for possible legislation. *Mr Kirby* said: “I am looking forward to having the opportunity to outline my position on same sex marriage, as well as addressing some of the wider issues raised by what I understand is a controversial topic. I support equality because I believe the institution of marriage strengthens families and society and I think that the benefits of a legally defined marriage should not be excluded to anyone because of their sexuality. At the same time, I accept that no religious institution should be forced to conduct a marriage if doing so conflicts with their beliefs. The Government has been very clear that the strongest legal safeguards will be in place to prevent that from happening. I am extremely proud of everything this Government is doing to advance equality, and I will be doing my utmost to support the cause of equal marriage in Parliament the weeks and months ahead.”
20. Brazil civil partnership laws include three-way relationships: <http://edition.cnn.com/2012/08/31/world/americas/brazil-polyfaithful-union>

21. Cameron's mother discouraging the redefinition of marriage: <http://www.telegraph.co.uk/news/politics/9824865/David-Camersons-mother-says-he-just-wont-be-told-on-gay-marriage.html>

22. The Government Consultation claimed to be the 'biggest listening exercise' ever carried out. However, Mr Cameron has persistently referred to "when" not "if", thus implying that the Consultation always had but one outcome in his view. His apparently fixed agenda on this matter gave the impression that the Bill was to "*be got out of the way as soon as possible so that we can get on with the really important matters of government*". This must be why the Government Response makes no specific reference to the implications of the size of the biggest Downing Street petition opposing his plan. (It now has about 2/3 million signatories—[http://c4m.org.uk/Accounting for these people shows a majority in opposition to the Bill](http://c4m.org.uk/Accounting%20for%20these%20people%20shows%20a%20majority%20in%20opposition%20to%20the%20Bill)).

23. ConservativeHome (Dec 28, 2012) findings—37% of members support and 55% oppose Cameron's proposal to introduce gay marriage: <http://conservativehome.blogs.com/thetorydiary/2012/12/55-of-tory-members-would-vote-against-gay-marriage-if-they-were-in-parliament.html>

SUMMARY:

- I. 44% agree that "in the long-term a party that opposes gay equality will struggle to win support from younger voters". 44% disagree.
- II. 71% concede that "this will not be a big issue at the general election—it will largely be forgotten because issues like jobs, inflation, Europe and the NHS will dominate". 25% disagree.
- III. 55% of Tory members would vote against gay marriage if they were in parliament.
- IV. 64% agree that "gay marriage is unnecessary because gay people already have civil partnerships". 32% disagree.
- V. 58% agree that "marriage should remain between one man and one woman". 34% disagree.
- VI. 38% agree that "marriage is an institution that brings two people together and there is no reason why two people should be two men, two women or a man and a woman". 58% disagree.
- VII. 71% acknowledge that "gay marriage is splitting the Conservative Party". 20% say it is not.
- VIII. 43% agree that "as long as religious liberty is protected I have no objection to gay marriage". 51% disagree.
- IX. 78% say "David Cameron underestimated the strength of feeling among Conservative MPs and members against gay marriage". Just 19% disagree.
- X. 50% fear that "in a few years' time teachers and other public sector employees will be losing their jobs if they don't support gay marriage". 40% do not.
- XI. 62% agree that "David Cameron should worry more about traditional Conservative supporters like churchgoers and less about winning support amongst non-traditional supporters like gay rights campaign groups". 32% disagree.
- XII. 36% agree "I admire David Cameron for standing up gay equality". 55% do not.

February 2013

Supplementary evidence submitted by Emeritus Professor James H. Grayson (MB 46)

1. INTRODUCTION

I write as an anthropologist, retired university lecturer, and an ordained minister of the Methodist Church in Britain. My comments are my own personal views and should not be construed to reflect the views of any organisation with which I am currently associated, or have been associated.

My concerns with the legislation as presently formulated are *not* principally concerned with its effects on the performance of religious rituals connected with marriage.

The concerns which I will state in this second correspondence *are* about the effect of this legislation as presently formulated which could lead to the *further extension* of the term 'marriage' to relationships which have been unacceptable by either custom or law in this country. These comments should be read in conjunction with my previous correspondence of 18 February, 2013.

2. SUMMARY OF CONCERNS

- a. Proponents of this bill argue that if two people love each other, then they should be able to 'marry'. This bill provides no definition of 'marriage'.
- b. Some proponents of this bill argue that it will strengthen commitment and 'monogamous' relationships.
- c. Some proponents of this bill have gone on to argue that bisexual and other sexual orientations should not be a barrier to 'marriage'.

1) What then is the definition of 'marriage' and what will be the consequences of a change away from the traditional understanding a relationship between a man and woman as the basis of a family?

2) Will the passage of this legislation provide the basis for the further extension of the definition of ‘marriage’ to include relationships which by custom and law have been considered unacceptable?

The answer to these questions depends on a definition of ‘marriage’ which this bill does not provide.

3. FURTHER EXTENSION OF THE DEFINITION OF MARRIAGE.

- a. Over a period of six or seven months, I carried on a correspondence with my MP and other proponents of this bill asking for the legal rationale for the legislation, requesting a definition of marriage, and asking what legal protections there would be for people in a public sphere (for example, teachers and lecturers) who held, affirmed and taught the traditional definition of marriage as the definition of ‘marriage’. No one provided an answer to the first two questions. The response to the third question was that the Human Rights Act provided adequate protection, ie, people would have to go to court to obtain justice rather than protection being provided in the legislation.

My MP, the Rt. Hon. Nick Clegg, asked the Rt. Hon. Maria Miller to respond to my questions. In a letter dated 4 November, 2012, she said the following:

‘Can I begin by saying that our proposals on equal civil marriage are based on the belief that if a couple love each other and want to commit to a life together, they should have the option of a civil marriage. Society is stronger when people enter into a stable relationship and commit to each other. I do not believe that the State should stop people getting married unless there are very good reasons—and being lesbian, gay, bisexual or transgender aren’t good enough reasons. If we believe commitment, fidelity and marriage are positive things—as this Government strongly does—then we should let them flourish, not restrict them.’

(full scanned letter attached, *not printed*).

- b. Her letter states that ‘if a couple love each other’ this attitude can be the basis for ‘marriage’. Yet she also states that being ‘bisexual’ should not be a restriction on marriage. This is confused. What possible definition of ‘bisexual marriage’ could there be unless it either permits ‘multiple partner marriage’ or permits ‘single partner marriage’ coupled with a tolerance of promiscuity or adultery? Neither of those conditions has been acceptable by custom and law in this country.
- c. If this legislation is passed without a precise definition of ‘marriage’, and if it can then be used to extend it to situations such as mentioned in 4.b. above, would this situation then provide the basis for a change in the universally held attitudes towards ‘incest’ and other relationships which might be justified by ‘love for each other’?
- d. In her letter quoted in 4.a. above, the Rt. Hon. Maria Miller implies that Government should not place restrictions ‘marriage’ so that it may flourish. This seems both confused and lays open the possibility of undermining the core institution of society, the family. As an anthropologist, I can state that all societies historically and currently have placed restrictions on marriage for the purpose of the maintenance and protection of the family.
- e. As stated in my earlier letter, the legislation is badly constructed because it provides no definition of marriage, and by this looseness threatens the very institution it purports to uphold and promote.
- f. Also as stated in my earlier letter, this legislation is badly constructed because it provides no specific legal protection for those who uphold the traditional definition and practice of marriage and say so in a public place. This means that they may be subject to discipline, harassment, stigmatisation or even legal prosecution.

4. SUGGESTIONS:

- a. The bill **must** include a definition of ‘marriage’ for the reasons stated in 4.a.
- b. Likewise, the bill **must** provide specific legal protection for people to hold, affirm and teach the traditional view of ‘marriage’. **Protection of the right of free speech is the cornerstone of a free and democratic society. Unless the proposed legislation includes protection for persons to hold and teach views supporting traditional concepts of marriage, it will undermine this basic freedom.**

February 2013

Memorandum submitted by Lisa Fairman-Brown (MB 47)

SUMMARY:

Objections on the grounds of:

- stabilising family life further
- adultery will no longer be of legal consequence in the near future
- the personal effects my family has witnessed regarding adultery and abandonment
- my earlier opinion submitted in the required way was disregarded
- disregard for proper parliamentary procedure

— likely loss of my job as a teacher

1. I am a wife and mother of two children, I am a secondary school teacher, I am a Christian and a supporter of the work of Care for the Family, a charity which supports families.

2. I am objecting to this Bill on the grounds that it will fundamentally shake the foundations of stable family life. This country already suffers greatly because of the decline in the promotion and well-being of the family. Above all individuals and in particular children suffer.

3. I understand that the legal profession see that in time, just as has happened in other countries, adultery will be removed altogether as a reason for divorce. How upsetting to think that within a generation adultery will no longer be considered in law as of any importance. The reality is that for many people adultery already is the crushing heartache which tears families apart. Just in the last few months my young son has had to come alongside a friend whose father has walked out on his family for another woman. He sees and tells me the devastation in his friend and it brings worries to him for his own family unit. Imagine that in just a few years from now, it will be considered by the authorities of no consequence. I wonder how that will feel for the injured family. I don't want to be a part of letting commitment and responsibility slip through our hands any further, I want to be part of a country that in reality actually upholds commitment. Please, for the sake of the emerging and next generation protect family life not demolish it.

4. I objected to this bill at any earlier stage by signing the petition set up by Coalition for Marriage on the understanding that my opinion given there would be taken into consideration by the government. It is most alarming to see that the government felt it acceptable to renege on their word and disregard mine and half a million signatories after the event. This is not proper conduct for the government of an open democracy.

5. I am truly shocked and concerned at the speed and disregard for proper parliamentary rigour in bringing this bill to law. I appreciate the democracy which this country affords under the rule of parliament therefore I am most unsettled by the absence of a Green paper, furthermore there was no White paper setting out the bill. I cannot understand why it was not in the Queen's Speech. All of this leads me to conclude this is contrary to parliamentary democracy and is setting a most dangerous precedent which can only have disastrous consequences in other fundamental areas of life further down the line.

6. Finally, I am a teacher who deeply cares for the young people in my charge. I will not be able to promote same sex marriage because I sincerely believe it is not what marriage is. I understand my job (I have 20+ working years ahead of me) is on the line and I may lose my job if a challenge were made on this area. I am however committed to loving and teaching every student I have the joy of teaching and promoting a way of life which will afford them and their children the greatest stability.

7. I would like to conclude that the work for democracy which you are taking part in is truly honourable and I hope your task in analysing submissions is smooth and straightforward.

February 2013

Memorandum submitted by John Hudson (MB 48)

I am writing as an individual who has been married for over 30 years. I do not represent an organisation, but have a special personal interest in encouraging and promoting marriage.

I am strongly opposed to marriage being redefined to include same sex couples. To be able to accommodate this Bill's requirements, there needs to be massive changes in the way our society operates. Given the existing rights and responsibilities available with civil partnerships, this Bill is unnecessary and does little more than re-badge partnerships as marriage. Furthermore, the long held attributes of marriage, both in law and in tradition, will have to be radically altered. To accommodate the different requirements of same sex relationships, this Bill will dilute the whole *raison d'être* of marriage. Why should those who have already entered into the marriage covenant have their solemn commitment changed by this Bill?

I believe that the following matters should be taken into account by the Public Bill Committee in its detailed examination of the Bill:

1. This issue is about the long-held underlying principles of family, society and personal freedoms. In this regard I should like to mention *Wilkinson v Kitzinger* (a Family Division Court case in 2006, EWHC 2022). This was an application for a declaration of marital status under s55 of the Family Law Act where both parties were of the same sex and had been "married" under Canadian law. The petition was dismissed by Sir Mark Potter.

2. The unique capacity of a marriage of man and woman is to generate children. The possibility of children has long been the rationale for the state to support marriage. There are distinct advantages to the welfare of society and its individuals for children to be raised by their natural parents. If children are left out of the picture, is there a compelling reason for the state to support marriage? As Sir Mark Potter clearly stated, "the exercise of the right to marry gives rise to social, personal, and legal consequences." From his judgement I think the following are particularly relevant in realising this Bill cannot work (all wording within quotation marks are taken from Sir Mark's judgement):

- 2.1. "Marriage remains an institution which is widely accepted as conferring a particular status on those who enter it."
- 2.2. "It is apparent that the majority of people, or at least of governments, not only in England but Europe-wide, regard marriage as an age-old institution, valued and valuable, respectable and respected, as a means not only of encouraging monogamy but also the procreation of children and their development and nurture in a family unit (or "nuclear family") in which both maternal and paternal influences are available in respect of their nurture and upbringing."
- 2.3. "The belief that this form of relationship is the one which best encourages stability in a well regulated society is not a disreputable or outmoded notion based upon ideas of exclusivity, marginalisation, disapproval or discrimination against homosexuals or any other persons who by reason of their sexual orientation or for other reasons prefer to form a same-sex union."
- 2.4. Marriage has long been embedded in the common law. Its definition of marriage is "the voluntary union for life of one man and one woman, to the exclusion of all others." This definition has been consistently applied and acted upon by the courts. "Marriage is an institution, or a relationship, deeply embedded in the religious and social culture of this country. It is deeply embedded as a relationship between two persons of the opposite sex."
- 2.5. Merely rebadging civil partnerships as marriage will not automatically give them the same potential attributes of fidelity and respect. An individual civil partnership cannot become less transient or more permanent just because it is relabelled as a marriage. As it already stands, civil partnerships have the potential of being just as economically secure and strong in relationship as marriage. "In 2004, in the course of the passage of the Civil Partnership Act, Parliament closely re-examined the complex problems involved if recognition were to be given to same-sex marriages. The solution which it reached was that there should be statutory recognition of a status and relationship closely modelled upon that of marriage which made available to civil partners essentially every material right and responsibility presently arising from marriage, with the exception of the form of ceremony and the actual name and status of marriage."
- 2.6. "Abiding single sex relationships are in no way inferior, nor does English law suggest that they are by according them recognition under the name of civil partnership. By passage of the CPA, United Kingdom law has moved to recognise the rights of individuals who wish to make a same sex commitment to one another. Parliament has not called partnerships between persons of the same-sex marriage, not because they are considered inferior to the institution of marriage but because, as a matter of objective fact and common understanding, as well as under the present definition of marriage in English law, and by recognition in European jurisprudence, they are indeed different."
- 2.7. Parliament decided that it was best to distinguish marriage and civil partnerships. "There are express distinctions observed between the ceremonies and processes of the two institutions. In particular, civil partnership may not be effected on religious premises, or in a religious ceremony and civil partnership is an institution exclusively open to same-sex couples."
- 2.8. Sir Mark referred to a statement by Baroness Scotland, who, when introducing the second reading of the Civil Partnership Bill in the House of Lords, said that "it is important for us to be clear that we continue to support marriage and recognise that it is the surest foundation for opposite sex couples raising children...."
- 2.9. Introducing the concept of same-sex marriage would make Britain out of step with the rest of Europe. This could create legal complications for the following reasons:
 - 2.9.1. "To accord a same-sex relationship the title and status of marriage would be to fly in the face of the (European) Convention (of Human Rights) as well as to fail to recognise physical reality."
 - 2.9.2. "Under the Strasbourg case law same-sex partners still do not fall within the scope of family life."
 - 2.9.3. "The European Court of Human Rights has not yet recognised that the relationship between adult homosexuals amounts to family life. But then I know of no case in which it has recognised that the relationship between two unmarried adult heterosexuals amounts to family life. Family life has so far been confined to relationships between married couples and between parents or other relatives or carers and their children."
3. Marriage is indeed the bedrock of our society, defined as it has been as the union of one man with one woman for life and is a concept understood by all. I understand and agree with the creation of civil partnerships to give same sex couples legal rights and status in committed long term relationships. What I do not agree with is to pretend that these are the same thing. Changing the definition of marriage is probably one the most significant decisions that a society can make. There would be a new legal culture that evolves over time that will have profound and incalculable consequences for family life and social relations in the UK. I am concerned that consequential changes will follow the redefinition of marriage that the Bill will either not foresee or do too little to protect:
4. There is a significant danger that same-sex marriage will complicate legal matters rather than simplify them. Historically, UK law assumes the currently accepted definition of marriage. As such, a marriage may end due to the unfaithfulness of either party. How can this Bill fully or practically define irretrievable break-down of a relationship, sexual union or adultery so that they apply to both same sex and heterosexual marriages?

5. What will be the impact of existing and future European legislation or courts? For example, what has been described as a ‘quadruple lock’ to ‘protect religious organisations’ may not stand up in the European Court of Human Rights. One judgement of the European Court of Human Rights suggests that churches may be required to conduct same-sex marriages. This case related to an adoption involving a lesbian couple from France, the Court confirmed that it was down to member states to determine marriage legislation—that same sex marriage is not a human right. However, the judgement also noted that ‘where national legislation recognises registered partnerships between same sex, member states should aim to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a similar situation’. This judgement is very significant as it suggests that, in a national legal context where heterosexual couples have the option of marrying in church, same-sex couples should be provided with a parallel opportunity. Such rulings demonstrate that, if a member state decides to allow same-sex marriage, but treats homosexual married couples differently from heterosexual married couples, it could be challenged under European human rights law. Legal experts have questioned the strength of the Government’s assurance that with proper drafting ‘the chance of a successful legal challenge through domestic or European courts is negligible’.

6. In trying to be inclusive, how will this Bill protect the rights of those who could too easily be alienated and oppressed? Whilst I favour equal rights, there is the real, potential danger that a few aggrieved individuals get rights at the expense of others who wish to express their beliefs in a simple and unthreatening manner.

6.1. What safeguards will there be for the many faith groups, both Christian and otherwise, who do not support this Bill? What will happen to those public servants or ministers of (any) religion who will not perform marriages for same sex couples?

6.2. What about implications that a redefinition may have for employers and employees, teachers and other public servants? In recent years, there have been several legal cases that have put unhealthy restrictions on individuals expressing their right of real freedom of belief.

6.3. What will happen to the meaning of the words husband, wife, mother, father? I understand that in Spain, following legislation, birth certificates now state the parents’ statuses as the equivalent of ‘progenitor 1’ and ‘progenitor 2’- how sad!

In conclusion, I believe there is no satisfactory way that this Bill can work to the overall benefit of our society. Therefore, it should be dropped.

February 2013

Memorandum submitted by Mr. John C Peters (MB 49)

SUMMARY

Implications of a general failure within the community to understand the meaning of marriage and thereby to accept same sex couples partnerships as being a possible equivalent.

As a founder member and Trustee of Time for Families for over 10 years my wife and I have been involved in the development and teaching of core material aimed at improving and preserving relationships between married couples. As part of this teaching experience we found many couples to be ignorant on matters of relationship skills. So much so that there are now courses running in prisons for soon to be released prisoners, the military, for personel returning to their families as well as in the wider community.

1. Our experience in helping couples prepare for marriage has been of a wish to marry before having children. Most couples have been living together for some months if not years but wish to marry to cement their relationship as a unit for bringing up children. The nature of their marriage is often misunderstood as being a contract rather than a covenant entered into for the sake of their children. It becomes evident as one teaches couples that the differences in approach by the sexes develops a home in which children are nurtured through different stages of development by the presence of both sexes having particular roles to play. The complexity of human personality types and the understanding of personal normalites created from their own family background comes to couples as a really unexpected understanding. We have experienced couples close to divorce who have turned their marriages around after one short afternoon of teaching.

2. The upshot of this relates to the Bill now before parlaiment and supported by many MPs on the basis that the community see nothing wrong in redefining marriage to incorporate same sex couples even though a specific relationship within civil partnerships was set up to cater for them. If our experience has been of extreme ignorance within the community as to what it means to embark upon marriage let alone work at and preserve it, is it very surprising that so many people see nothing wrong in opening it to same sex couples and in some countries that have gone down this road, opening it to more than two people in a marriage.

3. Aside from the very undemocratic way that this Bill has been jumped upon our society, there is little understanding of the effect on heterosexual marriage where covenants have been entered into and the underlying hurt now affecting many people. Part of our teaching relates to the fundamental destruction done to relationships by hurt which initiates anger, guilt, condemnation, resentment, anxiety and stress. Together these result in emotional overload showing itself as increased illness, depression, addiction and retreat into such areas as comfort eating and pornography. The underlying cost to our nation of such increases in load on the health

service, social services and work absence will in future be laid firmly at the door of such an apparently minor change as redefining marriage. Perhaps MPs should be less fond of keeping their seats by an apparent majority and listen more to the underlying ethos on which our nation has been built.

February 2013

Memorandum submitted by Jodie Mearns (MB 50)

I would urge the committee to not bow to the religiously deluded from which we have heard ever increasing shrill bigotry and homophobia wrapped in a certain interpretation of religious doctrine over the last 12 months.

Just because homophobia and bigotry donned a religious garb does not alter its nature or absolve its adherents of connecting with and recognising reality and the fomenting of a hate they promote within society against an innate and harmless minority.

The fact of this traditional persecution for the last 1700 years, by their ancestors of similar dogmatic beliefs, should not prevent us to say, enough—our present day knowledge and intellect and widespread visibility of Lesbian Gay and bi-sexual people have given our population a personal knowledge of the lies and miss-information peddled by the intolerant and dogmatic and the deluded who seek to continue their persecution hidden behind a veil of religiosity.

Bad things done, by the religious zealot or the morally deluded are still bad things, and should not be given special privilege and absolution because of their claimed religiosity or claimed moral superiority—lets go on evidence, truth and justice.

Just as we have tackled misogyny and racist attitudes, often from the same stable, it is time to tackle homophobic bigotry head on, and call it for what it is, and resist with vigour the squeals of religious persecution from many of those who have been **doing** the persecution and denigration of our gay brothers and sisters, uncles, aunts and cousins, neighbours, work colleagues, wrapped in a religious cloak of many hues.

Are not those who wish to proscribe same-sex marriage, also discriminating against those of differing religious views and interpretations who see the institution of marriage equality for same-sex couples as a public good and fully in accord with their religion and beliefs.

By doing so, they deny religious freedom to them, by preventing them from exercising their beliefs to legally marry same sex couples.

Extending marriage to same-sex couples enhances religious freedom.

After all, no one is forced to be married to someone they choose not to. So if someone does not wish to have a same sex marriage, then all they need to do is not marry a same sex partner. It is therefore permissive not proscriptive.

The state must treat all equally, irrespective of sexual orientation.

I welcome the legislation to extend and equalise marriage law to include same-sex couples, hopefully the committee will have the courage to enable amendments to include humanist ceremonies and civil partnership for mixed sex couples too and will resist extending exemptions to sexual orientation equalities legislation, beyond **religious marriage** celebrants.

I also hope you will equalise the pension inequalities that persist and address the anomalies in transgender, transsexual provisions in the bill.

I have been involved in the struggle for human rights and gay and transgender rights since my teens and have been a member of Liberty, Amnesty, and a number of gay rights organisations. I am bi-sexual and have had intimate knowledge of the gay community, both men and women over the last 45 years. I was sent to Sunday school as a child and have since extensively educated myself in the beliefs and practices of many religions. I am agnostic.

February 2013

Memorandum submitted by The Reverend Chris Casey (MB 51)

1. I respectfully request the Committee to consider my submission on the Marriage (Same Sex Couples) Bill.
2. I write as a practising Clergyman (Church of England), serving the Parish of St Andrew, Mirehouse, Whitehaven in Cumbria. I am also a Community Governor at the local Primary School Governing body, a Member of the Parish Resident's Group and a Chaplain to the Air Training Corps.
3. I wish to express a number of concerns about the proposed legislation permitting 'Same Sex Couples' the right, in law, to be deemed as 'married'. My concerns are specifically related to following arenas of concern:
 - The strength of Marriage.
 - The education of children.

— Civil liberties.

STRENGTH OF MARRIAGE

4. Most of the children whom I baptise come from homes where the parents are not married. I am constantly struck by how fluid and fragile these domestic relationships are. It is not uncommon for the second request for Baptism from the same Mother to be for a child she has had to another man—in some cases there are 4 different children to different Fathers. Domestically this simply means a great deal of insecurity for the children. By contrast married homes, whilst not devoid of their own problems (especially with the ever-present threat of child poverty for low-income families characteristic of my Parish), enjoy a more stable and secure family home. Anything that undermines marriage is not good news for children who need two parents of opposite genders if they are to enjoy the best life chances and thrive. In Spain,¹ and The Netherlands² after same-sex marriage was introduced, marriages across the whole population plummeted by over 20% in the following six years. Heterosexual Married parents, on the whole offer a far more stable life to their children than co-habiting couples, only 1 in 11 married couples split by the time of their child's fifth birthday compared to 1 in 3 of cohabiting couples. 97% of couples who stick together until their children reach adulthood are married. Homosexual couples simply cannot give the children they may have in their relationships the same kind of holistic upbringing that a man and a woman, a father and mother, can.³ To erode the security of a well-defined, holistic environment created by one man and one woman into which children are born, by seeking to redefine marriage for a very small pressure group in the UK is simply socially unhelpful and does not yield equal rights for children. Children deserve the best from their society and that must mean legally supporting those relationships in which they can thrive best.

5. Trayce Hansen, Ph.D., a licensed clinical psychologist has argued why simply loving a child is not enough.⁴ First, children require the unique love of a mother and a father, both of which are equally important but qualitatively different. Secondly, children progress through a number of important developmental stages during which they need a mother, and other stages when they need a father. Thirdly, children require an opposite-sexed parent to help them moderate their own gender-linked inclinations and so learn how to relate appropriately to the opposite sex. Fourthly, there is already research that demonstrates that children brought up in same-sexed homes experience increased sexual uncertainty and begin sexual experimentation at a younger age. And finally, if same-sex marriage is permitted, then other groups of people may argue that it is their right to redefine marriage too eg polygamous and polyamorous, leading to yet more confusion in the lives of children.

EDUCATION OF CHILDREN

6. Another major issue of concern for me is the education of our children if same-sex marriage ever becomes legal.

7. For many years developmental psychologists have recognised that children process and integrate information differently to adults. They have conceptual limitations and are simply not equipped to understand the nuanced nature of adult convictions about sexuality, they simply do not have the maturity. Should same-sex marriage become legal then there would have to be a realignment of teaching about relationships in schools. I believe this will lead children into confusion and fear; confusion over their own sexual identity and fear of expectations in relationships.

8. At age 3 a boy knows he is a boy—gender identity, at age 4 he is to know he will grow up as a man—gender stability, at age 6—a boy knows he can't be a girl even if he wears a dress—gender permanence. To present a child with the possibility that they may be homosexual, a lesbian, transgendered, transsexual etc is obviously a way of creating immense confusion. To then explain how same sex-couples will go through a bewildering array of procedures in order for them to have children that are related biologically to at least one of the parents, is to put our children at great risk of profound confusion.

9. Further, I have read some of the materials that groups such as Stonewall are aiming to have in place in our schools and I found them distressing. The relentless desire to bombard our children with homosexual propaganda is shocking and I believe represents the abuse of innocent children. Should a child intuitively react with fright or disgust how would they be treated? Maybe they would have to undergo intensive teaching, or be sanctioned in some way? This is the worst kind of education and represents a violation akin to brainwashing.

10. A leading human rights lawyer, Aidan O'Neill QC, has surveyed the possible implications of same sex legislation and considers that European law would ultimately not support the right of parents to withdraw their children from curriculum lessons that endorse same-sex marriage.

CIVIL LIBERTIES

11. I have observed the extraordinary progress of homosexual pressure groups, often supported by the government quango the Equalities and Human Rights Commission, in securing the convictions of a number of people who in all good conscience simply cannot condone what they believe to be immoral conduct (eg bed and breakfast owners, Housing Managers who were demoted for expressing their own opinions on a Facebook page, Civil Registrars who have lost their jobs because they were not allowed to conscientiously object to performing civil partnerships between homosexual couples, etc). In our neighbouring town of Workington a street preacher was even arrested and imprisoned for his convictions, even when modestly and discreetly sharing them with a member of the public who asked.

12. The government consultation on this issue chose to deliberately ignore the opinions of over half a million petitioners who signed a document against same sex marriage. My deep concern is that this legislation is simply being railroaded through Parliament without due consideration or protection being given to those who would become conscientious objectors and who face being penalised for believing in traditional marriage, most especially those public servants such as teachers and civil servants. In addition, religious ministers who oppose this new legislation will, I am certain, quickly become a target for homosexual pressure groups who might demand a same sex marriage at their local state church (Church of England) and then sue when their request is turned down, their appeals would take the issue to the European Court of Human Rights and any kind of protections for religious ministers will soon be ruled illegal.

SUMMARY

13. This submission contends that same sex marriage will undermine the strength of the institution of marriage which research consistently demonstrates is the most wholesome environment for children to be reared in.

14. The education, or rather indoctrination of children, about same sex marriage will lead to confusion, distress and even fear amongst young children.

15. Finally, the civil liberties of conscientious objectors are already being violated and should this legislation become law then we can expect a barrage of court cases seeking to convict people of offences related to the fact that they believe in traditional marriage which has been around for thousands of years.

16. Equality already exists in Civil Partnership legislation, so why do we need to pursue this legislation that was not called for by most homosexual people, nor mandated by the government's election manifesto, and is set to be immensely costly in all kinds of ways?

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4. (Trayce Hansen, Ph.D., and former member of the APA, "Love Isn't Enough: Five Reasons Why Same-Sex Marriage Will Harm Children." 2009 http://www.drtraycehansen.com/Pages/writings_samesex.html)

February 2013

Memorandum submitted by Revd Dick Wolff (MB 52)

A. KEY POINTS

1. The Bill does not intend to redefine 'marriage', but it does. It says that it would allow same-sex couples to legally marry, but in Schedule 4 Part 3 it strikes out adultery as grounds for divorce for same-sex couples and thereby removes a key understanding of 'what marriage is' from the legal definition of same-sex 'marriage'. It therefore does not offer same-sex couples 'marriage' as marriage is widely understood.

2. The internal essence of 'marriage' — as generally understood in Britain, I submit — is that of a one-to-one erotic/sexual relationship, to the exclusion of erotic/sexual relationships with people outside the marriage. In the debates in Parliament and in committee, it seems to be simply assumed that marriage is about exclusive erotic/sexual relationships, but (with a couple of exceptions) this has hardly ever been overtly stated.

3. There is actually little reference to this exclusive sexual/erotic nature in marriage legislation generally, but where it is most explicit is in the acceptance of adultery (that is, a sexual relationship outside the marriage covenant) as unreasonable behaviour in breach of the marriage contract, and therefore grounds for divorce.

4. By striking out adultery as grounds for divorce for same-sex married couples (whilst retaining it for heterosexual couples) the Bill — contrary to what Maria Miller MP said in the Parliamentary debate — effectively defines adultery as 'not unreasonable' within such marriages, and therefore redefines same-sex marriages as not being essentially sexually exclusive.

B. THE DANGER OF LEGAL CONFUSION

B1. There has been some discussion about whether openness to the possibility of procreation is the key element of marriage, and much affirmation of the 'mutual loving and caring' aspect. The former would seem to deny the validity of marriage for infertile (or 'post-fertile') couples. The latter is just confusing: an elderly brother and sister could live together, caring for each other 'till death us do part', yet the suggestion that they should be married, even were it legal, would be simply odd.

B2. The only people to have referred to the ‘one-to-one erotic relationship’ heart of marriage are former Archbishop of Canterbury Lord Carey whose comments were cited in the early part of the Commons debate, and Revd Dr Jeffery John who said :

I am not sure about the details of the law of adultery as it stands. I would like the assumption to be, for gay people and for straight people, that sexual fidelity is an absolute demand of the marriage bond, and that should be made clear in the legislation, however that is made clear.

In this legislation it is not only not made clear, the matter is actively made open to confusion and uncertainty.

B3. Alice Arnold, in the same discussion, said :

I think everybody knows what “married” means in general terms. . . . there is an allowance for either desertion or unfaithfulness, which would be unreasonable behaviour. It is not that difficult to say, “My partner’s left me for somebody else; that’s unreasonable behaviour.” We do not have to go into the sexual ins and outs of that. It is fairly clear to everybody that that is an irretrievable breakdown of the relationship.

I believe she is mistaken. By excluding the adultery clause in Schedule 4 Part 3 the Bill defines adultery as ‘not unreasonable’. But further, there are many people who abuse the marriage contract by committing adultery whilst having no intention of ‘leaving them for someone else’. In the divorce courts, the lawyer for the ‘wronged’ party would have a hard time securing a divorce from an adulterous partner who wished to contest the divorce. Even if they admitted adultery they would be able to deny that this was legal evidence of ‘irretrievable breakdown’ or unreasonable behaviour. This is a recipe for much distress and confusion in the courts.

C. THE REASON WHY EROTIC/SEXUAL BEHAVIOUR LIES AT THE HEART OF THE DEFINITION OF MARRIAGE.

C1. One of my primary reasons for supporting same-sex marriage — indeed, for believing that it is long overdue — is that I believe ‘one-to-one erotic behaviour’ is best expressed, and for the sake of a healthy society should be *confined* to, married relationships ‘forsaking all others’. Since ‘forsaking all others’ clearly doesn’t mean ‘not having any relationships of *any* sort with anyone else’, it clearly refers to an ‘exclusive *sexual* relationship’.

C2. Marriage (for both hetero- and homo-sexual couples) is the best model because of the nature of erotic love.

C.3 The *purest* form of love — what the Christians call ‘agape’ love — is totally selfless. Its only concern is the welfare of the other. At its extreme, it is ‘love your enemies’. If it is done for selfish reasons it ceases to be ‘pure love’ in this sense. You do not need to be married to someone to love them in this sense.

Erotic love, however, is a different sort of love — although it does not exclude agape love (as some suggest). In fact, the two go very well together.

C4. Unlike ‘agape’ love, the giving of erotic pleasure typically involves the receiving of it, too. One-to-one erotic behaviour can therefore be a very powerful way of strengthening the bond between two people. I would argue that this, rather than the making of babies, is its *primary purpose*. The fact that erotic behaviour produces a personal erotic ‘reward’ is one of its great blessings, because it gives people who might otherwise (in the busyness of life) drift apart a motive to get ‘up front and personal’ and renew their relationship erotically. The sex drive can drive us together — *it is a bonding drive*.

C5. By constraining erotic urges within an exclusive committed relationship, the marriage model of relationship ‘channels’ sexual energy to hold couples together. To be consistent — “Equal” — either Schedule 4 Part 3 needs to be struck out, or the Marriage Act needs to be amended to remove adultery as grounds for divorce in heterosexual marriages too, thereby separating marriage from sexual behaviour altogether and leaving people (and judges) to decide whether one partner being promiscuous was or wasn’t ‘unreasonable behaviour’ on a case by case basis.

C6. The fact that one-to-one erotic behaviour produces a personal erotic ‘reward’ is also its danger, of course. It can so easily become a selfish act. In its most distorted form it becomes the using of another person for sexual purposes. If one of the purposes of marriage is to channel people’s sexual urges into forging enduring partnerships that can form strong building blocks for society, then the *complementary* purpose is that of protecting society from the dangers of *abusive* (that is, purely selfish and exploitative) sexual behaviour.

C7. I would say that indulging in sexual behaviour outside of a committed relationship (without the partner’s knowledge or agreement) is at the very least *selfish* behaviour, in breach of trust. To exempt partners in a same-sex marriage from this constraint is effectively to say ‘if your partner acts selfishly by sharing one-to-one erotic behaviour with someone else, you have no grounds for complaint’.

C8. As I have said, the actual erotic preferences of the couples involved are completely irrelevant to this. Society’s laws only need to reach into that private domain where the protection of individuals (other partner, or children) from abuse by one of the partners has become an issue.

CONCLUSION

The Bill is effectively an adulterer's charter for some, and if it were consistent it would be an adulterer's charter for all. It effectively 'desexualises' marriage. It deals with the same-sex issue by running away from it. Far from *affirming* the sexual nature of same-sex relationships, it *denies* the significance of erotic behaviour in human relationships altogether as irrelevant.

That is a recipe for a lot of confusion, misunderstanding and hurt — in people's lives, and equally in the divorce courts.

It would be quite simple to correct this fundamental flaw : just remove the same-sex adultery and non-consummation exemptions at Schedule 4, Part 3. *Then* we might have 'Equal Love'.

Information concerning the Revd Dick Wolff

I have been an ordained minister in the United Reformed Church since 1981, during which time I have interviewed many couples seeking marriage and conducted many weddings.

I have participated in the discussions and debates within the United Reformed Church, and more generally, about same-sex relationships for over twenty years.

I have come to the conclusion during that time, not only that same-sex marriage is *permissible*, but that it should be the model or 'ideal pattern' for all sexual relationships.

Both of the local churches I serve are minded to support the conducting of same-sex marriages on our premises although this has not been formally tested in Church Meeting, and the financial implications may make it difficult.

I am also an Oxford City councillor for the Green Party.

February 2013

Memorandum submitted by Ryan Burton King (MB 53)

1. To the House of Commons Public Bill Committee,

2. My name is Ryan King. I am in my early twenties, live in the London Borough of Haringey, and am completing a BA (Hons.) course of study with the University of the Highlands and Islands by full-time distance learning. I am an active participant in local action groups and am the assistant pastor of Grace Baptist Church in Wood Green. In summary, I oppose the Marriage (Same Sex Couples) Bill on the grounds of nature, Scripture, religious liberty, protection of the divine institutions of marriage and family, the welfare of children, the perpetuation of humanity, and the prosperity of the nation.

3. The proposed legislation will effectively redefine 'marriage' and make it legally available to same sex couples. As a keen observer of this debate, I was present for the second reading of the Bill on Tuesday, 13 February 2013 until the motion was made to adjourn. Most of the arguments in support of the Bill were reactive to the varying positions of its opponents, and little was said by way of attempting to make a substantive case for the Bill. In light of some of the arguments made on the day, I would like to make the following observations.

4. It seems that some of the Members of the House are confusing the life-long commitment of being in a *marriage* with having a *wedding*, and the idea of *love* with the institution of *marriage*. This confusion is not in any way helpful. Is love really the only proper guide for who should and shouldn't be married? If so, then the government should not prohibit any form of sexual union, regardless of current taboos and how obscene or perverted it has previously been deemed. The incestuous relationship of Patrick and Susan Stübing of Germany is a case in point ('Brother and sister fight Germany's incest laws', *The Guardian*, 27 February 2007). We are told that the siblings 'fell in love' and at the time of the article's publication, had four children together. It is the fair and legitimate concern of many, including myself, that legalizing same-sex marriage on the grounds of 'love' will be one step closer to allowing other unions not acceptable under this country's laws.

5. Opening the institution of marriage to same sex couples was compared to abolishing slavery. On several occasions, the Bill was equated with the Civil Rights movement with references to Rosa Parks and quotes from Martin Luther King Jr. sprinkling the dialogue. As a student of history with a great interest in the Civil Rights movement, I must say that this lowered the level of the debate by insinuating that the Bill's honourable opponents are to be compared with white supremacists and racist bigots. To quote Lord Brennan QC ("Eight Centuries of Law Obliterated over Night", *The Telegraph*, 13 March 2012),

'The exchange of views and argument should be frank yet reasoned and reasonable, for secular bigotry today is as unacceptable as religious zealotry was in the past. We must recognise that marriage has established historical, sociological and religious foundations. Such statutes as affect it are designed primarily to regulate its legal consequences. Such a heritage cannot sensibly be equated to the denial of equality or to the practice of discrimination. Marriage is surely not the mere provision of goods and services by its participants, or churches or ceremonies that solemnise it.'

Not only do we see a lack of civility, but a lack of knowledge.

6. Firstly, no one (at least of a respectable and responsible nature) is denying the full and total humanity of gay people, who are, with everyone else in the world, made in the image of God. The enslavement of Africans was just this: it was built off of lies (springing from gross misinterpretation of Scripture, might I add, of the biblical word 'slavery' and the context in which it is used; one has only to read 1 Timothy 1:10 for a biblical approach to this atrocity), hatred, and the deluded notion that black people are basically sub-human beasts of burden. Slavery went against nature, by imprisoning those who ought to be free and treating them as animals. Marriage as the union of one man and one woman, an institution given by God from creation, is the opposite of this: it is wholly natural, created not only for pleasure but for the propagation of the human race (although in a fallen world, this is not always physically possible). Taking a relationship that absolutely cannot achieve the intentions of the Creator, nor seeks to fulfil the productive possibilities of biological science and calling it 'marriage' for emotional, sentimental, and subjective reasons, is, in fact the unnatural thing to do. It is therefore nonsense to claim, as did one MP, that denying marriage to gays is like forbidding inter-racial marriage. Inter-racial marriage is the union of a man and woman, who may, if able, naturally produce offspring and is therefore wholly natural. Gay 'marriage' is none of these things.

7. Secondly: the Civil Rights movement was a broad-sweeping campaign by people suffering under (or identifying with those who suffered under) an extension of slavery: racial segregation. The belief that humanity is divided into different races primarily distinguished externally by the pigmentation of one's skin is one of the most blasphemous ideas to enter into the heart of man, for in it the very pinnacle of God's creation—the reflection of His own image and likeness—is torn to pieces and scattered across an idolatrous pyramid chart of colour-based classification. The resulting hate-filled behavioural standards of subjugation, segregation, and discrimination without a shadow of a doubt rank among the most vile and despicable atrocities committed on the face of the earth. In its most prevalent form, historically and in the present day, it has been revealed in the way in which white people have treated and at times still continue to treat black people. It has no place in the body of Christ, as it does not demonstrate unity with His sinless mind and sanctified members nor does it display his selfless walk and sacrificial love. Those in whom any trace of it is found are like people who with their tongue 'bless our Lord and Father, and with it... curse people who are made in the likeness of God' (James 3:9). Martin Luther King's dream was about *overcoming* something that was unnatural, not *embracing* the unnatural; in King's only recorded reference to homosexuality, he speaks of it as a 'problem' and points to a 'solution' and his own daughter, Bernice King is well known for saying, 'I know deep down in my sanctified soul that he did not take a bullet for same-sex unions.' Rev. Jesse Lee Peterson, founder and president of The Brotherhood Organization of A New Destiny told the *Christian Post* (<http://global.christianpost.com/news/what-did-dr-martin-luther-king-jr-think-of-homosexuality-67259/#8sEx5SzgWoQRPq1e.99>), 'Nothing indicates that he would think homosexuality is from God, normal and something that we should take on as right... He wouldn't tell us to hate homosexuals, but to show them how to overcome sin.' Quite different from the picture painted by some MPs. Saying a Divine institution should not be open to human interpretation is quite an opposite matter from racism. Again, while they are different things, this proposed legislation with its accompanying philosophy and the slavery and segregation that once plagued the West are the same in one area: they are unnatural.

8. Arguments were also made on the grounds of what Jesus would have done in the situation. Presumably Members of the House who generally take little interest in Jesus' words felt compelled to do this given the constitutional status of the land as 'Christian.' It was indicated quite strongly by some, that Jesus would have taken the side of the Bill. Unfortunately for these Members, Jesus does not, in fact, take sides. He is a side. And if indeed they wish to know where Jesus stood, so they may stand with him, they must move beyond their woefully inadequate interpretations of the Golden Rule and the Great Commandment. Was the Golden Rule (Matt. 7:12) not a part of the Sermon on the Mount (Matt. 5–7), and does not this sermon, far from reducing sexual ethics to merely transitory cultural taboos, set the standard even higher? 'You have heard that it was said, "You shall not commit adultery." But I say to you that everyone who looks at a woman with lustful intent has already committed adultery with her in his heart' (Matt. 5:27–28). But the argument is raised that this relates to unfaithfulness of any kind, and Jesus surely would have no problems allowing the marriage of a committed, loving couple whatever their gender. Why then does Jesus always speak of marriage in the context of one man and one woman? There were practices of polygamy in his human ancestry—even King David took many wives (his behaviour is historically recorded, not practically endorsed), but Jesus gives us monogamy. There was homosexuality in his day, but Jesus gives us one man and one woman. Jesus would likely ask proponents of this legislation, 'Have you not read that he who created them from the beginning made them male and female, and said, "Therefore a man shall leave his father and his mother and hold fast to his wife, and the two shall become one flesh"?' (Matthew 19:4–5).

This is Jesus' definition of marriage.

9. It is insufficient to quote only Jesus on the matter. Most of the New Testament letters are written by the Apostle Paul. Paul is well known for writing a beautiful chapter on love (1 Corinthians 13) that is often quoted at weddings. Everyone remembers: 'If I give away all I have, and if I deliver up my body to be burned, but have not love, I gain nothing.

Love is patient and kind; love does not envy or boast; it is not arrogant or rude. It does not insist on its own way; it is not irritable or resentful...'(1 Cor. 13:3–5). But Paul is not saying that whatever qualms a person may initially have, love ultimately views everything as acceptable. The next verse (v.6) reads 'it does not rejoice at wrongdoing, but rejoices with the truth.' Within the same letter, Paul speaks plainly when he deals with a situation involving a man and his father's wife (likely his stepmother) who were having a sexual relationship.

They likely said it was ‘love’, but Paul says it is wrong. Fleshing out God-honouring principles of sexual behaviour, Paul refuses to rejoice in any wrongdoing and sternly asks, ‘Don’t you know that the unrighteous will not inherit God’s kingdom? Do not be deceived: No sexually immoral people, idolaters, adulterers, or anyone practicing homosexuality, no thieves, greedy people, drunkards, verbally abusive people, or swindlers will inherit God’s kingdom’ (1 Cor. 6:9–10). But Paul is very familiar with the love about which he later writes, and notes the forgiveness and transformational power that it holds: ‘And some of you used to be like this. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God’ (1 Cor. 6:11). It must also be said that in 1 Corinthians 7, he outlines principles for marriage specifically, and there is no way that one can legitimately infer that he leaves the institution open to everyone who is loving and committed: it is obvious in the text itself, and in its context, that marriage is only between a man and a woman.

10. Hopefully having clarified and defended the biblical and orthodox Christian view of marriage, the essence of which is shared by the majority of people belonging to all manner of different beliefs and faith systems, I would now note other problems with the Bill. The first of these is religious liberty, a foundational component to any truly free society. I am aware of various ‘locks’ that have been placed on the Established Church, excluding it from conducting gay marriage ceremonies but what of those who in some way or other are non-conformists (of any religion)? What of para-church ministries and organizations that faithfully uphold traditional marriage? What of teachers whose consciences, shaped by religious beliefs or not, will not permit them to teach lessons advocating and promoting gay marriage? What of registrars who have held their posts for some time and cannot—again because their conscience does not allow it—oversee gay marriage ceremonies? What of anyone for that matter who publicly and in an appropriate manner voices dissent and refuses to conform to something that to them will do injury to conscience and damage society? I am aware that religious organizations are *permitted* not *required* to marry gays, but it has been acknowledged even by the Bill’s supporters that no total assurances may be given of these ‘protections’ until they are tried in court. The implication here is of course that they will be tried in court, as activists tend to make an issue of targeting groups and individuals unwilling to comply. This will undoubtedly have social and economic implications, but before such practical matters are even considered we are confronted with the potential denial of religious liberty on a vast scale in our institutions of learning, our places of work, and our houses of worship. Might I plead with you to fully consider and scrutinize the Bill, and not even risk endangering the vital liberties of a person’s faith and practice in keeping with the moral law?

11. It has been argued that opening marriage to same sex couples will actually strengthen the institution. How can this be, seeing as it opens it up to those for whom it is not intended? To argue on the basis of ‘inequality’ is foolish, as there are many laws that may be subjectively interpreted as ‘unequal’ because they legally deny something to someone. If denying something to someone makes them unequal, then are we saying that respectful and responsible young people under a certain age are unequal when the law denies them alcohol and sex? There are things that serve a place and a purpose which most definitely are not for everyone. Marriage is for a man and a woman, who are united not just for pleasure but, where possible, for posterity and the perpetuation of the human race.

12. How can the Bill be said to strengthen marriage, if it brings with it no requirement of consummation (without which a marriage may be legally voidable), and no requirement of faithfulness? The Bill provides that adultery, which is grounds for divorce, will continue to be defined as sexual intercourse with a person of the opposite sex. There is no offence of this manner for the proposed gay ‘marriages’, so it is clear then that divorce law will be fundamentally different in many aspects. A heterosexual couple vows to forsake all others and remain faithful to one another (tragically, this is not always upheld as it should be, but the principle remains). Gay couples do not have to make any such vow as they cannot divorce on grounds of adultery and so are not held to any standard of faithfulness. Does this not actually produce the inequalities which proponents of the Bill so dread and demonstrate core differences between heterosexual and homosexual relationships? Without faithfulness, how can we say marriage is strengthened?

13. How can the Bill be said to strengthen the institution of marriage, if it weakens that for which marriage is intended, namely family? While it has become a trend in social science studies to advocate perceived equal stability in families with same sex parents as compared to families with a father and a mother, a recent study among American children of same sex couples by Mark Regnerus in the *Social Science Journal* indicates otherwise. Quoting from an article by Charles C. W. Cooke for the National Review examining the study (<http://www.nationalreview.com/articles/302319/gay-parenting-bad-kids-charles-c-w-cooke?pg=1>):

‘Children with a parent in a same-sex relationship “underperform” in almost every category. Some of these differences may be relatively benign — whether one voted in the last presidential election, for example — but most are decidedly not. One deficit is particularly worrying: Less than 2 percent of children from intact, biological families reported experiencing sexual abuse of some nature, but that figure for children of same-sex couples is 23 percent. Similarly disturbing is that 14 percent of children from same-sex couples have spent some time in foster care, compared with around 2 percent of the American population at large. Arrest, drug experimentation, and unemployment rates were all higher among children from same-sex families.’

This, coupled with the high divorce rate among same sex couples, do not stable families, secure citizens, and a successful nation make.

14. In conclusion, I have also heard it said that we have ‘redefined’ marriage before. This is wrong—laws may have been made in relation to marriage but they never changed its essential nature as the lawful union of a man and a woman committed to each other for life. When such legislation was made, it was not redefining, or even defining marriage. It was simply recognizing it for what it is, and upholding it for the good of the nation. It is the pinnacle of arrogance for the government to presume that it has the authority and ability to alter the meaning of an institution begun at creation, not by any earthly government but by the Sovereign Lord God. How dare we attempt to change the immutable to suit the fleeting and unstable emotions of our society! It is better to be ruled by our thoughts than by our feelings, and better still than acting on what we think, to act on what we from the beginning of history actually know. Rather than a redefinition, perhaps a reaffirmation of marriage, as established by God, is in order.

February 2013

Memorandum submitted by Dr Davina Cooper, Dr Nicola Barker and Dr Eleanor Wilkinson (MB 54)

RESPONSE (25 January 2013)

AUTHORS:

Dr Nicola Barker is a Senior Lecturer in Law, University of Kent, teaching family law and public law, including the European Convention on Human Rights. She is the author of a number of peer-reviewed articles about same-sex marriage and civil partnerships, and a book, *Not the Marrying Kind: A Feminist Critique of Same-Sex Marriage* (Palgrave, 2012).

Dr Davina Cooper is a Professor of Law & Political Theory, University of Kent; from 2004 to 2009, she was the Director of the AHRC Research Centre for Law, Gender & Sexuality. Her five books include *Challenging Diversity: Rethinking Equality and the Value of Difference* (CUP, 2004). She has also recently written on legal disputes over conscientious objection (with Didi Herman), see ‘Up against the property logic of equality law: Conservative Christian accommodation claims and gay rights’, *Feminist Legal Studies* [March 2013, forthcoming]

Dr Eleanor Wilkinson is a British Academy Postdoctoral Fellow at the University of Leeds. She is currently researching the changing nature of intimate relationships in contemporary Britain, with a particular interest in family law and family policy.

A. SUMMARY

This submission focuses on three aspects of the current debate:

1] The proposed amendment (14 February 2013) that would allow registrars who are ‘conscientious objectors’ to withdraw from performing same-sex marriages. We argue here that different registrars’ preferences should be managed through informal means, where possible, within the organisations in questions. Legally instituting a right of exemption contravenes the spirit of the Equality Act 2010 and enshrines the acceptability of anti-gay prejudice within secular institutions. If conscientious objection is to be permitted, and we would recommend it should not be, it should be permitted for *all* those who wish to refrain from participating in specific marriage ceremonies, whether between same-sex or different-sex couples.

2] Access to civil partnerships. We argue that different-sex (ie, heterosexual) couples *should* be granted the right to civil partnership. We also argue that care needs to be taken not to create further inequality on the basis of marital status.

3] The likely effectiveness of the so-called ‘quadruple lock’ to prevent religious bodies, particularly the Church of England (other religious bodies have a ‘triple lock’), from being compelled to perform same-sex marriage ceremonies if challenged before the European Court of Human Rights. We argue that there is no convincing case that any legal challenge to a religious body’s refusal to perform same-sex marriages would be successful. The European Court of Human Rights has repeatedly protected religious bodies from state interference under Article 9.

B. ‘CONSCIENTIOUS OBJECTION’ AMENDMENT

1. We appreciate some officials hold strong views against being required to conduct same-sex marriage ceremonies (or even to officiate more administratively). However, while we would encourage public authorities *informally*, as part of their role as good employers, to create arrangements which allow registrars some degree of flexibility—recognising that some registrars may prefer to do a large number of same-sex civil partnerships while others would prefer to do none at all—we strongly argue against introducing a ‘conscientious objection’ exemption in relation to (and *solely* in relation to) same-sex marriage. Our reasons are as follows:

2. Legal: The current requirement that registrars perform civil partnerships (CPs) under the Civil Partnership Act 2004 does not statutorily recognise conscientious objections. The question of whether an individual registrar, who refuses to perform CPs when their employer requires them to do so, suffers direct or indirect

discrimination was tested in *Ladele v. LB Islington*.¹⁸¹ There, both the Employment Appeal Tribunal and Court of Appeal rejected the applicant's claim for legal accommodation, finding that the Council was within its rights to adopt a practice of requiring all registrars to participate in order to pursue its own lawful policy commitment to promoting diversity and equality.

3. Practical: In some areas, mandating the right to conscientious objection may create practical scheduling difficulties where a number of registrars wish to withdraw. This places pressure on public bodies to manage the withdrawal of registrars from conducting (certain kinds of) marriage, while ensuring at the same time that work-loads are manageable and equal, and that same-sex marriage applicants are not disadvantaged or delayed by attempts to find registrars for their marriage ceremonies.

4. Symbolic: Providing a limited and special exception for conscientious objection in the case *only* of same-sex marriages undermines the state's explicit legal commitment to same-sex relationships as being of equal validity to heterosexual ones.

5. Working environment: Legally allowing registrars to refuse to perform same-sex marriages is likely to have a detrimental effect on many civil registry working environments. It will give fuel and legitimacy to those who wish to advance claims amongst fellow registrars (as well as in other workplaces) that gay relationships are sinful or wrong. (The court judgment in *Ladele* suggests disquiet and unhappiness among council employees proved a significant factor in the impetus for the disciplinary action taken against Ms Ladele by Islington council.)

6. Local autonomy: Allowing explicit and public withdrawal by registrars simply because they believe gay marriage to be wrong *requires* public bodies (regardless of their own policies) to accommodate a position which treats gay marriage as unacceptable. This restricts the scope of public authorities, such as local councils, to promote policies for which they have a local electoral mandate. In *Ladele*, the Court of Appeal stated that while registrars with the outlook of Ms Ladele would find compliance harder than other registrars, the council's position was a proportionate means of furthering a legitimate aim. This aim was not simply to have sufficient registrars to perform Civil Partnerships but to send out a message that public recognition of gay relationships was an appropriate principle for a council committed to equality and diversity. Islington Council's position was affirmed by the European Court of Human Rights (2013).

7. Inequality: The amendment makes a symbolic statement that refusing to provide gay people alone with an equal marriage service is acceptable. There may be a range of registrars who for different reasons (some deeply felt) would wish *not* to participate in the marriage of particular couples. This amendment accommodates certain wishes but not others; as such it sits in tension with the symmetrical character of the Equality Act 2010. If conscientious objection is to be permitted it should be permitted for all those who wish to refrain from participating in certain marriage ceremonies.

8. The secular public sphere: The amendment relates specifically to marriages performed in a secular context, since marriages in religious contexts already are extensively dealt with. Within the context of secular public action, not everything identified by proponents as the manifestation of their religious belief can be accepted as valid. Other interests and rights are also relevant. It is arguable that if registrars do not wish to conform to the provisions governing secular marriage, they should work in a more explicitly religious context governed by religious norms.

9. The notion of 'conscientious objection' in this context. Does it apply to all beliefs or only religious ones? Given the Equality Act 2010, the ECHR and recent case-law, there is no good legal reason for restricting 'conscientious objection' to religious (as opposed to other philosophical) beliefs. This is likely to generate considerable uncertainty and litigation regarding the kinds of beliefs, and the 'depth of belief', required to legitimately ground 'conscientious objection' to same-sex marriage.

C. EXTENDING CIVIL PARTNERSHIPS TO DIFFERENT-SEX COUPLES

1. We are concerned that the government has dismissed the fact that the majority of people would like to see Civil Partnership opened up to different-sex couples (as demonstrated by the findings of the Equal Civil Marriage consultation). We argue that different-sex couples should be granted the right to civil partnership, the reasons for which are as follows:

2. If the government is committed to promoting stable relationships then it makes no sense to deny people the right to civil partnership.

3. Denial may be in breach of the European Convention on Human Rights. In 2011 four different-sex couples filed a claim with the European Court of Human Rights after they were all denied the right to a civil partnership (*Ferguson and Others v United Kingdom* 2011). They argued that a refusal to allow different-sex couples to register a civil partnership constituted discrimination violating Article 14 (discrimination) of the European Convention of Human Rights, combined with Article 8 (respect for family life) and Article 12 (the right to marry). In *Schalk & Kopf v. Austria* (2010), difference in treatment on the basis of sexual orientation was said to "require particularly serious reasons by way of justification". We argue that the government has no justification

¹⁸¹ *Ladele v LB Islington* [2009] IRLR 154 (EAT); [2010] IRLR 211 (CA).

for continuing to preserve civil partnership for *only* same-sex couples, and that there is no serious justification for legal segregation on the basis of sexual orientation.

4. The government claims that there is no material or legal advantage for opening up civil partnership to different-sex couples, and therefore that this move is unnecessary. However, there *are* a number of material disadvantages for different-sex couples who do not wish to marry but would like to form a civil partnership—they are left with no legal recognition of their partnership. Furthermore, whilst there is no material advantage for allowing same-sex couples the right to marry, the government recognizes that this is largely a symbolic gesture that sends out a wider message to society about the equal worth of lesbian and gay relationships. Yet, same-sex and different-sex relationships will only be perceived as equal if there is complete equality between both marriage and civil partnership. Continuing to preserve ‘civil partnership’ for same-sex couples continues to mark civil partnership as in some way different and ‘inferior’.

5. Removing the bar to civil partnership for different-sex couples would enable those in a civil partnership, when one of the couple legally changes their gender, to remain in a civil partnership, should they wish to do so. Currently the only option being proposed is to transfer the civil partnership into marriage which not all trans couples would want.

D. QUADRUPLE LOCK

1. There is no legal basis to fears expressed by some organisations that the European Court of Human Rights would compel religious bodies to celebrate same-sex marriages. We present four reasons why religious bodies do not need to be concerned.

2. First, the case law does not provide any precedent to suggest that the ECHR would seek to interfere with the internal policies and decision-making of a religious body, in fact the opposite is the case. Where states have attempted to interfere, the Strasbourg Court has repeatedly ruled that the state must remain neutral in relation to the internal workings of religious bodies (see *Hasan v. Bulgaria* (2002) 34 E.H.R.R. 55; *Obst v. Germany* (Application No. 425/03); *Fernández Martínez v. Spain* (Application no. 56030/07); *Siebenhaar v. Germany* (Application No. 18136/02)). The way that the Marriage (Same Sex Couples) Bill is framed, providing an opt-in for those who want to perform same-sex marriages, whilst not requiring any religious body to do so, upholds this principle of state neutrality.

3. Second, Article 9 protects religious freedom. In a case where a same-sex couple wanted to claim that a religious body was in violation of their rights to marry and not be discriminated against, the Court would look at whether the UK legislation properly balances those rights against the religious body’s right to freedom of religion. In cases where such a balancing exercise is required, the Court gives a wide margin of appreciation to the national legislature. The Court also gives a wide margin of appreciation to national legislatures in situations where there is a lack of a consensus among the 47 signatories to the European Convention on Human Rights. This means that a provision would need to be wholly disproportionate for the Court to interfere.

4. Third, the provisions in the Marriage (Same Sex Couples) Bill are proportionate. Some concern has been expressed about the impact of the Court’s decision in *Schalk and Kopf v. Austria*. The judgment in *Schalk* has no direct application to the religion issue because it does not deal with the question of whether, should same-sex marriage be legal, it would be discriminatory for religious bodies to refuse to perform them.¹⁸² However, the court did emphasise that ‘differences based on sexual orientation require particularly serious reasons by way of justification’. This has been taken by some right-wing commentators to mean that if the UK did introduce same-sex marriage, it cannot be treated any differently than heterosexual marriage, including by religious bodies. This is not an accurate interpretation: the phrase ‘require particularly serious reasons’ does not prohibit all differences but rather requires that any differences must be justified by good reasons. Given that the Convention also protects religious freedom, preventing a religious body from being compelled to perform same-sex marriages against their faith is likely to constitute a good reason. As noted above, there would be a wide margin of appreciation on the issue of balancing the Convention rights of one group against those of a different group. The Marriage (Same Sex Couples) Bill strikes a proportionate balance.

5. Fourth, the possibility of religious bodies being required to defend nuisance claims with little chance of success before the Strasbourg Court is minimal because there are stringent admissibility criteria. Of all applications against the UK since 1959, 97% were struck out as inadmissible. Of the remaining 3%, only 61% resulted in a judgment against the UK (source: Council of Europe Statistics 1959–2010: Statistics on Judgments by State, pp.14 and 21). Any application made before the Strasbourg Court would be taken against the UK, not against any individual religious body, so it would be for the UK government to defend the Marriage (Same Sex Couples) Bill.

6. The Human Rights Act 1998, section 2 requires the UK courts to have regard to the jurisprudence of the ECHR. Therefore, should a claim be made in the UK courts against a religious body, the UK courts would have regard to the above case law emphasizing state neutrality, and the wide margin of appreciation in this area.

¹⁸² In legal terms, the case did not address whether there would be a breach of Article 14 in conjunction with Article 12.

E. CONCLUSION

1. Although we are largely supportive of these moves towards equality, we are still concerned about a number of significant inequalities that remain. In conclusion we would like to echo the concerns raised by Liberty regarding the unequal treatment of same-sex couples in certain pension schemes. If the government truly wants to create a society in which lesbian and gay relationships are valued then this issue cannot be ignored.

2. We also want to stress that great care needs to be taken in subsequent policy not to marginalize those in society who are not part of a married couple. Whilst the government may wish to uphold marriage as a 'gold standard' we want to stress that this is something that many may object to for reasons of belief, or which may prove impractical or impossible for some.

3. Care needs to be taken that we do not create further inequality on the basis of marital status, and although not within the scope of this legislation, the government needs to also seriously consider the rights of cohabiting couples and other inter-dependent relationships, and to consider developing a more pluralistic approach to relationship recognition that would be able to incorporate the diversity of people's intimate lives in contemporary Britain.

February 2013

Memorandum submitted by Christie Elan-Cane (MB 55)

NON-GENDERED

Fighting for legal and social recognition outside the gendered societal structure

From: Christie Elan-Cane, NON-GENDERED—Fighting for Legal Recognition

SUMMARY

The Bill takes no account of non-gendered people who do not define as male or female. If the purpose of this Bill is that every legitimate couple should have an equal right to marry, the government has failed.

1) The draft terminology is unequivocal in its description of a couple as comprising of one man and one woman, or two men, or two women.

2) Members of society who do not identify as male or female (and do not regard themselves as either men or women) are forced to present as gendered in order to register a marriage, and the Marriage (Same sex Couples) Bill will not change this unacceptable situation.

3) While it is currently possible for a non-gendered person to marry (under compromise of registering as gendered), and the proposed legislation will make it possible for a non-gendered person to marry someone of either sex (under compromise of registering as gendered), the Bill will not enable a non-gendered person to marry as non-gendered.

4) Compromise is not equality and compromise is unacceptable within a democratic society.

5) The Bill serves only to perpetuate injustice on socially invisible members of society who have no legally enforceable rights but who nonetheless can form relationships and should have the same right to have a relationship recognised by the state.

6) Relationships where one partner or both partners are non-gendered must be allowed to achieve the status of marriage without compromise. No human being should be forced to deny their identity in order to marry their partner.

I declare interest in outcome of proceedings in that my core identity is non-gendered and I have spent most of my adult life trying to achieve legal and social recognition that others can take for granted.

The denial of existence is the worst act of discrimination by the gendered majority against the non-gendered

February 2013

Memorandum submitted by Rev C B Ross (MB 56)

With reference to the **Marriage (Same Sex Couples) Bill**, I wish to submit the following personal experience for the Committee's consideration:

1. For almost three years, since my retirement, I served as a volunteer Force Chaplain to Strathclyde Police, covering the whole of Lanarkshire (the former 'N' and 'Q' Divisions, as well as the Force Training and Recruitment Centre, Jackton). This was a role that I enjoyed immensely, and I was extremely active in regular visitation, and in identifying myself with officers and staff. I submitted a monthly article to the different Divisional Bulletins, and attended all of the Force, and Divisional, events as invited. The result of my endeavours was that I gained the trust of those I sought to serve, and was being used by some in pastoral situations.

2. However, just before the summer, a particular senior officer in one of the Divisions read my **personal** blog (www.crazyrev.blogspot.com)—and objected to my expressed support for traditional marriage as, it was claimed, it went against the Force's Equality and Diversity Policies. I was summoned to a meeting, the end result of which has been that my services have been dispensed with! This, I would emphasise, is before any legislation has been placed on the Statute Book.

3. My voluntary situation is bad enough, but legal opinion is that if I were, for example, a Hospital Chaplain in full-time employment, then I would be equally open to dismissal because of my sincerely-held beliefs regarding the sanctity of marriage.

4. This is, I would contend, typical of the kind of situation that could, and would, arise if the Bill were to become law.

February 2013

Memorandum submitted by Michael Graham (MB 57)

PHILOSOPHICAL ISSUES : DEFINITION OF 'MARRIAGE'

In order to ensure their continuity, societies throughout history have enshrined in law a preference for committed heterosexual relationships which can give life to, and sustain, the next generation. In the English-speaking world we have called these relationships 'marriage'. They are based on more than love; they also encompass the possibility—by natural means—of having children, thus ensuring the future of the society in question. Our society will therefore be immeasurably weakened unless we retain in law a distinctive definition of marriage as a union between a man and a woman, rather than the redefinition implicit in the Equal Marriage Bill.

EQUALITY AND JUSTICE ISSUES

The Greek philosopher Aristotle contended that injustice results from treating unequals equally. This principle applies perfectly in the current context, since there can be no comparison between heterosexual relationships which can produce children through natural means, and homosexual relationships which cannot. Therefore, the equality premise which is driving the Equal Marriage Bill is a false one. This is underlined by the recent ruling of an Australian federal judge that no discrimination or injustice against same sex couples is implied by the fact that they are barred from marriage as traditionally defined.

A further consideration is that there will be far greater inequality in our society if the Government's legislation succeeds, since large sectors of society—the Churches, and many others with a regard for the tradition of the ages—will be set against their neighbours. Disunity, rather than unity, will be the result. The provisions in the Bill for exemption for the Churches will merely enhance this disunity rather than eliminate it..

EDUCATIONAL ISSUES

Schools play an essential role in forming children's attitudes towards adulthood, and in making them aware of society's basic institutions. The most ancient institution of all is the family, headed by a man and a woman who are able to create and nurture new life.

Apart from doing significant damage to the family, the Government's proposed legislation will confuse the message which schools aim to give to children about the real nature of marriage. It will also cause difficulty for teachers, who will be required to present to children a range of equally-valid relationship possibilities as they enter adulthood : some leading to the possibility of parenthood, and others not.

DEMOCRATIC ISSUES

If such a fundamental change is to be made within our society—in essence amounting to a redefinition of what we are by nature—the Government should not rush through legislation without a proper mandate, as it is attempting to do. It should, instead, defer its plans until the next parliament—when they can be properly covered by a manifesto commitment. The undue haste with which the proposals are being rushed through Parliament is perhaps being governed by an EU proposal—due, maybe, to come into force in Autumn 2013—under which all member states would be compelled to accept each-other's marriage arrangements—as UKIP suggests. If this is the case, the Government should say so.

For all these reasons, I feel the Equal Marriage Bill as currently drafted and programmed is ill advised and should be abandoned or significantly amended.

February 2013

Memorandum submitted by Dr James B Waddell (MB 58)

Re: Equal Marriage

Thank you for your letter addressing the issues I raised (letter 18 December 2012) concerning Same-Sex Marriage to Mr Geraint Davies MP; he has forwarded a copy to me with a copy of the document "*The Facts about Equal Marriage*" (January 2013).

Your letter and document are still not addressing the core issues of Same-Sex Marriage and diverting the argument away on to irrelevancies. This tactic was also followed by MPs who supported Same-Sex Marriage in the debate in Parliament on 5 February 2013. The core issues are these:

1. **There is No Mandate for Same-Sex Marriage.** This was admitted openly in the debate, but it was dismissed as not being relevant and justified on grounds of 'equality' and 'love'. It is however highly relevant. No political party or the government has a mandate from the public to introduce such a seismic change to society as we know it. So why is parliament 'raping' the public and the culture of society with this policy?

2. **No government has the authority to redefine the definition of Marriage.** Marriage, the joining together of a man and a woman, the two becoming one, and the procreation of children to populate the earth was commanded by God and supported by the physical biology and sex (not gender) of a man and a woman. Marriage has for millennia been defined and commonly accepted as being between a man and a woman. Previous Parliaments may have changed civil law to grant or deny certain legal rights to the man and the woman united in marriage, but the fundamental definition of marriage being between a man and a woman can never be changed as it was defined at Creation by God.

Your belief that "*loving some one of the same sex*" is not a reason for preventing people getting married is astonishingly perverse and open ended. It is based on the presumption that Same-Sex Sexual Relationships are valid in the first place, when God has said they are an abomination and that those enter into such behaviour are worthy of death. If 'love' is the only qualification for marriage, what about marriage to: children (aka paedophilia), incest and multiple same-sex partners in marriage as in other countries or even animals? Also, there is no evidence that what same sex relationships have is 'love'—more like lust.

3. **Why is the government promoting a lethal lifestyle and high-risk unnatural sexual behaviour?** It is well documented, although totally ignored now by politicians and now concealed by revisionists, **that homosexuals were the original source of HIV and AIDS, which has resulted in the death of millions across the world.** Also their sexual behaviour is classified as high-risk from injury and Sexually Transmitted Diseases. How can this be part of the natural union of marriage between a man and a woman?

4. **Same-Sex Marriage is not about equality it is about approbation of Same-Sex Sexual Relationships.** Even the most casual observer of the debate could see that there is no equality in Same-Sex Marriage: no consummation, no man and a woman, no husband and wife, just 'husband and husband', and 'wife and wife' under the new government definition, and of course completely sterile couples. The real agenda is that the government is committed to forcing UK society to accept the approbation of Same-Sex Sexual Relationships and to fall in line with pending EU legislation requiring the recognition of Same-Sex Marriages registered in other EU countries within the UK—the elephant in the room at the debate.

5. Religious Rights and Freedom of Speech will not be protected by the Quadruple Lock. For years, even before this bill was proposed, street preachers have been arrested for stating that homosexuality is a sin; advertising challenging the myth that people are born gay was banned from London buses by Boris Johnson; Christian Concern was banned from holding a conference to discuss Same-Sex Marriage in two public venues; an employee was demoted and almost lost his job for saying on a private Face Book page that he disagreed in Same Sex Marriage (many others have lost their jobs in similar circumstances); and private accommodation providers have been all but forced out of business for applying their Christian beliefs to their business.

Additionally, it was reported in the debate by many MPs that they had received threats of violence for their opposition to Same-Sex Marriage, a common experience for anyone who opposes homosexuality and Same-Sex Marriage.

Even if an individual case is won by a very brave defendant standing up for his or her right to express their rejection of homosexuality or Same-Sex Marriage in a public, work or private context, the fear of reprisals, loss of employment or a lengthy, financially ruining, court case will shut-up most people with another level of political correctness. That is not Parliament defending freedom of speech, but quietly enforcing censorship from a distance.

Does the government honestly expect a teacher to be able to say to a classroom of students: "*Marriage was defined by God at the time of Creation as between a man and a woman. Therefore, Same-Sex Marriage is not marriage. The law of the land says that Same-Sex Marriage is legal, which suggests that it is a right thing to do, but in my opinion it is not.*" When a child in that class repeats this lesson to their guardians in a Same-Sex Marriage or gay relationship, a complaint will immediately be made to the school, and pending a disciplinary hearing, the teacher will automatically be given a summary dismissal. It is happening now in places of work, when someone objects to homosexual behaviour and Same-Sex Marriage.

Given the militant and Gestapo like tactics of Stonewall, their sponsorship of legal prosecutions to challenge the boundaries of the law and gay rights, and the way Peter Tatchell writes Cameron's speeches, why should anyone think that MPs and judges will come out to support the religious and speech freedoms of those who object to: homosexuality, Same-Sex Marriage, the new definition of marriage, husband, wife, mother, father, parent and even what it means to be a man and a woman, which is determined by gender not sex? The government is having a laugh as it gags its citizens.

How can the government state *"(it) is committed to freedom of speech and has always been absolutely clear that being able to follow your faith openly is a vital freedom that the Government will protect. Everyone is entitled to express their view about same-sex marriage at work or elsewhere;"* unless you add, *"but don't expect to keep your job, or expect not to be arrested if you make such statements."*!

The introduction of Same Sex Marriage is the most divisive and anarchic bill ever to have been proposed by Parliament as it strikes at the core of what it means to be a man and a woman and our understanding of family relationships. It also attempts to subvert the definition of marriage commanded by God and yes, although repeatedly and mockingly denied by MPs in the debate, Same-Sex Marriage completely devalues the marriage of every citizen in the UK in the same way as introducing into circulation counterfeit currency. Same-Sex Marriage is not genuine Marriage and it never can be.

Therefore, I appeal to your commonsense to abort this complete and total folly before you bring God's severest judgement on this government and on this nation.

You will certainly lose many votes.

February 2013

Supplementary evidence submitted by O. B. Hepworth (MB 59)

SUMMARY

I am concerned at the proposed amendments (ref no's. 10 & 11 on the List of Amendments) which re-define same sex marriages as 'civil marriages' and would allow an opt out for civil registrars from conducting marriages for same sex couples; the first amendment negates the purpose of the Bill, to provide for equality in legal terms, and the second would result in difficulty in accessing this service and lead on to an erosion of equal treatment in the provision of goods and services for LGBT people and other minorities.

1. I have watched the public evidence sessions of the Bill Committee and I have become concerned at the line of questioning by two or three MP's, who are declared opponents of the whole Bill in principle and the 'evidence' being given by witnesses who are also opponents of the whole Bill.

2. Now David Burrowes and Tim Loughton have proposed two amendments

3. The purpose of the first [Ref 10 on published List of Amendments] is obscure but suggests that same sex couples would get something different, to be called "civil marriage", as opposed to "Marriage". All of the church representatives who have given evidence appeared to be satisfied with the protections given to them by the "quadruple lock". None of the religious organisations wanted the State to interfere with their right to deal with the civil and the religious aspects of registering marriages in one go. The Committee heard from several witnesses from religious organisations who wish to conduct religious marriage ceremonies.

4. The second proposed amendment seeks to give public registrars an absolute 'opt-out' on grounds of their personal conscience, whether based on religious belief or not, from conducting Marriages for same sex couples [Ref 11 on published List of Amendments]

5. The witness Mark Jones, a Solicitor, stated in his evidence (14th February) :

"..... I was told this morning by a former registrar who decided to leave the service when she felt compromised. She was in touch with her former colleagues—there are a dozen or so within that particular service—and to all of them, including some who hold a religious belief and some who have no religious belief, she was explaining, "At the beginning of the service, we explain what marriage is. It is one man, one woman, voluntarily entered into for life, to the exclusion of all others, and there is a notice to that effect in every registry office in England and Wales." The explanation that I was given is that there is extreme confusion—and actually, distress—for every single individual within that **organisation** about the definition. It is what they have based their understanding on presumably it is consistent with their belief, not a conflict of conscience—and now they will have to be saying something different"

6. In the Registry described by Mr Jones, were the Bill to be passed with the Burrowes/Loughton amendment, it seems probable that the entire staff would have a conscientious objection and therefore there would be no Marriages for same sex couples in that district.

7. I am very concerned that such an amendment would effectively be rolling back Equality legislation and allowing for public discrimination against LGBT people

8. Having once established the principle that public servants had an individual right of conscientious objection to serving LGBT people on this one issue there would be an argument to extend it to all other issues and areas of the public service. Furthermore, once such a right had become established for public sector employees, it would be difficult to say that private sector employees and businesses should not also have a similar right.

9. We could see an effective end to equality in entitlement to goods and services for LGBT individuals and couples.

10. Providing for the 'reasonable accommodation' of employees and others who have a conscientious objection to dealing with or serving gay and lesbian people (or any other minority group) depends upon the number of people who hold such objection being tiny. Plainly it cannot be guaranteed that the number of such people will be very small in every office, Council or locality.

February 2013

Memorandum submitted by The Rt. Revd. Frank White (MB 60)

SUMMARY

The proposed legislation being scrutinised by the Committee is regressive and will compromise the foundational institution of British society. This submission identifies how the three key building blocks of marriage are being redefined to mean the opposite of their universal understanding. Such a radical change requires much careful consultation and informed societal consent.

From: The Rt. Revd. Frank White; Assistant Bishop in the Diocese of Newcastle.

1. I am writing to the Committee in my public capacity and responsibility as a bishop in the Diocese of Newcastle; I am not an "official spokesperson" for the Church of England. The diocese in which I serve covers the county of Northumberland, and the unitary authorities of North Tyneside and Newcastle-upon-Tyne, and has a population of 805,000 people in nine parliamentary constituencies.

2. I am writing to ask the Committee to reconsider the proposed legislation. My concern is not primarily 'religious' but practical reflecting the nature of marriage as a social institution, whether contracted in a religious or civil ceremony. This is not a commentary on the validity of same sex relationships, which have brought stability and confidence to many, but on the nature of marriage as a foundational institution for the flourishing of human society. The essential nature of this institution is captured in the text of Article 12 of the European Convention on Human Rights which states that "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right." While I am not disputing the capacity of Parliament to enact the proposed legislation I am advocating that the Convention and human societies from time immemorial have understood marriage to be between people of the opposite sex. This is the plain reading of Article 12.

3. There is no separate category of "religious marriage" as is sometimes expressed in popular writing or media commentary, but marriage reveals its essential character in whatever cultural context it is solemnised. I do not believe that Parliament is intending to create a separate category of "religious marriage", though the way the legislation is being framed may unintentionally be leading to this conclusion.

4. There are at least three foundational principles which identify the essential character of marriage. First, it is a covenant for life between members of the opposite sex; second, it is undertaken in the mutual society of its partners for the procreation and proper care of children, and thirdly, it is an exclusive covenant which is compromised by the sexual participation of any third party to the relationship. These foundational principles are connected and mutually reinforcing of the institution of marriage itself and each are explained more fully in the following three paragraphs.

5. There is no substantial precedent in British or any other society to suggest that marriage can be effected between people of the same sex; indeed even contemporary dictionary definitions use the term 'same sex marriage' as the descriptor of the institution which some societies have created only in the last dozen years. There is no equivalent definition of 'heterosexual marriage' because marriage has the established understanding of being between people of the opposite sex. Indeed a marriage conducted between people who turned out to be of the same sex would be regarded as null and void.

6. The procreation of children is a fundamental instinct for the human race as it is for all animals as defined in evolutionary science. Sexual reproduction through the intercourse of opposite sexes is a central building block for the development of species. In same sex relationships intercourse cannot naturally have this outcome; and because marriage is the principal institutional way of legitimating sexual relationships it follows that a basic purpose of such an institution is vitiated. In any part of the animal world the failure to reproduce naturally will lead, eventually, to extinction.

7. The intervention of a third party into the sexual exclusivity of a marriage has in this and every civilised society been sufficient grounds for the aggrieved party to take steps to terminate the marriage. For same sex marriage the intervention of a third party is biologically and physically required and necessary if the couple are to have children. Furthermore, the children of such a union will not have the genetic material of both

parties, importing into the basic evolutionary process an uncertainty which marriage as hitherto understood has attempted to avoid (hence the rules on consanguinity and affinity).

8. The intention of Parliament cannot be to destabilise the most basic building block on which flourishing societies are founded nor can it be to create the possibility of humans moving into an evolutionary cul-de-sac. The deeper consequences of the legislation that the Committee are examining, I submit, need to be more fully examined. The preliminary consultation, to which I responded, was flawed in that it presumed the outcome before it posed the questions.

9. The effects of the proposed legislation the Committee are scrutinising will be regressive rather than progressive; the more effective way of achieving the latter would be for Parliament to commission a careful research programme and establish a broad based enquiry into the purpose and practice of marriage. For the institution of marriage which affects, one way or another, every person and community in this society nothing less serious is worth contemplating.

SUMMARY

The proposed legislation being scrutinised by the Committee is regressive and will compromise the foundational institution of British society. This submission identifies how the three key building blocks of marriage are being redefined to mean the opposite of their universal understanding. Such a radical change requires much careful consultation and informed societal consent.

February 2013

Memorandum submitted by Steve Bow (MB 61)

INTRODUCTION AND SUMMARY

1. I am a Christian in my late twenties, with experience of traditional (Catholic and Anglican) and non-traditional (charismatic—New Frontiers, Equipppers, Soul Survivor) churches. I hope to clarify some of the issues related to this Bill and give some context to the figures involved in considering these issues. The three sections I will cover are the democratic basis (or lack thereof) for the Bill, the uniform views of religious groups on marriage, and the application of the principle of equality with regards to marriage, which in fact supports maintaining the current law. I hope the evidence I put forward will enable you to make a fully informed decision on the progression of this Bill.

THE (UN)DEMOCRATIC PROCESS

2. First of all, please recall the Consultation of March 2012, which, incredibly, did not ask *whether* the law should be changed, but *how* to change it, on the implicit assumption the decision to redefine marriage had already been made. This presumption has rightly been criticised, on the charge that the Government has no mandate to make this change. In fact, the argument expressed by the Government's "Equal Marriage Mythbuster"¹⁸³ released to accompany the first reading of the Bill, supposedly demonstrating this objection is a myth, **clearly shows that there is no mandate:**

- a. "The Conservative Party's Contract for Equalities, published alongside its General Election Manifesto in 2010, set out clearly that we would **consider** the case for changing the law to allow civil partnerships to be called and classified as marriage" (emphasis mine)

3. The Consultation document expressly was **not** intended to *consider* the case for changing the law, as its working basis was a presumption that the law would be changed. The Government has a mandate to consider, or consult on whether a change should be made, not to make a change without public approval.

4. Even given that the Consultation was not a consultation on the salient issue, 228,000 people responded, which according to the Government, is the largest ever response to a consultation. Of this number, 46% disagreed with Question 1, ("Do you agree or disagree with enabling all couples, regardless of their gender to have a civil marriage ceremony?"). The 513,000 additional petition signatures were ignored in the weighting:

- a. "...the majority of responses to the Consultation (not including petitions) supported opening up marriage to same-sex couples." Equal marriage: The Government's response, 2012, p6)

5. Had the petition signatures been included (reasonably assuming that they correspond to a "No" answer to question 1 of the Consultation), the results could have been as great as 84% opposed to the redefinition of marriage (617,000 opposed, 121,000 for). Even if we assume that all the "No" Consultation responses were accompanied by a corresponding petition signature and so ignore them all, this would still give us 69% in opposition to the change (513,000 opposed, 121,000 for). So the, at best, equivocal response of the public can be seen, upon closer examination, to reveal **the majority of people (69–84%) were opposed to the Consultation's fundamental tenet of same-sex marriage.**

¹⁸³ I do suggest you read a copy of the "Mythbuster" document, which was provided to reassure the public about these proposals, and examine the "myths" yourself. The arguments "debunking" the "myths" are dubious at best, and blatant whitewashes at worst.

RELIGIOUS GROUPS

6. It is clear the tensions around this issue arise from the severe conflict between the Government's proposals and the teaching of the majority of religious groups. In the Government's communication, much has been made of the support of the Unitarian Church, in a clear attempt to sell the illusion that the idea of same-sex marriage is only ambivalently opposed by religious groups. However, the Unitarian Church amounts to a membership of fewer than 4,000 people which is only 0.007% of population of England and Wales (source: Unitarian and free Christian Churches Annual Report 2011). The clear fact is that **the majority of religious groups, representing the majority of religious members, stand side by side in opposition to same-sex marriage**. The Catholic Church, the Church of England and the Muslim Council of Britain (2.7 million Muslims in Eng. & Wales, 35,700 in Hounslow, 2011 Census, ONS) all formally repudiated the redefinition suggested in the 2012 Consultation, affirming instead that marriage is between *one man and one woman*.

7. In my discussions with traditional (Catholic and Anglican) and non-traditional (Charismatic/Evangelical) Christians, the same themes and feelings are repeated:

- a. that the moral teaching of the church down through the ages is being disregarded as bigoted,
- b. that many MPs and members of public who conscientiously disagree with this Bill are scared to profess their honest objections in fear of being labelled bigots or even losing their employment,
- c. that the Government does not take seriously any moral argument on the matter of marriage from the Church or any other religious group,
- d. and that the Government are pushing through a law undemocratically.

EQUALITY

8. Finally, I would like to discuss the principle underlying the issue of same-sex marriage, which is probably well-summarised by the now-humorously cliché saying, "Political-Correctness gone mad". The principle is, of course, equality.

9. Supporters of the same-sex marriage Bill rally under the noble banner of equality, and it was from under this banner the proposals for same-sex marriage arose:

- a. "During a listening exercise ... in 2010... we heard representations from many who sought equal access to marriage for same-sex couples."—Equal civil marriage: a consultation (2012, p3)

10. However, let us look at how equality is defined, or rather, how it is refined:

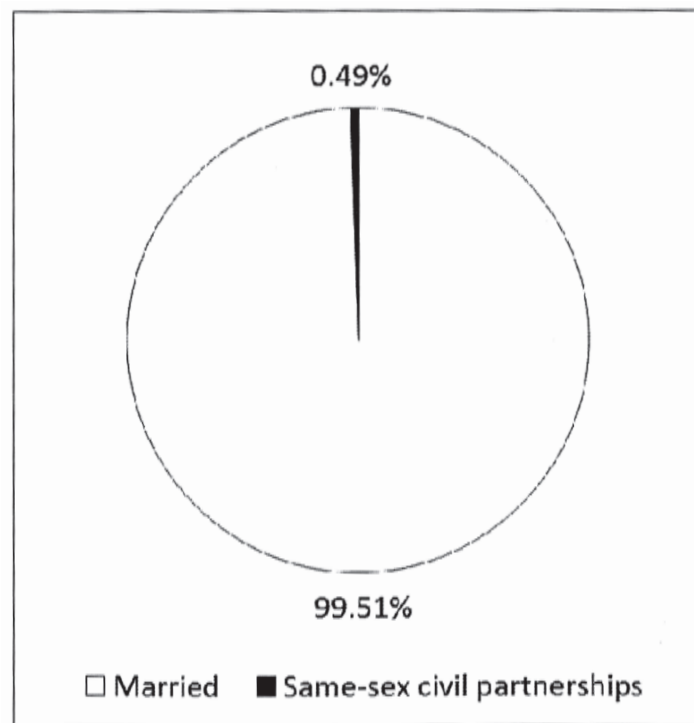
- a. "Equality is not about treating everyone the same"—*Stonewall*

11. So the well-known Lesbian, Gay, Bisexual and Transgender lobby and support group Stonewall make clear that equality does not demand that everyone has the same treatment.

12. In light of this, the demand that same-sex couples be given admission to an institution that, by definition, excludes them, begins to look rather inconsistent with this principle of equality. Let us look at a further definition of equality:

13. "Equality... [is] about treating everyone as individuals with respect and consideration"—*Stonewall*

14. Does this Bill treat everyone with respect and consideration? Let us be clear, the Marriage (Same-Sex Couples) Bill, seeks to radically redefine the meaning of marriage, in order to allow same-sex couples to partake in it. There are 21.2 million married in England & Wales and 104,000 in same-sex civil partnership (2011 Census, ONS). It is not expected or suggested that the numbers of same-sex marriages will significantly differ from civil partnerships. I have used a lot of figures so far, but in this instance, just as a picture paints a thousand words, a chart reveals the true scale of the comparison. In case the chart is not visible, people in same-sex civil partnerships make up a tiny 0.49% of those in marriages or civil partnerships. To redefine marriage in order to meet the philosophical needs of a group that makes up less than half a per cent of formalised relationships is grossly disproportionate:



15. Again, let us be clear, **this Bill seeks to fundamentally redefine the meaning of the institution of marriage, an institution of over 20 million people, without their agreement and despite majority opposition to the Consultation document.** A conservative interpretation of the 2012 Consultation suggests that at least 69% (14.6 million people) could be strongly opposed to such a move. Is the proposed Bill, redefining this age-old institution without the overwhelming consent, or even the majority approval of those who are already members, consistent with the principle of treating all with respect? This radical redefinition threatens to be foisted upon many millions, without consent, without mandate, and without a legitimate claim to equality.

February 2013

Memorandum submitted by Keith Dilliway (MB 62)

Thank you for asking for submissions for the above Bill and I am writing as an individual who has been married for over 30 years. I am also drafting this as a primary school teacher who has a special personal interest in encouraging and promoting the traditional view of marriage.

Marriage in my opinion should not be redefined to include same sex couples. Civil partnerships already have existing rights and responsibilities so therefore this Bill is unnecessary and does little more than re-badge partnerships as marriage

I believe that the following matters should be taken into account by the Public Bill Committee in its detailed examination of the Bill:

1.1. The unique capacity of a marriage of man and woman is to generate children. This unique capacity has long been the reason for the state to support marriage. There are distinct advantages to the welfare of society and its individuals for children to be raised by their natural parents.

1.2. Children need both maternal and paternal influences in their homes.

1.3. "The belief that this form of relationship is the one which best encourages stability in a well regulated society is not a disreputable or outmoded notion based upon ideas of exclusivity, marginalisation, disapproval or discrimination against homosexuals or any other persons who by reason of their sexual orientation or for other reasons prefer to form a same-sex union." (Quoting Sir Mark Potter, July 2006, [http://en.wikipedia.org/wiki/Mark_Potter_\(judge\)](http://en.wikipedia.org/wiki/Mark_Potter_(judge)))

1.4. Civil partnerships have the potential of being just as economically secure and strong in relationship as marriage. "In 2004, in the course of the passage of the Civil Partnership Act, Parliament closely re-examined the complex problems involved if recognition were to be given to same-sex marriages. The solution which it reached was that there should be statutory recognition of a status and relationship closely modelled upon that of marriage which made available to civil partners essentially every material right and responsibility presently arising from marriage, with the exception of the form of ceremony and the actual name and status of marriage."

1.5. When Baroness Scotland introduced the second reading of the Civil Partnership Bill in the House of Lords, she said that “it is important for us to be clear that we continue to support marriage and recognise that it is the surest foundation for opposite sex couples raising children....”

2. Marriage is the bedrock of our society and should remain the union of one man with one woman for life.

3. Same-sex marriage will probably distort legal matters rather than simplify them. Historically, UK law assumes the currently accepted definition of marriage. As such, a marriage may end due to the unfaithfulness of either party. How can this Bill fully or practically define irretrievable break-down of a relationship, sexual union or adultery so that they apply to both same sex and heterosexual marriages?

4. The so ‘quadruple lock’ to ‘protect religious organisations’ may not stand up in the European Court of Human Rights. If a member state decides to allow same-sex marriage, but treats homosexual married couples differently from heterosexual married couples, it could be challenged under European human rights law. Legal experts have questioned the strength of the Government’s assurance that with proper drafting ‘the chance of a successful legal challenge through domestic or European courts is negligible’.

5. In trying to be inclusive, how will this Bill protect the rights of those who could too easily be alienated and oppressed? Whilst I favour equal rights, there is the real, potential danger that a few aggrieved individuals get rights at the expense of others who wish to express their beliefs in a simple and unthreatening manner.

5.1. What safeguards will there be for the many faith groups, both Christian and otherwise, who do not support this Bill? What will happen to those public servants or ministers of (any) religion who will not perform marriages for same sex couples?

5.2. What about implications that a redefinition may have for employers and employees, teachers and other public servants? What will happen to the meaning of the words husband, wife, mother, father?

In conclusion, I believe there is no satisfactory way that this Bill can work to the overall benefit of our society. Therefore, it should be dropped.

February 2013

Further supplementary evidence submitted by Emeritus Professor James H. Grayson (MB 63)

1. INTRODUCTION

I write as an anthropologist, retired university lecturer, and an ordained minister of the Methodist Church in Britain. My comments are my own personal views and should not be construed to reflect the views of any organisation with which I am currently associated, or have been associated.

For the purpose of this **third comment** which concerns the nature of family relations, I would note the following three personal facts: 1) when I was a child my mother had an extended serious illness over a period of five years and died when I was fourteen, 2) after three years my Father remarried and there was no issue from this marriage, and 3) I am the father of two adopted sons. For these three reasons (single-parent family, family including a step-parent, and adoption), I feel that I understand the complexity of family structures and relationships from a personal as well as from a professional academic point of view.

I would also note as before that my concerns with the legislation as presently formulated are **not** principally concerned with its effects on the performance of religious rituals connected with marriage.

SUMMARY OF CONCERNS

The concerns which I will state in this third correspondence are about the effect of this legislation as presently formulated which could have unintended consequences which need to be considered in its final framing. These comments should be read in conjunction with my first correspondence of 18 February, 2013, and the second correspondence of 22 February, 2013.

CONCERNS FOR UNINTENDED CONSEQUENCES

1. The legislation as currently framed does not provide a definition of marriage, but does imply equality between sexual relations between a cross-sex couple, and physical relations between a same-sex couple.

2. Couples who are in a cross-sex relationship and couples who are in a same-sex physical relationship may be treated in law so that the same legal benefits and protections are given to each group (equity), but these two sets of relationships cannot be construed to be the same thing.

3. Clearly, sexual relations between two people of different sexes has the potential for the creation of life, whereas a physical relationship between same-sex couples cannot.

4. Some same-sex couples have used surrogate mothers if a male couple, and donor sperm if a female couple in order to create progeny.

5. Surrogacy of a female or male type raises serious questions regarding the children born in these circumstances and the relationships between the three (3) adult people involved.

6. First, how will the child who is born by such a method be affected psychologically and mentally? What relationship will the child have, if any, to either the surrogate mother or the sperm donor father? If such treatments were to become routine and seen as a matter of equality, how will this change the nature of 'motherhood' and 'fatherhood'?

Such surrogacy or donation is different psychologically and socially from IVF treatment using sperm of a traditional married couple and needs to be considered carefully.

7. Second, what kind of relationship will there be between the surrogate mother and the two male members of a couple, or the sperm donor and the two female members of a couple? Based on these relationships, what kind of family bonds may be engendered? How will this affect the child in such a family psychologically and mentally?

8. Traditional marriage creates a strong bond between the child born to such a union, and enhances the relationship between the two biological parents. The same kind of relationship cannot exist between two people of the same gender and the child. The strong social bond arising from the procreational relationship is an important element in building a strong and stable society.

9. Recently, before the birth of his second child, Elton John expressed concern that in a playground setting his son might be subject to prejudiced questions such as 'Where's your Mum?' by other children. This concern illustrates the psychological issues which could be faced by children born by surrogacy to same-sex male couples. It also raises the question of whether a child asking such a question might be disciplined at school for being 'prejudiced' or 'homophobic'.

10. Surrogate birth and sperm donation to same-sex couples raises the further issue of whether such assistance should be provided routinely by the NHS because it is a matter of 'equality' and fairness. In my view, same-sex couples should be treated with legal equity, but it does not seem to me that equality can be used to support routine treatment of this type.

11. In the absence of any legal protections for persons adhering to the traditional understanding of marriage and the family, will such people be subject to legal prosecution or social harassment for being 'prejudiced' or 'homophobic'? This is a particular concern for teachers, lecturers, and public servants.

SUGGESTIONS

1. As in my previous comments, I feel that it is essential that the proposed legislation have a clear and precise definition of marriage, and one which concerns takes into consideration some of the important personal and social implications of this law if it were to be passed in its current form.

2. It is also essential that the law include legal protection for people to hold, affirm and state traditional views about the nature of marriage and the family without fear of prosecution, persecution, harassment or stigmatisation.

As currently framed, the legislation will not simply extend a right to a neglected group of people, but instead it will change dramatically the nature of family relations and, in the absence of legal protections, could be a serious threat to the ability of people to speak freely in the public sphere about the traditional understanding of marital and family relations, and the effect that changes might have on marriage and the family.

February 2013

Memorandum submitted by Canon Nicholas Anthony Turner (MB 64)

SUMMARY

Uniformity between opposite-sex and same-sex couples is at the heart of what is meant by Equal Marriage. Schedule 4, however, acknowledges legal distinctions between the two types. These in time will have to be removed by legislation. This inevitable revision will undermine the assurances given to churches and religious groups. In other words, the good intentions of the Bill will be undermined by the unintended consequences of Schedule 4.

AUTHOR

I am a Church of England Rector, and Canon Theologian of St Helena. I have studied closely all the relevant legislation, from the *Civil Partnership Act* through the *Gender Recognition Act* to the *Equality Act*, and have written at some length on these subjects in various national and regional magazines.

I have expressed in print my support for gay marriage since 2004, but I have had many concerns with the unintended consequences of the actual pieces of legislation. If the *Civil Partnership Bill* was too detailed [eg

50.1.c], this Bill is not detailed enough. I do not speak on behalf of anyone else, but I do hope that my suggestions are helpful.

SUBMISSION

1. The purpose of the Bill is to make marriage equal between opposite-sex and same-sex couples; ie not to introduce a separate and distinct form of same-sex marriage.

2. The need for uniformity has been increased by the rejection of civil partnerships for opposite-sex couples (not part of this Bill, but part of the consultation leading up to it). This means that any rights and advantages available to civil partners should, as a matter of equality, also be available to opposite-sex equal-marriage couples.

3. Equal-marriage for same-sex couples should offer the same rights and advantages as do civil partnerships. Just as equal-marriage for opposite-sex couples should offer the same rights and advantages as equal-marriage for same-sex couples. In a few small but significant instances, this does not appear to be the case.

4. Schedule 4 takes account of the legal differences between opposite-sex and same-sex equal marriages. In particular, adultery and consummation will continue to be understood only in their current legal forms. The 'common law presumption' seems to me a more interesting distinction, as it has consequences for a third party, namely the child, but I confess I have insufficient understanding of this particular point.

5. Therefore, it is inevitable that further legislation will be needed fully to establish the central purpose of this Bill, namely the uniformity of equal-marriage. It is not complete in itself, but only a (major) stage in a longer process of legislation.

6. The present Bill, in other words, presupposes [the term is a little loaded, but I cannot think of a better one] a further Bill to remove the precisely sexual elements embedded in the current understanding of marriage—adultery and consummation (and the implications of common law presumption?)—which separate opposite-sex from same-sex unions.

7. Even if no problems reveal themselves in the Courts (to whom the Government has left the responsibility for dealing with the implications of Schedule 4) this formal legal distinction between the two forms of equal-marriage is an impediment to the full expression of the proposed new law.

8. The principal and unintended consequence, of the fact that this Bill is not the last word, is that the promise of protection to religious groups becomes merely temporary. Most of the Bill is taken up with providing the 'quadruple locks' and other protections of conscience. Much of the protection is, necessarily, by way of *ad hoc* exceptions—Clause 1.3 and 2.5, to take two obvious examples. They are not general principles but specific exceptions.

9. Specific exceptions, especially when expressed in complex legal language and by reference to other Parliamentary Acts, are not as secure in the long term, as general principles which can be understood in broad and popular terms.

10. An appeal to natural justice can survive over decades, even centuries, long after the precise wording has become redundant or obscure. An appeal to a precise exception to a particular part of another Act simply does not carry the same long-term moral weight.

11. Put in other terms: the necessary uniformity expressed in the term Equal Marriage is left incomplete by the existence of Schedule 4. The subsequent legislative revision of the content of this Schedule undermines, I would argue, the protections provided for churches and other religious groups.

12. My own suggestion would be to remove at this stage, from Schedule 4, at least Parts Two and Three so as to establish manifest equality as soon as possible, and thus to pass on as few anomalies as possible to future sessions of Parliament.

13. There is one other anomaly that should be considered along with those above, relating to Clause 9. [I am relying on the *Government Response* of December 2012 as well as the Bill itself.] An opposite-sex couple cannot establish their marriage except by performative utterances, ie using words provided by the State. In popular terms they must make precise and public vows.

14. Same-sex couples can be married without having to exchange any vows at all: they can be married, in other words, without any content being imposed upon them from outside. Though not specified in the Bill, the conversion process from civil partnership to marriage does not require the use of words—any vows are entirely optional [6.13 *Response*].

15. Whether couples should or should not avail themselves of this option is not the point. The fact is same-sex couples will have this right in equal-marriage and opposite-sex couples will not.

Memorandum submitted by Peter Bowen (MB 65)

1. My name is Peter Bowen. I live in the Newport West constituency. I am making this personal submission because the views of over 641,000 voters who signed the Coalition for Marriage petition have been ignored by the Government. Also because of the suggestion that few constituents have complained to their MPs or to their bishops which has been taken to imply that there is support for the measure. Although I am a committed Anglican my submission is based solely on the conviction that the institution of marriage cannot be changed by Act of Parliament and to change the legal definition of marriage will have unforeseen consequences to the detriment of the institution and family life.

2. My wife and I are as one on this issue. We were married in the Anglican Church in 1968. We have two married daughters each with a boy and a girl in primary school. Although we are practicing Anglicans our objection to marriage for same-sex couples is based not so much on religious convictions but on the consequences for the institution of marriage. It has been suggested that marriage has changed over time. That is true but these changes have been about equality before the law involving one man and one woman. It is because the institution of marriage is so important that it should not be changed.

3. There is no mandate for this Bill. I have not met anyone who understands where the proposal has come from nor have I come across anyone who is in favour of the move other than on-line campaigners. Friends have threatened to cut party allegiances over the issue and if same-sex weddings or blessings are allowed in church they say they will leave. While the legislation provides legal protection for the Church of England and the Church in Wales, opinions differ on whether churches will be forced into conducting same-sex ceremonies. This has become a divisive issue in the church which would be better avoided.

4. Marriage is the joining together for life of one man and one woman to the exclusion of all others. To extend the meaning to include same-sex couples devalues unions already entered into. It is also in danger of corrupting the meaning of parenthood which is enshrined in the biological fact that new life requires a mother and a father to create another life. That is not to deny the ability of same sex-couples to bring up children. While children in care may prefer to be brought up in a 'home' environment, the notion that same sex-couples should therefore be permitted to marry and acquire children through surrogacy or other means is a travesty of the meaning of care and has more to do with the wants of the couple than the needs of children which should be paramount.

5. To accommodate such situations it is regrettable that the terms 'mother' and 'father' are being replaced by gender neutral terms such as 'parent 1' and 'parent 2'. This alone should be sufficient warning of the consequences of this misguided legislation. There are also warning signs that if the Bill becomes law attempts will be made to permit more than two people in a marriage. Much has been made of the inference that if people love each other they should be allowed to marry but from a Christian perspective we are all commanded to 'love one another'. The implications for marriage based on love alone have serious implications including the prospect of polygamy and incestuous relationships. Assurances against extensions have already proved worthless. Assurances that allowing civil partnerships would not lead to calls for same-sex marriage have been already been dismissed as outdated.

6. As a parent and grandparent I am concerned about the impact of the legislation in schools for teachers and for children if it is enshrined in law that same-sex couples are no different to heterosexual couples. The historic understanding of marriage implies the possibility of procreation within the family unit providing a stable environment for biological parenting. Suggestions have been made that the inability of some couples to have children is a reason to permit same-sex marriage. This is illogical. It is impossible for same-sex couples to have children because they do not have the ability for complementary sexual union.

7. The impact of the legislation in the work-place is likely to have further consequences to those already reported in the media regarding security of employment with implications for free speech. Public acceptance of the fact of homosexuality has resulted in the unforeseen consequence that people are now accused of homophobia if they do not sign up to what is mistakenly referred to as the equality agenda giving no opportunity for a genuine difference of opinion using political correctness to silence opposition.

8. I have listened to much of the evidence given to the Committee through the video link. The experience did little to encourage a feeling of democracy at work when some members of the committee appeared to be more intent on using the occasion as a platform for their particular life-styles than on taking evidence to form a conclusion. In particular I thought that the Coalition for Marriage representatives were given an unnecessary hard time compared with others whose evidence appeared to find more favour resulting in the now widespread implication that opponents of same-sex marriage are homophobic, bigoted or against equality. This is a complete travesty.

9. Equality has been provided in the civil partnerships legislation so that same-sex couples can enjoy the same rights and benefits as opposite sex couples obtain through civil marriage. The proposed Bill is a mistake.

10. SUMMARY. I oppose this legislation because there is no mandate to change the definition of marriage which could have far reaching unforeseen consequences. The qualities of love and equality are being misapplied. Equality for same-sex couples has already been provided through civil partnerships legislation.

Memorandum submitted by David Cade (MB 66)

FROM A SPECIALIST IN THE FIELD OF EDUCATION

I have taught in primary schools, secondary schools, and in universities. My partner and I are both 58-year-old males, we have been together for 20 years, and we have a Civil Partnership. We are currently refused the right to marry.

THE RELEVANCE OF MY EDUCATIONAL EXPERIENCE TO THIS LEGISLATION

As a primary school teacher I many times observed frightening homophobia issuing from pupils who were just 7 and 8 years old. Such homophobia ranged from what could be classified as “mild homophobia” involving pejorative taunts and name-calling, such as “You’re a queer, you are!”, and “Your mother’s a lesbian!”, to homophobia of a deeply-instilled and profoundly hateful nature. For example, I recall one 7 year-old sincerely and quietly sharing with the class her sincere and innocent understanding of what a gay person is: “They’re awful, filthy people, who do evil things with each other”. Instances such as this demonstrated to me that by the age of 7 children’s attitudes on such serious matters as the dignity (or not) of homosexual people have been firmly fixed and set in place. Interaction with my pupils’ parents revealed to me that their children’s hatred of homosexual people had been nurtured within the home. The children had faithfully absorbed their parents’ prejudices. My careful attempts to reverse those prejudices often seemed impossible and futile.

At secondary schools I observed that very small number of youngsters who slowly begin to recognise that their natural sexual attraction is not for the opposite sex but for their own. I observed how painfully difficult daily life is for such pupils when the whole curriculum is based upon the false notion that everyone in the world’s populations has been and is heterosexual. Too keenly they perceive that there is no, or very little, affirmation for people of their own sexual orientation and they receive the message that they are sub-standard.

At universities I observed how most homosexual students have by this stage learnt to keep their sexual orientation, or their sexual lives, quiet if not hidden. While heterosexual students happily, freely, and openly engage in romantic relationships with each other, I observed that homosexual students often find it safest to seek refuge in their studies, willingly allowing peers to perceive them as “swots”.

So my experience at primary, secondary, and tertiary levels of education revealed to me the profound effects that homophobia or, at best, a heterosexist view of existence, have upon the developing child, the teenager, and the young adult. This Bill has the power to help make a change to this situation: to remove the negativity of hatred towards homosexual people from the hearts and minds of heterosexual youngsters, and also to let homosexual youngsters see and know that their nation, their state, and their government, values them absolutely equally—even if certain religious groups do not.

REGARDING TEACHERS

I urge the committee to require all teachers in all schools to demonstrate respect to the Act’s granting of equal Civil Marriage to homosexual couples. If the Act allows teachers not to recognise the new equality of Civil Marriage, then the Act will, in effect, be a new form of the infamous and deliberately prejudicial “Section 28”.

Such a provision would enable teachers to indicate, at the very least, disrespect for homosexual couples, and thereby disrespect for homosexual people, including those teachers’ own homosexual students. At worst, such a provision would legalise the homophobia of certain teachers, regardless of whether that homophobia is motivated by personal preferences or religious beliefs. Furthermore, such a provision would result in **the absurd situation of the government continuing to support programmes to stamp out homophobic bullying in schools while at the same legally entitling teachers to besmirch marriage between two loving and committed homosexual citizens.**

CONSIDERATIONS BEYOND EDUCATION

Equal “Civil Marriage”, not separate “Same-Sex Marriage”

I urge the committee to ensure that the Act will absolutely share the institution of civil marriage with people who are homosexual, that the Act will not allow homosexual people just another second-rate form of union.

I agree with Maria Miller that marriage is “the gold standard”. I believe that it is that form of marriage which must now be shared with people who are homosexual. If justice is to be done, then Equal Marriage must be granted, and not “Partly Equal Marriage”.

REGARDING “CIVIL PARTNERSHIPS”

There have been suggestions that the Act could result in the “unfairness” of homosexual people having a choice of Civil Marriage or Civil Partnership and possibly even Religious Marriage (if their religious group is willing), while heterosexual people will not be granted Civil Partnership. I urge the committee to phase out Civil Partnerships by automatically upgrading all Civil Partnerships to Civil Marriages as part of the Act. Both heterosexual and homosexual people will then have the same choices: (1) Civil Marriage, (2) Religious Marriage, or (3) the option of not formally committing to another person. The only injustice that will then exist

is that the Act will allow ministers of religious groups to legally deny Religious Marriage to homosexual people, if such ministers choose.

REGARDING "ADULTERY"

I urge the committee to ensure the absolute equality of Civil Marriage for homosexual and heterosexual couples by ensuring that in the case of homosexual couples who seek divorce adultery may be cited, just as a member of a heterosexual couple may cite it. "Adultery" should be understood to simply mean unfaithfulness to one's married spouse by having had sexual relations with another person, regardless of the exact nature of those intimate physical relations.

A form of Civil Marriage that does not acknowledge the possibility of "adultery" will not be perceived by society as a whole as truly Equal Marriage. Homosexual people must be granted exactly the same form of Civil Marriage to which heterosexual people have access.

REGISTRARS

I urge the committee to require all public servants to carry out all of their duties on behalf of the state regardless of whatever personal or religious beliefs those public servants may hold. I urge the committee to ensure that no individual is employed as a registrar if he or she is not happy and willing to carry out the duties of a public servant with respect to all of the state's citizens, regardless of citizens' sexual orientations. Registrars currently employed who are not willing to respect all citizens equally in this manner should be required to forfeit their positions as public servants or to accept alternative positions if such positions are available.

February 2013

Memorandum submitted by John Guy (MB 67)

1. I write to express concern that the government continues to 'bulldoze' through its proposals for the 'Marriage (Same Sex Couples) Bill, for which it clearly has no mandate. Opinion surveys throughout the country indicate quite clearly that there is no enthusiasm for this bill's proposals, not even among the 'Gay' community.

2. The supplication I make is as a private individual who is a practising member of The Church of England. The whole concept of same sex partnerships goes clearly against the writings of The Bible and Christian Tradition. Not only that, it also goes against the teachings of other religions practiced in this country.

3. I write as a firm believer in democracy and I think that its proposal attempts to ride over the wishes of the majority in this country as I have already indicated. It is being done without the customary discussion draft such as white and green papers. In fact it was not even in the Conservative or Liberal Democrats Manifesto during the last General Election.

4. As a retired teacher who has spent most of his career working among troubled young people I have seen the damaging affect of unstable marriages as well as on single parent families. I think that that further eroding the stability of marriage will do nothing to help many of the kind of families that I worked with for many years. I am of the opinion that the Government should be devoting its time and energy working on ways to strengthen marriage and family life. I think that the proposals in this bill will not do anything to achieve this, rather it will confuse such people even more. The benefit of stable marriage and family life are undeniable.

5. The two countries in Europe that have already made single sex marriage legal have shown that heterosexual marriage has been badly eroded. The first country to legalise same-sex marriage was the Netherlands in 2001. In the first ten years since same-sex marriage was introduced marriage rates across the whole population have fallen. Same-sex marriage was legalised in Spain in 2005. Again since same-sex marriage was introduced marriage rates across the population have plummeted. I fear for the affect and stability this has had in these countries, and will also here if these proposals are made law here.

6. I am of the opinion that 'Gay' couples will not gain any substantive new rights through marriage that are not already available to them already in civil partnerships. I am very concerned that we are taking great risks with a very important institution that, in terms of substantive rights, is not actually needed by the people the change is designed to benefit.

I would therefore, in conclusion, I would urge the Government to abandon proposals to enact The Marriage (Same Sex Couples) Bill.

February 2013

Memorandum submitted by The Equal Rights Trust (MB 68)

ABOUT THE EQUAL RIGHTS TRUST

The Equal Rights Trust (ERT) is an independent international human rights organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

ERT focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

1. INTRODUCTION

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. ERT is the only international human rights organisation which focuses exclusively on the rights to equality and non-discrimination as such. Established as an advocacy organisation, resource centre, and think tank, ERT focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice. In working to accomplish this mission, from time to time we submit legal opinions to governments and parliaments concerning the implementation and enforcement of equality rights.

2. ERT welcomes the Marriage (Same Sex Couples) 2012–13 (the Bill), which opens up the institution of marriage to couples of the same sex and thereby removes the current discrimination against persons on grounds of their sexual orientation with regard to the ability to marry the person they love. Subject to the comments and recommendations set out below, we believe that the adoption of this Bill would address one of the few remaining areas of legal inequality on grounds of sexual orientation in the United Kingdom. Therefore, as a result of this Bill's adoption, the United Kingdom would have some of the strongest and most progressive legislation protecting the rights of lesbian, gay and bisexual people.

3. Notwithstanding ERT's overall support for the Bill, however, we believe that there remain a number of provisions within the Bill which do not fully comply with the rights to equality and non-discrimination as set out in international human rights law, and which render the Bill unnecessarily weaker as a result. In our view, by adopting the recommendations set out in this submission, the Committee would significantly strengthen the Bill and ensure that it is fully compliant with the rights to equality and non-discrimination as protected by international human rights law.

4. In analysing the Draft Bill, ERT has applied the standards contained in the Declaration of Principles on Equality.¹⁸⁴ The Declaration of Principles on Equality was drafted and signed by 128 human rights and equality experts from over 40 different nations. It reflects a moral and professional consensus on the right to equality. The 27 principles of the Declaration take their starting point from the United Nations Declaration on Human Rights providing that "all human beings are born free and equal in dignity and rights".¹⁸⁵ The principles are based on concepts and jurisprudence developed in international, regional and national contexts and are intended to assist the efforts of legislators, the judiciary, civil society organisations and anyone else involved in combating discrimination and promoting equality. The Declaration has been described as "the current international understanding of principles on equality"¹⁸⁶ and has been fully endorsed by the Parliamentary Assembly of the Council of Europe, which has recommended to member states to take it into account when developing their national legislation and policies.¹⁸⁷

5. In addition to the Declaration of Principles on Equality, ERT has also referred, where relevant, to international human rights law, and in particular to the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. The evolution in the Court's jurisprudence in relation to same sex couples, culminating in *Schalk and Kopf v Austria*¹⁸⁸ makes clear that the relationship between same sex couples is protected by the "right to respect for family life" in Article 8. Further, although the Court also stated that the recognition of same sex marriages falls within the margin of appreciation of states, this will, of course, be subject to developments within the member states of Council of Europe. As a greater number of member states provide for the recognition of same sex marriages, this margin of appreciation will decrease in scope. As the margin of appreciation decreases, the Court's Article 14 jurisprudence on discrimination is likely to apply to English law in this area.

2. DIFFERENCES BETWEEN CIVIL MARRIAGES AND RELIGIOUS MARRIAGES/MARRIAGES SOLEMNISED BY RELIGIOUS ORGANISATIONS: CLAUSES 1 TO 8 AND SCHEDULE 1

6. Clauses 1 to 8 of, and Schedule 1 to, the Bill open up the institution of marriage to persons of the same sex and make amendments to a number of pieces of legislation, primarily the Marriage Act 1949, with the effect of permitting civil same sex marriages in register premises, approved premises, and for persons who are housebound or detained; and religious same sex marriages where the religious organisation "opts in" to conducting such marriages.

7. The piecemeal development of marriage law in England and Wales has resulted in a number of different ways by which a marriage may be conducted. These were set out in the consultation document produced by the Government Equalities Office, as follows:

¹⁸⁴ *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

¹⁸⁵ Article 1 of the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

¹⁸⁶ *Naz Foundation v. Government of NCT of Delhi and Others* 160 Delhi Law Times 277 (2009), Para 93.

¹⁸⁷ Parliamentary Assembly of the Council of Europe, Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe, REC 1986 (2011), 25 November 2011.

¹⁸⁸ Application No 30141/04, 24 June 2010.

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- (a) Marriages according to the rites of the Church of England or Church in Wales;
 - (b) Marriages according to the rites of the Society of Friends (the Quakers);
 - (c) Marriages according to the Jewish religion;
 - (d) Other religious marriages in a registered building and in the presence of an authorised person;
 - (e) Marriages in a register office conducted by a superintendent registrar and registered by a registrar;
 - (f) Marriages on approved premises conducted by a superintendent registrar and registered by a registrar; and
 - (g) Marriages for the housebound or detained, as well as “death bed” marriages.¹⁸⁹
8. These various methods of conducting marriages may be broadly divided into three categories:
- (i) Marriages which are entirely “religious” in their nature. This category would include (a), (b) and (c) in that the marriage is conducted by a religious celebrant and the involvement of the state is limited solely to recognition of the marriage thus conducted;
 - (ii) Marriages which are partly “religious” and partly “civil” in their nature. This category would include (d) in that the marriage is conducted in a religious building by a religious celebrant, but the presence of a person authorised by the Registrar General is required; and
 - (iii) Marriages which are entirely “civil” in their nature. This category would include (f), (g) and (h) in that there is no religious element involved and the marriage is conducted in the presence a public servant (ie a superintendent registrar).
9. ERT proposes to address each of these three categories separately, as each raises different issues in relation to the rights to equality and non-discrimination, though some general principles can be said to apply to marriage generally and therefore to all three categories.

2.1. *The Regulation of Marriage is a Public Function*

10. In the view of ERT, international and regional human rights law (including the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights) and English law clearly recognise that the regulation of marriage is a public function.

11. Marriage between two persons has long been recognised under English law. Until the Marriage Act 1753, the state had no involvement in the conduct of marriage save that it recognised marriages conducted in accordance with the Canons of the Church of England. Since then, the state’s involvement in marriage has changed dramatically. The Marriage Act 1753 set down legal requirements for a marriage to be valid. Such requirements included that the marriage should take place in a church or chapel and be conducted by a minister, and that a formal marriage announcement (banns) or licence should be obtained prior to the marriage taking place. Under the Marriage Act 1836, the state has conducted civil marriages itself. Today, the law on marriage is entirely set down in statute and dozens of separate pieces of legislation, in areas as diverse as wills and the administration of estates, inheritance, housing and tenancies, criminal justice, immigration and social security, refer to marriage and to persons who are married.

12. The state therefore has an indispensable role in relation to marriage in that it (a) recognises marriages conducted by certain religious organisations, (b) conducts marriages, and (c) regulates the position of married persons through legislation in areas such as those listed above. The effect is that the *conduct, recognition and regulation* of marriages are roles of the state. The exception to this is that, through various provisions of the Marriage Act 1949, the capacity to *conduct* marriages can be delegated to religious organisations either entirely (in the case of the Church of England, the Church in Wales, the Society of Friends (the Quakers) and the Jewish religion) or partially (all other religions).

13. Principle 8 of the Declaration of Principles on Equality defines the scope of the rights to equality and non-discrimination as “all areas of activity regulated by law”. As the law regulates the conduct of marriages, the rights to equality and non-discrimination apply in this field. Principle 8 of the Declaration reflects the scope of Article 26 of the International Covenant on Civil and Political Rights (ICCPR) which states that:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination...*¹⁹⁰

14. The United Nations Human Rights Committee has interpreted Article 26 as “prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities”.¹⁹¹

15. English law itself also recognises that international and domestic human rights law, and in particular the European Convention of Human Rights, applies to the conduct of marriages as a function of the state (or public function). For example, upon the introduction of the Human Rights Act 1998—which incorporated the European

¹⁸⁹ Government Equalities Office, *Equal Civil Marriage: A Consultation*, March 2012, Para 2.4.

¹⁹⁰ G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

¹⁹¹ Human Rights Committee, *General Comment No. 18: Non-discrimination*, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 1994, Para 12.

Convention on Human Rights into national law—the then Home Secretary, Jack Straw, during the Committee debate of the Bill in the House of Commons stated that:

Much of what the Churches do is, in the legal context and in the context of the European Convention on Human Rights, essentially private in nature, and would not be affected by the Bill even as originally drafted. For example, the regulation of divine worship, the administration of the sacrament, admission to Church membership or to the priesthood and decisions of parochial church councils about the running of the parish church are, in our judgment, all private matters.

In such matters, Churches will not be public authorities; the requirement to comply with convention rights will not bite on them. We do not believe that, for example, the Church of England, the Church of Scotland or the Roman Catholic Church, as bodies, would be public authorities under the Bill. I was asked to clarify that by many people, not least the Cardinal Archbishop.

On the occasions when Churches stand in place of the state, convention rights are relevant to what they do. The two most obvious examples relate to marriages and to the provision of education in Church schools. In both areas, the Churches are engaged, through the actions of the minister or of the governing body of a school, in an activity which is also carried out by the state, and which, if the Churches were not engaged in it, would be carried out directly by the state.¹⁹² (Emphasis added.)

16. In the same debate, the Home Secretary stated:

*There was a time when one could get married only in church but, these days, marriage is a matter of civil law—it is the exercise of a public right. The Churches are standing in the stead of the state in arranging the ceremony of marriage, which is recognised not only in canon law, but in civil law. In that instance, the Church is performing a function not only for itself, but for civil society.*¹⁹³ (Emphasis added.)

17. The conduct of marriages is also recognised as a public function by the Equality Act 2010. Section 29 of the Act prohibits discrimination in the provision of services. Section 31(1) of the Equality Act defines “provision of a service” as including the “the provision of a service in the exercise of a public function” and section 31(4) defines “public function” as “a function that is a function of a public nature for the purposes of the Human Rights Act 1998”. That the conduct of marriages is regarded as a provision of a service is explicitly, though indirectly, recognised through Part 6 of Schedule 3 to the Act which provides an exception to section 29 in that refusal of religious organisations to solemnise a marriage on grounds of the gender reassignment of one or both of the participants will not constitute unlawful discrimination.

18. The Marriage (Same Sex Couples) Bill itself recognises that the conduct of marriages is the provision of a service through subclause 2(5) which inserts a new Part 6A into Schedule 3 to the Equality Act 2010 which will extend the exception to section 29 in that refusal of a person to (a) conduct a relevant marriage, (b) be present at, carry out, or otherwise participate in, a relevant marriage, or (c) consent to a relevant marriage being conducted on grounds that marriage is between two persons of the same sex will not constitute discrimination. “Relevant marriage” is defined in subclause 1(4) as any religious marriage and so the exception will not apply to civil marriages.

19. It is clear, therefore, that the conduct of a marriage, wherever it takes place, and whoever is conducting the marriage, is the provision of a service and, indeed, a public function, and is therefore within the scope of international human rights law.

2.2. Marriages which are Entirely Religious in Nature

20. Marriages which are entirely religious in nature are those which are conducted by the Church of England, the Church in Wales, the Society of Friends (the Quakers) and the Jewish religion. They are entirely religious in nature in that the marriage is conducted in a religious building by a religious celebrant with no state involvement, save that the state recognises the marriage that has been thus conducted. Thus, while these marriages are entirely religious, as the paragraphs above make clear, these institutions are undertaking a public function on behalf of the state, by virtue of the state recognition of the marriages which they conduct.

21. In the view of ERT, by permitting these religious organisations to refuse to conduct same sex marriages, the Bill allows these institutions to directly discriminate on the basis of sexual orientation. The Bill expressly permits the different and unfavourable treatment of lesbian, gay and bisexual people in the exercise of marriage by these institutions. While ERT accepts that these institutions should be free to determine the doctrines applicable to marriage in accordance with the tenets of their religion, such religious freedom does not extend to acts which constitute public functions. To the extent that these institutions are undertaking a public function, they are bound by obligations under international and domestic human rights law not to discriminate on grounds of sexual orientation.

¹⁹² Hansard HC Deb, 20 May 1998, vol 312, col 1017.

¹⁹³ Ibid., col 1017 to 1018.

22. Principle 5 of the Declaration of Principles on Equality provides a definition of direct discrimination:

*Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*¹⁹⁴

23. This definition reflects the current understanding of direct discrimination in international law. For example, the United Nations Committee on Economic, Social and Cultural Rights, in interpreting the prohibition against discrimination in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, has provided the following definition:

*Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; eg where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (eg the case of a woman who is pregnant).*¹⁹⁵

24. Similarly, European Union law defines discrimination as: “where one person is treated less favourably than another is, has been or would be treated in a comparable situation [on a prohibited ground].”¹⁹⁶

25. The European Court of Human Rights has used the following formulation: “differences in treatment based on an identifiable characteristic, or “status” ... of persons in analogous, or relevantly similar, situations.”¹⁹⁷

26. These definitions are reflected in English law via section 13 of the Equality Act 2010 which provides:

13 Direct Discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

27. The Bill, by permitting religious institutions to “opt out” of the provision of same sex marriages, allows these institutions to treat lesbian, gay and bisexual people less favourably on the basis of their sexual orientation in respect of marriage. By allowing the specified institutions to refuse to provide same sex marriages, the Bill has the effect of denying lesbian, gay and bisexual persons the ability to express their emotional, affectional and sexual attraction to a person of the same sex through marriage in one of these institutions, in a way which is not denied to heterosexual people.

28. Principle 5 of the Declaration of Principles on Equality provides that direct discrimination “may be permitted only very exceptionally, when it can be justified against strictly defined criteria”.

29. The sole justification which has been put forward for the differential treatment between opposite sex marriages and same sex marriages is the protection of religious freedom. ERT accepts that the protection of religious freedom is a legitimate aim in international human rights law and, in fact, is explicitly recognised under, for example, Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the European Convention on Human Rights.

30. ERT believes, however, that the debate about the need for religious organisations to “opt out” of the requirement to conduct same sex marriages has placed insufficient emphasis upon the public function that the religious organisation is carrying out. The evolution of English marriage law is such that the religious ceremony and the public function of conducting a marriage are fused together. This conflation of these two actions has resulted in a failure properly to appreciate the clear distinction between the private, religious act and the public function which a religious institution is carrying out when performing a marriage recognised by the state. While the individual religious organisation is entirely free to determine its doctrines—including the necessary criteria for persons wishing to marry under its doctrines—when acting as a private institution, the public function of conducting a marriage recognised by law must be conducted without discrimination.

¹⁹⁴ See above, note 1, Principle 5.

¹⁹⁵ Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 10.

¹⁹⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2(2)(a); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2(2)(a); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 2(a); and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 2(1)(a).

¹⁹⁷ See, for example, *Carson and Others v United Kingdom* (Application No. 42184/05), 16 March 2010, Para 61. See also *D.H. and Others v the Czech Republic* (Application No. 57325/00), 13 November 2007, Para 175; and *Burden v United Kingdom* (Application No. 13378/05), 29 April 2008, Para 60.

Recommendation 1: The Bill and any other relevant legislation should be amended so as to provide that the Church of England, the Church in Wales, the Society of Friends (the Quakers) and the Jewish religion must not discriminate against same sex couples when carrying out their public function of conducting marriages on behalf of and in the stead of the state. These religious organisations should, however, be free to conduct religious marriages which are *not* automatically recognised by the state (and therefore not public functions) according to their own doctrines.

2.3. *Marriages which are Partly Religious in Nature and Partly Civil in Nature*

31. Marriages which are partly religious in nature and partly civil in nature are those conducted by all other religions under section 44 of the Marriage Act 1949. Whilst the ceremonies are religious and conducted by a religious celebrant, the marriage must be conducted in the presence of either (a) a registrar of the registration district in which the registered building is situated, or (b) an authorised person whose name and address have been certified (...) by the trustees or governing body of that registered building or of some other registered building in the same registration district.¹⁹⁸

32. For the same reasoning set out in section 2.2 of the submission above, ERT believes that, to the extent that they take advantage of the privilege to conduct marriages on behalf of the state, rather than conducting marriages which are purely religious, religious organisations are fulfilling a public function. As such, they assume the responsibilities that lie with carrying out public functions, including the obligation to respect and protect the rights to equality and non-discrimination.

Recommendation 2: The Bill should be amended so as to provide that all other religious organisations must not discriminate against same sex persons when carrying out the public function of conducting marriages on behalf of and in the stead of the state. These religious organisations should, however, be free to conduct religious marriages which are *not* automatically recognised by the state (and therefore not public functions) according to their own doctrines.

2.4. *Marriages which are Entirely Civil in Nature*

33. ERT notes that the Bill will treat same sex marriages and opposite marriages conducted in civil ceremonies as equivalent for all purposes and that there is no exception to the Equality Act 2010 for civil marriages.

34. ERT welcomes the provisions in Part 1 of Schedule 7 to the Bill which will provide that all premises currently approved to conduct opposite sex marriages under section 26(1)(bb) of the Marriage Act 1949, as amended by section 3 of the Bill, will automatically be approved to conduct same sex marriages, and that in future, any applications for approval will be for both opposite sex and same sex marriages. Proprietors or trustees of approved premises—whether already approved or approved in the future—will not, therefore, be able to refuse to permit same sex marriages to take place on those premises.

3. JURISDICTIONS RECOGNISING SAME SEX MARRIAGES (CLAUSE 10 AND SCHEDULE 2)

35. Section 10(3) and Schedule 2 to the Bill contain provisions on how same sex marriages conducted in England and Wales are to be recognised in Scotland and Northern Ireland.

36. Paragraph 1(1) of Schedule 2 provides that the Secretary of State may pass an order providing that the law of Scotland will recognise such a marriage as a civil partnership in Scotland. Such an order may only be made if same sex marriage is not lawful in Scotland (paragraph 1(3)). The Scottish Government announced in July 2012 that it would introduce legislation to allow same sex marriage in Scotland and in December 2012 published the Draft Marriage and Civil Partnership (Scotland) Bill for consultation with a view to introducing a Bill in the Scottish Parliament during this legislative session. It is therefore unlikely that the order-making power provided in paragraph 1(1) will need to be used.

37. Paragraph 2(1) of Schedule 2 provides that under the law of Northern Ireland, a same sex marriage is to be treated as a civil partnership. In October 2012, the Northern Ireland Assembly voted by 50 to 45 against a motion calling for the introduction of same sex marriages. It therefore appears likely that Northern Ireland will be the only constituent country in the United Kingdom which will not conduct or recognise same sex marriages and will instead treat such marriages entered into in the rest of the United Kingdom as civil partnerships.

38. ERT notes the government's explanation in the consultation and the consultation response that marriage is a devolved matter in respect of Northern Ireland.¹⁹⁹ However, ERT would remind the Committee that responsibility for the implementation of international human rights law ultimately lies with the United Kingdom government, and it is therefore for the United Kingdom government to ensure that the rights to equality and non-discrimination are protected across the full jurisdiction, including Northern Ireland, regardless of any legislation concerning devolution.

¹⁹⁸ Section 44(2) of the Marriage Act 1949.

¹⁹⁹ Government Equalities Office, *Equal Civil Marriage: A Consultation*, March 2012, Para 2.37; HM Government, *Equal Marriage: The Government's Response*, December 2012 Para 9.4.

39. ERT believes that there is a significant risk that the Bill as currently drafted creates a discriminatory anomaly in that marriages between opposite sex couples will be treated as marriages in Northern Ireland while marriages between same sex couples will be treated as civil partnerships.

40. ERT would remind the Committee that although Article 12 of the European Convention on Human Rights does not compel states to introduce same sex marriage, the European Court of Human Rights stated in *Schalk and Kopf v Austria* (2010)²⁰⁰ that:

*[T]he Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex. However, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State.*²⁰¹

41. Therefore, in the view of ERT, while a state is free to regulate same sex marriage in *allowing* it or not, where a state has decided to provide for same sex marriage, these marriages fall within the ambit of Article 12. Thus, the positive decision by a state to permit same sex marriages extends the right to marry under Article 12 to include same sex couples. Moreover, the European Court of Human Rights, again in *Schalk and Kopf v Austria*, recognised that same sex couples have a right to family life under Article 8 of the European Convention on Human Rights. As the regulation of marriage is clearly connected to an important aspect of family life, these marriages also fall within the ambit of Article 8.

42. As the regulation of same sex marriages falls within the ambit of Articles 8 and 12, the non-discrimination provisions of Article 14 must apply. As a consequence, a state is not permitted to regulate same sex marriages in a discriminatory manner any more than it is permitted to regulate opposite sex marriages in a discriminatory manner.

43. Under Article 1 of the European Convention of Human Rights, the United Kingdom has undertaken to “secure to everyone within [its] jurisdiction the rights and freedoms defined in Section I of this Convention”. Therefore, while we note the government’s position that the regulation of marriage is a devolved matter, we urge the Committee to consider this contention in light of the primary obligation of the state to protect the human rights of all persons within its jurisdiction. ERT therefore calls on the Committee to consider whether the devolution of the regulation of marriage is compatible with the obligations of the state to protect the rights arising under Article 14 in conjunction with Articles 8 and 12 of the European Convention.

Recommendation 3: The Committee should consider the extent to which the state should be permitted to devolve the regulation of marriage, where such devolution may result in differential and discriminatory treatment of some persons within its jurisdiction, on the basis of their sexual orientation and/or place of residence.

4. DIFFERENCES BETWEEN OPPOSITE SEX MARRIAGES AND SAME SEX MARRIAGES (CLAUSE 11 AND SCHEDULES 3 AND 4)

4.1. *Presumption on Birth of Child to Married Woman (Schedule 4, Part 2)*

44. The presumption of legitimacy is a longstanding rule of English common law, concisely stated by the Lord Chief Justice of the Court of Common Pleas when delivering the unanimous opinion of the judges in the *Banbury Peerages Case*:

*[T]he birth of a child from a woman united to a man by lawful wedlock is, generally, by the law of England, prima facie evidence that such a child is legitimate.*²⁰²

45. The presumption is a rebuttable one, the burden being on the party who submits evidence that the child is *not* that of the husband to prove, on the balance of probabilities, that the child *is not* that of the husband.²⁰³

46. Part 2 of Schedule 4 to the Bill provides that the common law presumption of legitimacy (the presumption that a child born to a woman who is married is the child of her husband) will not apply to marriages between two women. The effect is that where, in a marriage between two women, one of the women gives birth, there will be no common law presumption that her wife is a parent of the child. The Bill seeks to partially remedy this differential treatment through an amendment to section 42 of the Human Fertilisation and Embryology Act 2008 (HFEA 2008) as follows:²⁰⁴

²⁰⁰ See above, note 5.

²⁰¹ *Ibid.*, Para 61.

²⁰² (1811) 1 Sim. & St. 153, per Sir James Mansfield CJ.

²⁰³ Section 26 of the Family Law Reform Act 1969.

²⁰⁴ The amendment is made by paragraph 36 of Schedule 7 to the Bill.

Section 42 of HFEA 2008 (current)	Section 42 of HFEA 2008 (<i>as amended</i>)
<p>Woman in civil partnership at time of treatment</p> <p>(1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership, then subject to section 45(2) to (4), the other party to the civil partnership is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).</p> <p>(2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).</p>	<p>Woman in civil partnership at time of treatment <i>or marriage to a woman</i></p> <p>(1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership <i>or a marriage with another woman</i>, then subject to section 45(2) to (4), the other party to the civil partnership <i>or marriage</i> is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).</p> <p>(2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1).</p>

47. Thus, while the amendment to section 42 of the HFEA 2008 will ensure that the wife of a woman who gives birth will be in an equivalent position to a husband of a woman in an opposite sex relationship who gives birth where the child was conceived through assisted reproduction under the HFEA 2008, it will not provide such equivalence where the child was not conceived through assisted reproduction under the HFEA 2008. The wife of a woman who chooses to conceive in other ways—for example through an informal agreement with a sperm donor—would not enjoy the presumption of parentage.

48. Moreover, ERT notes that the presumption of parentage as currently defined (and as left unchanged by the Bill in its current form) presents a number of other problems of discrimination in the context of the wide range of familial relationships which exist today. At present for example, the law creates a clear distinction on the basis of marital status between the fathers of children born in a marriage and fathers who are not married to the mother of their child. In addition, irrespective of the amendment to the HFEA noted above, the Bill is silent on the question of the presumed parentage of men in same sex relationships. Yet ERT notes that, for reasons connected with the nature of childbirth itself, it is not possible to conceive of how the presumption of legitimacy could be expanded to include male parents in same sex relationships without creating other inconsistencies in the law.

49. ERT believes that the presumption of legitimacy is an anachronism, out of place in a modern system of family law. It predates both the scientific techniques which allow parentage to be established without doubt and the social advances which recognise as normal a far wider range of family relationships than solely those consisting of a married relationship between men and women. In addition, as exemplified above, the presumption discriminates both on grounds of marital status and sexual orientation. We note that, while some of the discriminatory impacts of the presumption can be addressed through amendment to the law, it is not possible to conceive of how the presumption could be amended to ensure its full consistency with the right to non-discrimination, without nullifying the presumption's essential nature and purpose.

50. We are therefore of the view that the consideration of this Bill presents an opportunity to consider removing the presumption from English law. We note however that the presumption cannot be viewed in isolation, as it is intimately bound up with the law more generally on parentage and affiliation, legitimacy and legitimation. ERT therefore believes that, prior to the deletion of the presumption, a comprehensive review of the law on parentage and affiliation, legitimacy and legitimation should be undertaken with a view to identifying a suitable replacement for the presumption which is consistent with the rights to equality and non-discrimination.

Recommendation 4: The presumption of legitimacy should be removed from English law. Prior to any Act removing the presumption, there should be a comprehensive review of the law on parentage and affiliation, legitimacy and legitimation in order to identify a suitable replacement which is compatible with the rights to equality and non-discrimination.

4.2. Divorce and Annulment of Marriage (Schedule 4, Part 3)

51. The effect of Part 3 of Schedule 4 to the Bill is two-fold: first, adultery will be defined in statute as only comprising sexual activity between two persons of the opposite sex; second, non-consummation of a marriage, whether through incapacity or wilful refusal, will result in the marriage being voidable only if it is an opposite sex marriage and not a same sex marriage.

4.2.1. Adultery

52. Paragraph 3 of Schedule 4 will insert new subsection (6) into section 1 of the Matrimonial Causes Act 1973. This subsection will define adultery as sexual activity between two persons of the opposite sex, giving

statutory footing to the current definition in the common law.²⁰⁵ This amendment to the Matrimonial Causes Act 1973 represents a departure from the original consultation which indicated that case law would be allowed to develop to provide a definition of what constitutes adultery in the context of a same sex marriage.²⁰⁶

53. In the view of ERT, the distinction which this provision creates—between sexual acts outside of marriage between persons of opposite and same sex—is, essentially, an irrelevant one when considering the nature and effect of adultery as commonly understood. Moreover, while we note that there will be occasions where persons in opposite sex marriages wish to claim adultery where their husband or wife has had sexual relations with a person of the same sex, this distinction treats less favourably homosexuals seeking divorce on the basis of their spouse alleged adultery, as the homosexual spouse would ordinarily have engaged in extramarital sex with a same sex partner. The effect of the amendment is to create a definition of adultery which will leave many persons in a same sex marriage unable to rely upon section 1(2)(a) of the Matrimonial Causes Act 1973 where their husband or wife has committed “adultery” with someone of the same sex. Therefore, it is our view that this distinction directly discriminates on grounds of sexual orientation. (It should however be noted that the opposite is true in respect of those who are accused of adultery: the amendment would directly discriminate against heterosexuals who are themselves accused of adultery as compared to homosexuals accused of adultery.)

54. Principle 8 of the Declaration of Principles on Equality provides that the rights to equality and non-discrimination apply “in all areas of activity regulated by law” which undoubtedly includes the regulation of family law, including divorce law and the grounds upon which divorce may be granted.

55. ERT sees no justification for this differential treatment. Persons in same sex marriages will be disadvantaged in that, in a large proportion of cases where their husband or wife has sexual relations outside of marriage, they will be unable to rely on this fact within section 1(2)(a) of the Matrimonial Causes Act 1973. In 2011, this section was relied upon in 15% of all divorces in England and Wales, a total of 17,302 divorces.²⁰⁷ It is therefore reasonable to predict that there are likely to be many persons in same sex marriages in the future who wish to divorce on grounds of “adultery” but will be unable to do so due to the restrictive definition in the Bill.

56. ERT notes that the alternative ground of “unreasonable behaviour” provided in section 1(2)(a) of the Matrimonial Causes Act 1973 will be available to a person in a same sex marriage who wishes to divorce their partner if they have had sexual relations outside the marriage. However, the fact remains that in many cases where a person has sexual relations outside of a same sex marriage, the other person in that marriage will be unable to rely on the ground of adultery, while relatively few people in opposite sex marriage will find themselves so restricted.

57. Moreover, ERT reminds the committee that one of the key principles behind the introduction of this Bill was to remove the segregation of opposite sex and same sex couples and to allow *all* couples to enter into a single non-segregated institution. The symbolism behind the distinction created by this amendment—that adultery is something that only heterosexuals can do, and, implicitly, that adultery by a heterosexual is more serious than adultery by a gay man or lesbian—seriously undermines this principle. It indicates that sexual infidelity is less of a concern for same sex marriages than opposite sex marriages, and is likely to contribute to the perpetuation of the stereotype of promiscuity amongst LGB people.

58. ERT therefore urges the Committee to amend this provision of the Bill to ensure that adultery is defined as including sexual activity outside of marriage with a person of the opposite sex or the same sex.

Recommendation 5: The Bill should be amended so as to provide that adultery includes sexual activity with a person of the opposite or the same sex.

4.2.2. Consummation

59. Paragraph 4 of Schedule 4 will amend section 12 of the Matrimonial Causes Act 1973 to provide that non-consummation will only render voidable an opposite sex marriage and not a same sex marriage. As with the provisions relating to adultery, this represents a departure from the original consultation which indicated that case law would be allowed to develop to provide a definition of what constitutes consummation between two men or two women.²⁰⁸

60. The current standard definition of what will constitute consummation is sexual intercourse through penile penetration of the vagina which is “ordinary and complete” and not “partial and imperfect”.²⁰⁹ A marriage is voidable regardless of whether the non-consummation is due to incapacity of either party²¹⁰ or the wilful refusal of the respondent in nullity proceedings.²¹¹

²⁰⁵ *Dennis v Dennis* [1955] 2 All ER 51.

²⁰⁶ See above, note 6, Para 2.16.

²⁰⁷ Office for National Statistics, *Divorces in England and Wales – 2011, 2012*, available at: <http://www.ons.gov.uk/ons/rel/vsob1/divorces-in-england-and-wales/2011/stb-divorces-2011.html>.

²⁰⁸ See above, note 23.

²⁰⁹ *DE v Attorney General* (1845) 163 ER 1039.

²¹⁰ Section 12(1)(a) of the Matrimonial Causes Act 1973.

²¹¹ Section 12(1)(b) of the Matrimonial Causes Act 1973.

61. ERT believes that the amendment to the law relating to consummation of marriages made by the Bill constitutes direct discrimination on grounds of sexual orientation. (We also note that the law on consummation as it stands at present constitutes discrimination on grounds of disability, where such disability means that the person is incapable of sexual intercourse which satisfies the definition of consummation.)

62. As noted above, Principle 8 of the Declaration of Principles on Equality provides that the rights to equality and non-discrimination apply “in all areas of activity regulated by law”. This undoubtedly includes the regulation of family law, including the grounds upon which a marriage is voidable.

4.2.2.1. Sexual Orientation

63. Direct discrimination is defined in Principle 5 of the Declaration of Principles on Equality as follows:

*Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment.*²¹²

64. Under the Bill, a person in a same sex marriage will be explicitly disbarred from citing non-consummation of the marriage, whether through incapacity or wilful refusal, as ground for annulling the marriage, whereas a person in an opposite sex marriage will be able to do so.

65. Decrees of nullity have a number of important effects in law, including permitting the courts to make financial provision orders (section 23 of the Matrimonial Causes Act 1973), property adjustment orders (section 24 of the Act), pension sharing orders (section 25 of the Act), and orders with respect to children under the Children Act 1989.

66. Thus, the inability of a person in a same sex marriage to annul that marriage where it would be voidable if it were an opposite sex marriage is undoubtedly “less favourable treatment” or a “detriment” in that it deprives them of an important legal remedy with potentially significant consequences.

67. This “less favourable treatment” or “detriment” is inextricably linked to the sexual orientation of the person as it is only persons in same sex marriages—where the parties will inevitably be homosexual (or bisexual) who will be unable to take advantage of the remedy.

68. The government has not put forward any justification for this differential treatment, save that they were dissuaded from their original proposals not to change the law and to let case law develop naturally by consultation responses from the Catholic Bishops’ Conference of England and Wales and the Family Law Bar Association, amongst others, that “it would not be acceptable to leave such uncertainty in the law”.²¹³

69. Principle 5 of the Declaration of Principles on Equality provides that “direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria”.

70. The government has not sought to justify this differential treatment between same sex marriages and opposite sex marriages; nor can any reasonable justification be put forward. While ERT believes that the state is entitled to regulate family law, and to set down (or not set down, as the case may be) particular grounds which render a marriage voidable and subject to annulment, it is not entitled to do so in a way which directly discriminates on grounds of sexual orientation without providing a justification against strictly defined criteria.

71. ERT again reminds the committee that one of the key principles behind the introduction of this Bill was to remove the segregation of opposite sex and same sex couples and to allow *all* couples to enter into a single non-segregated institution. The symbolism that consummation is something that is only relevant to opposite sex marriages, and, thus, that the sexual aspect within a marriage is more important to heterosexual people than LGB people denies the sexuality of LGB people. Indeed, the combined effect of the segregation between opposite sex marriages and same sex marriages in respect of the law on adultery and consummation enforces the legal notion that only sexual activity between two persons of the opposite sex is valid and that a different sexual culture exists within the LGB community that does not exist amongst heterosexuals.

72. ERT therefore concludes that, if marriage law is to continue to include provisions on consummation, they should be non-discriminatory in their application and therefore apply both to opposite sex and same sex marriages. This can be done in a number of ways such as:

- (a) Not including any provisions on consummation and, instead, leaving the definition of consummation to the judiciary;
- (b) Replacing paragraph 4 of Part 3 of Schedule 4 to the Bill with a simple paragraph which provides that, for the purposes of consummation, sexual intercourse may be between two persons of the same sex as well as two persons of the opposite sex; or
- (c) Replacing paragraph 4 of Part 3 of Schedule 4 to the Bill with a statutory definition of consummation inclusive of a number of sexual practices.

²¹² See above, note 1, Principle 5.

²¹³ HM Government, *Equal Marriage: The Government’s Response*, December 2012, Para 9.9.

Recommendation 6: The concept of consummation should apply both to same sex marriages and to opposite sex marriage.

4.2.2.2. Disability

73. Notwithstanding the implementation of Recommendation 6, ERT believes that the law on consummation will continue to discriminate, as it does already, against persons with a disability, where that disability means that they are incapable of sexual intercourse which satisfies the definition of consummation (hereafter ‘the disability’).

74. “Disability” is defined in section 6(1) of the Equality Act 2010 as any “physical or mental impairment” which has “a substantial and long-term adverse effect on [the person’s ability to carry out normal day-to-day activities]”. This definition would include persons who were physically unable to engage in sexual intercourse, as well as persons with psychological or emotional disorders which prevented them from engaging in sexual intercourse, such as genophobia.

75. The definition of consummation in the present law treats less favourably persons with certain types of disability and thus persons with a protected characteristic, by reason of that characteristic (disability). The category of disabled persons treated less favourably is those with a disability which prevents them from completing an act qualifying as consummation. As defined presently, a person in a marriage with certain types of disability will never be able to consummate the marriage, thereby rendering the marriage voidable for its entirety, and the person would thus be in a position where the other party to the marriage could seek to annul the marriage at any time. The inability of a person with this kind of disability to consummate a marriage undoubtedly is the reason for their less favourable treatment compared to a person without that disability, in that it leaves them in a significantly weaker position before the law. Not only will the marriage be voidable for its entirety as opposed to valid under the law—an important symbolic difference—but that person is thereby left vulnerable to nullity proceedings being brought against them at any point during the marriage with the range of potentially significant consequences listed above.

76. The government has not sought to justify this differential treatment between persons with this type of disability and persons without disability, nor can any reasonable justification be put forward. ERT believes that the state is entitled to regulate family law, and to set down (or not set down, as the case may be) particular grounds which render a marriage voidable and subject to annulment. However, it is not entitled to do so in a way which puts a certain protected group at a disadvantage, unless the creation of this disadvantage can be objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

77. ERT therefore concludes that the Committee should take this opportunity to revisit the law on consummation and to use the Bill to amend the law so as to ensure that it does not discriminate against persons with particular disabilities.

Recommendation 7: The law on consummation should be amended so as to ensure that it does not discriminate against persons with particular disabilities which prevent them from “consummating” a marriage.

4.2.2.3. Consummation generally

78. As a result of the government’s express statement in its response to the consultation that “there is no intention to remove references to non-consummation from legislation”,²¹⁴ ERT has not sought to argue that the concept of consummation should be removed from English law, but merely that if it is to remain, it should be non-discriminatory in its application.

79. The Committee may, however, wish to address the law on consummation more generally as part of its consideration of the Bill, and to consider the advantages and disadvantages of retaining non-consummation of a marriage as grounds for its annulment, particularly given the difficulty of formulating the law such that it applies in a non-discriminatory manner.

5. DIFFERENCES BETWEEN OPPOSITE SEX COUPLES AND SAME SEX COUPLES IN ACCESS TO CIVIL PARTNERSHIPS

80. Civil partnerships were established by the Civil Partnership Act 2004 and are limited to couples of the same sex.

81. In its consultation, the government stated that they did not intend to open up access to civil partnerships to opposite sex couples.²¹⁵ In response to the question of whether access to civil partnerships *should* be opened up to opposite sex couples, 61% of respondents answering that question stated that they should be, and only 24% stated that they should not be.²¹⁶ Despite the vast majority of respondents supporting the opening up of access to civil partnerships to opposite sex couples, the government’s response was that their position had not changed and the Bill does not provide access to civil partnerships to opposite sex couples.

²¹⁴ See above, note 30.

²¹⁵ See above, note 6, Para 2.20.

²¹⁶ See above, note 30, p. 42.

82. ERT strongly believes that the prohibition of opposite sex couples from entering into a civil partnership constitutes direct discrimination against heterosexual persons on grounds of sexual orientation. Principle 5 of the Declaration of Principles on Equality provides the following definition of direct discrimination:

*Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*²¹⁷

83. This definition reflects definitions found in international human rights law and which are summarised in paragraphs 22 to 25.

84. ERT believes that the case law of the European Court of Human Rights strongly suggests that this direct discrimination would be found to constitute a violation of Article 8 of the Convention, when taken in combination with Article 14.

85. Article 8 provides that “[e]veryone has the right to respect for his private and family life” and the Court has recently stated in *Schalk and Kopf v Austria*²¹⁸ that “family life” includes cohabiting opposite sex couples and same sex couples living in stable *de facto* partnerships.²¹⁹ The legal recognition and regulation of opposite sex couples and same sex couples therefore falls within the ambit of Article 8.

86. The Court has stated that “in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations”²²⁰ and the court has held that same sex couples “are in a relevantly similar situation to a different-sex couple as regards their need for legal recognition and protection of their relationship”.²²¹ Conversely, opposite sex couples must be held to be in a “relevantly similar situation” to same sex couples as regards their need for legal recognition and protection of their relationship.

87. A difference of treatment between same sex and opposite sex couples will constitute a violation of Articles 8 and 14 if:

*[I]t has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.*²²²

88. The European Court of Human Rights has held that “differences based on sexual orientation require particularly serious reasons by way of justification”.²²³

89. The explanation in the government’s consultation response as to why the prohibition on access to civil partnerships for opposite sex couples is necessary is that civil partnerships were not intended or designed to be an alternative to marriage and that they should not be seen as an alternative to marriage for opposite sex couples.²²⁴ Furthermore, the government stated that “it has not been made clear what detriment opposite sex couples suffer by not having access to civil partnerships.”²²⁵

90. These justifications have been elaborated upon in two recent comments on the Bill. The first, provided by the Secretary of State for Culture, Media and Sport, during Second Reading of the Bill, when specifically asked why opposite sex couples would not be permitted to enter into civil partnerships, was that “we do not feel that there is significant demand for the extension of civil partnerships in the way [the questioner] describes”.²²⁶ This justification can be described as the “*insignificant demand*” justification.

91. The second was provided by the Prime Minister during Prime Minister’s Questions on 6 February 2013 when he stated that:

I am a marriage man. I am a great supporter of marriage. I want to promote marriage, defend marriage, encourage marriage, and the great thing about last night’s vote is that two gay people who

²¹⁷ See above, note 1, Principle 5.

²¹⁸ See above, note 5.

²¹⁹ See above, note 5, Para 94.

²²⁰ See above, note 5, Para 96.

²²¹ See above, note 5, Para 99.

²²² See above, note 5, Para 96.

²²³ See above, note 5, Para 97.

²²⁴ See above, note 5, Para 7.8.

²²⁵ See above, note 5, Para 7.9.

²²⁶ Hansard HC Deb, 11 December 2012, col 160.

*love each other will now be able to get married. That is an important advance. We should be promoting marriage, rather than looking at any other way of weakening it.*²²⁷

92. ERT understands this to mean a concern that there would either be a reduction in the number of marriages, or a reduction in the social value of the institution of marriage. This justification can be described as the “*promoting marriage*” justification.

93. The case law of the European Convention of Human Rights is clear that it is not sufficient merely that a justification be put forward, but that the differential treatment must “pursue a legitimate aim [and] ... there [must be] a reasonable relationship of proportionality between the means employed and the aim sought to be realised.”

94. In respect of the first justification—the “insignificant demand” justification, no purported legitimate aim has been put forward or even suggested by the government. Indeed, ERT is unaware of any justification of “insignificant demand” having been put forward, let alone accepted, in the case law of the European Court of Human Rights as a legitimate justification.

95. ERT accepts that the second justification put forward, “protecting and promoting marriage” as understood in paragraph 45 may be considered a legitimate aim. However, we do not believe that there is a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”²²⁸ for two reasons:

- (i) Same sex couples will continue to have access to civil partnerships after the Marriage (Same Sex Couples) Bill comes into force. The government specifically rejected the option it had of removing the civil partnership regime, either by permitting existing civil partnerships to continue but to prohibit any further ones from taking place, or by converting all existing civil partnerships into marriage. ERT believes that it is inconsistent to say both that permitting opposite sex couples from entering civil partnerships would weaken marriage *and* that permitting same sex couples to enter either civil partnerships or marriage would not weaken marriage. To put it another way, if the ability of same sex couples to have the option of either marriage or civil partnership does not weaken marriage, then the same must be true of opposite sex couples. As a result of this inconsistency, there can be no “reasonable relationship of proportionality”;
- (ii) The government has produced no evidence to suggest that opening access to civil partnerships would weaken marriage. If the government’s belief is that there is no “significant demand” for civil partnerships for opposite sex couples, then this would be evidence that the extension would not, in fact, weaken marriage or impact upon the number of opposite sex marriages that took place.

96. ERT is therefore of the view that the continued prohibition on opposite sex couples being able to enter into civil partnerships constitutes differential treatment on grounds of sexual orientation where there is no “reasonable relationship of proportionality between the means employed and the aim sought to be realised” and therefore would potentially constitute a violation of Articles 8 when taken in combination with Article 14 of the Convention.

97. ERT is aware that amendments to the Bill have been tabled by Rob Wilson, Julian Huppert, and Greg Mulholland (New Clauses 1 and 2) which would have the effect of opening civil partnerships to opposite sex couples. ERT therefore recommends that the Committee agree to these amendments and ensure full equality for all couples in access to civil partnerships.

Recommendation 10: The Bill should be amended as per New Clauses 1 and 2 tabled by Rob Wilson, Julian Huppert, and Greg Mulholland, i.e. the following new clauses should be inserted into the Bill:

New Clause 1

- ‘(1) Part 1 of the Civil Partnership Act 2004 is amended as follows.
- (2) In section 1, subsection (1), leave out “of the same sex”.’.

New Clause 2

- ‘(1) Part 2 of the Civil Partnership Act 2004 is amended as follows.
- (2) In section 3, subsection (1), after “if—”, leave out—
“(a) they are not of the same sex”.’.

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²²⁷ Hansard HC Deb, 6 February 2013, vol 558, col 269.

²²⁸ See above, note 5, Para 96.

Memorandum submitted by Mrs Janet and Mrs Sarah Wood (MB 69)

INTRODUCTION

1. We married as a heterosexual couple 33 years ago, Sarah reassigning gender in 2000. Our marriage is strong and we wish it to continue, so the GRA's annulment requirement prevented Sarah's gender recognition.

2. Sarah developed trans equality expertise as a civil servant, first highlighting shortcomings in her department's employment processes affecting trans people, then working to her departmental Director General in his capacity of 'Transgender Champion' and finally leading a gender, the civil service trans network, engaging across the wider civil service on trans issues with the aim of minimising negative impacts that arose from inadequate trans awareness.

SUMMARY

3. We endorse the evidence already submitted by GIRES, which Sarah co-authored, and concentrate here primarily on those issues affecting us personally:

- the regressive impact of gender recognition on occupational pensions scheme survivor benefits, creating a risk of significant/total loss of benefits
- the requirement for spousal consent and its capacity to destabilise the family;
- fast track reintroduction
- estitution of annulled marriages

Schedule 4-Part 6—Regression of survivor's rights in occupational pension schemes on gender recognition

4. The Bill provides an exception to avoid loss of wife's state pension on spouse's gender recognition in a subsisting marriage, but fails to avoid loss of wife's survivor rights in occupational pension schemes. Although the state pension exception is primarily to avoid reducing pensions in payment, this exception will, in the right circumstances, also allow spouses not yet receiving pension payment to benefit from the exception. We welcome this provision, including its prospective aspect, which seems to indicate that no real obstacle exists to a similar exception to prevent the loss of survivor rights on gender recognition in occupational pension schemes.

5. Loss* occurs because a wife's marital status switches from opposite sex to same sex, with its more limited survivor benefits. Whereas married women's survivor benefits are based on years accrued from 6/4/1978 onwards, public sector pension schemes only accrue survivor benefits to same sex couples from 6/4/1988 (*potential loss 10 years' rights). Around one third of private sector schemes only accrue from 6/12/2005 (*potential loss 27 years' rights). While private sector schemes have discretion to preserve wives' survivor benefits on gender recognition, public schemes have NO discretion. This Bill therefore may impose an impossible and incalculable condition of gender recognition, the potential loss of significant/all survivor benefits. (See examples in Annex A.) In our case, Janet's potential loss exceeds Example C in this annex, should Sarah obtain gender recognition under these proposals and pre-decease Janet.

6. Therefore, the Bill's aim to allow gender recognition in subsisting marriages without prior annulment, fails a significant proportion of individuals intended to benefit, because no reasonable trans spouse will feel able to trade their gender recognition for their wife's financial security.

7. No reason or evidence for this treatment of trans couples was given the government's consultation response, so we wrote to our MP Mr Barker and relevant DCMS/DWP ministers prior to the Bill's publication. In the absence of any response to date, the first evidence of justification was Mrs Miller's response to Ms Green's Q353 in Committee's oral evidence hearing on 12 February.

8. The first reason was that it would otherwise impose extra administrative/regulatory burdens—We disagree, since pension schemes already have to cope with people notifying a spouse's gender transition in name and title, and any relationship changes on gender recognition or otherwise. Existing complexity of pensions is no fault of couples in subsisting 'trans marriages' and changes to accommodate the small number of people involved can hardly be 'the straw that breaks the camel's back'. In any case, see paragraph 91 *Goodwin v UK (ECHR/2002/588)* which, in deciding that transsexual people have the right to legal recognition, referred to the practicalities of recognition: "No concrete or substantial hardship or detriment to the public interest has indeed been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost." Therefore administrative/regulatory convenience is insufficient to justify any loss of trans spouse's wives benefits.

9. The second reason was that intrusive questions would be asked of surviving wives to evaluate survivor benefits—We disagree again; pension schemes can identify benefits clearly when notified of gender recognition in marriage. And, sadly, intrusive questions remain an everyday risk for transsexual persons or their spouses. It is not for government to determine that such questions are so intrusive as to justify this loss of survivor benefits.

10. Additionally, the Minister's evidence gave the misleading impression that all occupational pension schemes possess flexibility to deal with survivor rights in a way that does not penalise spouses on gender

recognition. While it is true that private sector schemes can, and some do, there is NO discretion for public sector schemes to vary from statute.

11. Since these justifications appear to be inadequate, we must consider whether other reasons can be inferred for changing the survivor benefits for trans people’s spouses in a continuing marriage, from the higher widows’ level of entitlement to survivor benefits prior to gender recognition, to the restricted level of same sex couples. The argument appears to be that, on gender recognition, the couple have legally become a same sex couple and, in the interests of “equal treatment”, must have the same outcome as other same sex couples. We must therefore first understand how civil partners came to be treated differently to opposite sex couples before we can understand trans couples’ proposed treatment.

12. One reason for different treatment of civil partner’s survivor rights was residual sex discrimination currently working out of the system, whereby occupational schemes were obliged to provide widows’ survivor benefits from 6/4/1978, but widowers’ benefits only from 6/4/88. When civil partnerships were legislated, partners’ survivor benefits had to be considered in this context. However, government initially decided that civil partners’ would only be entitled to survivor benefits based on contributions made from 6/12/2005, when the Civil Partnerships Act came into force.

13. Government’s justification of this treatment was scrutinised in detail by the Joint Committee on Human Rights. The respective arguments advanced by the government and the JCHR are included in JCHR’s report on the CP Bill ([HL136/HC885](#)) which posed questions to government (Appendix to report) seeking justification for the treatment of survivor pensions. Government responded in a further letter of 29/7/2004 included as an Appendix in the JCHR’s later progress report (HL 182/HC 1187). The July letter repeated government’s claim that no discrimination arose but nevertheless responded to JCHR’s questions. However, before publication of JCHR’s progress report on 20/10/2004, government announced a policy change during the Commons 2nd reading of the CP Bill on 12/10/2004, to allow registered same-sex partners to accrue survivor pensions in public service schemes from 1988. The sole reason given for the change of heart was to ensure that the rights as well as responsibilities of married couples are replicated in civil partnerships.

14. JCHR’s progress report welcomed this change but nevertheless commented on government’s arguments of 29/7/2004 because of the importance it attached to the interpretation of discrimination and human rights law. JCHR concluded at 2.29 of the report that, in their view, “the onus of justification in relation to the difference of treatment had not been made out by the Government in its letter responding to our concerns. In the absence of such justification, we conclude that the difference of treatment would be incompatible with Article 14 in conjunction with Article 1 of Protocol 1. We welcome the fact that this now appears to be accepted by the Government.” We conclude from this that government conceded the existence of Article 14 discrimination and that it could not be justified, at least in public sector schemes. However, this decision was about extending civil partners’ rights **back to** 1988, but is it right to use the same reasoning to justify the rather different treatment of trans marriages in which the wife will be denied rights accrued **prior to** 1988 in public sector and many private sector schemes, or prior to 2005 in some of the latter? We think not, since it is an entirely different question.

15. As JCHR indicated in its progress report, paragraph 2.12, the comparison required to determine Article 14 discrimination is NOT when survivor rights accrue but when benefit is paid. As stated in 2.31, if discrimination is demonstrated, then the onus is on government to justify any difference of treatment. Such evidence must be ‘weighty’, for example, that the impact on existing schemes might give rise to serious economic repercussions or that the impact will be so grave as to justify the difference of treatment.

16. To assess whether discrimination arises in the restriction of survivor rights on gender recognition a comparator must be identified. During the CP Bill discussions, there was only one obvious comparison, between civil partners and married couples, but who should trans couples be compared with? The choice rests between a wife in a lesbian same sex marriage (‘lesbian wife’) and the wife married to a husband who has not undergone gender reassignment/recognition (‘non-trans wife’). The table below considers the circumstances of both options alongside the wife of a trans woman in a same sex couple as a result of gender recognition within marriage (‘trans wife’):

<i>Circumstance</i>	<i>Lesbian wife</i>	<i>Trans wife</i>	<i>Non-trans wife</i>
Spouse’s contributions record 1978 to 1988	None paid	Paid throughout	Paid throughout
Marriage status 1978 to 1988	Marriage unavailable	Married throughout	Married throughout
Entitlement to survivor rights granted	Granted in 2005	Granted by 1978	Granted by 1978
Liability provided for by pension scheme	Unprovided before 2005	Provided throughout	Provided throughout
Sexual orientation	Lesbian	Heterosexual	Heterosexual
Gender reassigned spouse?	No	Yes	No

17. This table shows no coincidence between lesbian and trans wives, whereas trans and non-trans wives differ only on spouse's reassignment; non-trans wives are therefore the correct comparator. Equal treatment is clearly accorded prior to the grant of gender recognition, the ultimate stage of the gender reassignment process, as both wives receive rights back to 1978. Only on gender recognition does the loss of earlier years put trans wives at the disadvantage identified in Annex A. This is not however a difference of sexual orientation—although gender recognition may recast the couple as legally same sex, it can have no effect on the wife's actual sexual orientation—but a difference due to sex, of which gender reassignment/recognition is an aspect. Government must justify this discrimination.

18. JCHR indicated the high level of justification required in its report on the CP Act, for which government claimed that backdating survivor's pensions for civil partners to 1988 would add £125 million to the liabilities of public service pension schemes. JCHR was rather dismissive of the evidence, so we cannot identify the level of financial impact that would constitute justification, not least because government changed its policy and absorbed any extra liability, whatever it may have been. We can however consider the impact of allowing survivor benefits to remain unrestricted by a spouse's gender recognition. Trans people who obtain recognition within marriage are a tiny minority, even among those who undergo reassignment, a group that is in itself a very small minority. Additionally, since all liabilities are known and provided for up to the time of gender recognition, there will be no extra cost of preserving the survivor benefits unchanged after recognition. It may therefore be that the government's justification really is no more substantial than the Minister's offering per paragraphs 8 and 9 above. Accordingly, we hope this demonstrates that government's policy of restricting existing survivor benefits on the grant of gender recognition is incompatible with human rights. We have insufficient space to elaborate the similar case that the proposal is unlawful under EU Council Directive 86/378/EEC as recast by Directive 2006/54/EC.

19. The analysis above relates to public sector schemes, but the disadvantage to spouses on gender recognition may be even greater in those private sector schemes limiting rights to post-2005 years. While, as the minister stated, private sector schemes do have discretion, around one third of schemes apply this later date, as considered in the recent employment tribunal case 2411316/2011 *Walker v Inmospec Ltd*. We therefore see good reason to also mandate the preservation of rights in private sector schemes if the Bill is amended to do so for public sector schemes.

20. If the Bill remains unchanged, then we need to consider the effect of the loss of spouse's survivor benefits on Sarah's Article 8 rights to gender recognition. The risk of significant loss makes it likely that trans spouses in such cases would feel obliged to forgo recognition; in fact Sarah has always guaranteed Janet that she would never let gender recognition trump Janet's rights. This constructive denial of gender recognition must infringe Article 8 rights of the trans spouse. Prior to this Bill, *Goodwin* (ECHR/2002/588) determined that legal recognition must be provided to trans people, but made clear the state's right to set the conditions for recognition. This was tested in the *Parry* case ([2006] ECHR 1157), where it was found to be within the state's margin of appreciation to require annulment of an existing marriage. This Bill, however, removes the annulment requirement, but instead implies a new condition for some individuals, that their spouse's survivor benefit must be restricted in parallel with the current treatment of civil partners, despite the Bill's intention to recognise the marriage as continuous.

21. This point was raised by JCHR in its Gender Recognition Bill report HL34/HC303 para 4.29: "We are particularly concerned about the impact on pensions of an enforced annulment of marriage. At present, (the Bill) does not cater for this, and there is no guarantee that civil partnership legislation (when it is eventually put before Parliament) will do so satisfactorily." The Civil Partnership Act did not so cater, nor does this Bill, despite its removal of the annulment requirement, the only area where the State previously had any margin of appreciation.

22. Given the complexity of pensions, the Bill creates an enormous risk that trans spouses, at last able to obtain gender recognition within marriage, may seek recognition without knowing/understanding restrictions imposed on wives' survivor benefits. This is not always obvious from pension statements, particularly when retired, and might go unrealised until the wife claims these benefits. It is unjust for the state to set such traps for ordinary members of the public, particularly when, even fully informed, the risk cannot be evaluated.

23. Current proposals, with their retrospective denial of benefits, create a high risk of judicial review and Annex B encloses our analysis of draft amendments to Schedule 4 Part 6 of the Bill to remove this high risk.

Schedule 5 section 4—The requirement for spousal consent and its capacity to destabilise the family

24. We share concerns expressed by GIRES about the impact of current proposals for spousal consent and continued use of IGRCs, as they may allow non-trans spouses to effectively veto gender recognition or unreasonably delay proceedings. We therefore wish to see more balance.

25. Spouse's consent is provided as a mechanism to facilitate couples wishing to remain married to do so without hindrance. However, perfectly happy marriages may stumble over the loss of survivor rights if the Bill remains unchanged. If Sarah were to ask for Janet's consent and inform her of the potential loss, might Janet refuse to give consent because of this risk? Could this create a wedge that undermines the marriage, contrary to the Bill's aims. And what if Sarah seeks Janet's consent without informing her of this risk? We intend to avoid this outcome, but see the risk for others.

26. Incapacity is a further issue, where the spouse suffers, for example, a severe stroke or dementia. The trans spouse may want gender recognition but cannot obtain it, even though recognition has no practical impact on the couple or the trans spouse’s willingness to care for their spouse.

FAST TRACK REINTRODUCTION

27. The GRA contains a temporary Fast Track process enabling those who had been living in role for 6 years and had a formal diagnosis of gender dysphoria or had undergone genital reassignment surgery , to meet the evidence requirement for GRC award, provided they were unmarried. We wish to see this process reintroduced and remain in place on a rolling basis, particularly if the treatment of survivor rights remains unchanged. The original process was denied to married persons who would have otherwise qualified, and some people, including Sarah, have been waiting over a decade for gender recognition. Her wait may be even longer if the restriction on survivor rights persists, as Sarah can only seek recognition if she outlives Janet. This could be many years hence, so it is vital that the process does not expire. Such a process will cut implementation costs by reducing the GRP’s workload, and applicants’ costs, because of the reduced evidence requirement.

28. Although Schedule 5 allows couples who ended their marriages under duress and formed a civil partnership to convert to marriage, it will not restore their original marriage. Our hearts go out to couples who felt obliged to surrender marriage for the trans spouse’s recognition. Most reasonable people (including the JCHR in their 2003 GRA report) see the annulment requirement as a great wrong. The Bill rectifies this wrong for new couples but does not redress the distress suffered by those impelled to sacrifice their marriages.

30. Married couples who took this route to civil partnership to obtain a GRC should be allowed, on request, to have their original marriage reinstated, original rights intact, with a marriage certificate issued in their current names, showing the original date of marriage, and the marriage considered as continuous.

Annex A

<i>Examples of lost survivor benefits</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Sector</i>	<i>Public</i>	<i>Public</i>	<i>Public</i>	<i>Private**</i>	<i>Private**</i>	<i>Private**</i>
	<i>Retirement at age 55 eg police</i>	<i>Pension deferred in 1991 during period of self employment till retirement</i>	<i>Early retirement in response to deficit reduction</i>	<i>Retired age 60</i>	<i>Retired age 65</i>	<i>Due to retire age 66***</i>
Joining date	05/04/1958	05/04/1976	05/04/1977	06/12/1972	06/12/1965	06/12/1971
Leaving date	05/04/1988	05/04/1991	05/04/2011	05/12/2012	05/12/2005	05/12/2021
Years in service	30	15	34	40	50	50
Pre 6/4/78 service	20	2	1	5.33	12.33	6.33
Service 6/4/78 to 5/4/88* (PUBLIC)	10	10	10			
Service from 6/4/88 (PUBLIC)	0	3	23			
Service from 6/4/78 to 5/12/2005 (PRIVATE)				27.67	37.67	27.67
Service from 6/12/2005 (PRIVATE)				7	0	16
PRE-RECOGNITION:						
Pension at current value (£)	20000	5000	30000	25000	10000	25000
Wife’s pension (£)	3333	2167	14559	10834	3767	10918
Basis of calculation	(10/30 x 20000 x 1/2)	(13/15 x 5000 x 1/2)	(33/34 x 30000 x 1/2)	(34.67/40 x 25000 x 1/2)	(37.67/50 x 10000 x 1/2)	(43.67/50 x 25000 x 1/2)
POST RECOGNITION:						
Wife’s pension following gender recognition (£)	0	500	10147	2188	0	4000
Basis of calculation	(0/30 x 20000 x 1/2)	(3/15 x 5000 x 1/2)	(23/34 x 30000 x 1/2)	(7/40 X 25000 X 1/2)	(0/50 X 10000 X 1/2)	(16/50 X 25000 X 1/2)
% loss of pension	100	77	30	80	100	63

<i>Examples of lost survivor benefits</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Sector</i>	<i>Public</i>	<i>Public</i>	<i>Public</i>	<i>Private**</i>	<i>Private**</i>	<i>Private**</i>
	<i>Retirement at age 55 eg police</i>	<i>Pension deferred in 1991 during period of self employment till retirement</i>	<i>Early retirement in response to deficit reduction</i>	<i>Retired age 60</i>	<i>Retired age 65</i>	<i>Due to retire age 66***</i>
Annual loss (£)	3333	1667	4412	8647	3767	6918
Loss over 5 years (£)	16667	8333	22059	43234	18835	34588
Loss per week (£)	64.10	32.05	84.84	166.29	72.44	133.03

*Wives' survivors rights were granted from 6 April 1978. 6 April 1988 was the date when survivors' rights were equalised for widows and widowers to eliminate this aspect of sex discrimination in the UK's provision of pensions.

**Based on schemes applying the minimum rights from 6 December 2005. The two third of schemes said to grant rights back to 1988 will be similar in impact to the public sector examples.

***Forecast based on current salary

NB: only private schemes have discretion to be flexible. Public sector schemes have NO discretion.

Annex B

Draft amendments to prevent regression of the survivor rights of a wife in an existing marriage, following a spouse's gender recognition.

A. Analysis of amendments required

These have been arrived at by using an up to date version of the Pension Schemes Act 1993 available at <http://www.dwp.gov.uk/docs/a5-1251.pdf>, updating this to see the effect of the amendments proposed in Schedule 4 Part 6 of the Marriages (Same Sex Couples) Bill, and then drafting amendments to the Act so updated that will prevent the regression of the wife's survivor rights following gender recognition. These amendments were arrived at by analysing each paragraph of Part 6 in turn as below, to arrive at the suggested text of amendments included at B below:

Sub paragraph 16—Draft amendment 1 below ensures that wives in same sex couples as a result of their spouse's gender recognition also benefit from the exception in Schedule 9 Para 18 Equality Act 2010 afforded to husbands and wives in opposite sex marriages.

Sub paragraph 17—I believe that no amendment is required as this paragraph functions only to extend guaranteed mini-mum payment provisions of Section 8 Pension Schemes Act 1993 to same sex couples in addition to husbands, wives and civil partners.

Sub paragraph 18—Draft amendment s 2 and 3 amend Section 17 (3) and (4) respectively, to avoid placing the limitation to accrued years from the tax year 1988–1989 onwards on wives in same sex couples as a result of their spouse's gender recognition. Draft amendment 4 provides a definition of such wives. This seeks to follow the models provided in the Part 5 exceptions for such couples.

Sub paragraph 19—The current clause in the Bill ensures that same sex couples are afforded survivors' rights. Draft amendments 5 to 7 collectively ensure that wives in same sex couples as a result of their spouse's gender recognition are included in the categories entitled under Section 24D (2) entitled to access pension rights accrued between 6 April 1977 and 5 April 1997, and that such wives are removed from the categories in Section 24D (3) whose entitlement in restricted to the period 5 April 1988 to 5 April 1997.

Sub paragraph 20—As explained in the Explanatory Notes to the Bill, Section 37 of the Pensions Schemes Act 1993 pro-hibits alterations to the rules of a contracted-out scheme unless the alteration is of a prescribed description and except in prescribed circumstances. Section 37(3) prohibits such alterations by schemes that were formerly contracted-out so long as any person is entitled to receive benefits for the period when the scheme was contracted-out. Section 37(4) limits the appli-cation of section 37(3) when the beneficiary is a widower or surviving civil partner. The effect of the amendment in para-graph 20 is that this limitation may also be applied when the person entitled to receive benefits under the scheme is so enti-tled because of being a survivor of a marriage with a person of the same sex. Draft amendment 8 removes this limitation where the beneficiary is a survivor who is a wife who was in a same sex couple as a result of their spouse's gender recogni-tion.

Sub paragraph 21—I believe that no amendment is required as this paragraph functions only to extend to same sex couples the further provisions of Section 47 (1) Pension Schemes Act 1993 regarding the effect of entitlement to guaranteed minimum pension on payment of social security benefits.

Sub paragraph 22—I believe that no amendment is required as this paragraph functions only to extend the basis of re-valuation provisions of Section 84 Pension Schemes Act 1993 to same sex couples in addition to husbands, wives and civil partners.

Sub paragraph 23—I believe that no amendment is required as this paragraph functions a definition in Schedule 3 (1) Pension Schemes Act 1993 to add surviving same sex spouses to widows, widowers and surviving civil partners.

B. Suggested text of amendment

1. At Schedule 4 Page 34 Line 4, at end insert

- “(c) a woman who is married to a woman who is her spouse where —
- (i) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (ii) the marriage subsisted before the time when that certificate was issued.”.

2. At Schedule 4, Page 34, Line 22, after (4) delete “:after “partner’s” insert “or surviving same sex spouse’s”.” and insert

- “—
- (a) after “partner’s” insert “or surviving same sex spouse’s”;
 - (b) at the end insert “but this limitation does not apply to a surviving same sex spouse by virtue of gender recognition as defined in (4C) below.”

3. At Schedule 4, Page 34, Line 21, insert

- “(2A) In subsection (3) after “widow’s”, insert “or a survivor same sex spouse’s, where within (4C) below,”.

4. At Schedule 4, Page 34, Line 22, at end insert

- “(3A) After subsection (4B) insert
- “(4C) A surviving same sex spouse is “a same sex spouse by virtue of gender recognition” where she was married to—

- (a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.”

5. At Schedule 4, Page 34, Line 29, leave out “is a man married to a woman, and the earner “ and insert “is a man married to a woman, or a woman within (4) below who is married to a woman, and the earner”

6. At Schedule 4, Page 34, Line 32, leave out “is a married woman, a man married to a man, or a civil partner, and the earner dies” and insert “is a married woman except within (4) below, a man married to a man, or a civil partner, and the earner dies”.

7. At Schedule 4, Page 34, Line 34, at end insert

- “(4) A woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, whose marriage subsisted before the time when that certificate was issued.”

8. At Schedule 4, Page 34, Line 35, delete “, in subsection (4), for “widower or surviving civil partner of an earner” substitute “widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner,”. “

and insert

- “—
- (a) in subsection (4), for “widower or surviving civil partner of an earner” substitute “widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner,”;
 - (b) at the end insert

- “(5) The limitation in subsection 4 shall not apply to the survivor of a marriage with an earner of the same sex in which the survivor was married to—

- (a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.”

Memorandum submitted by Revd Paul Burr, Rector of Swardeston, Norfolk (MB 70)

THE WISDOM OF GENERATIONS

1. Marriage is the wisdom of generations. It offers a way of life tried and tested by parents and grandparents. Marriage provides stability to children growing up in a complex and uncertain world. It sustains love, loyalty, and unconditional acceptance over a lifetime—most critically when we are at their most vulnerable—in infancy, sickness, and old age. Marriage cements the generations by the joining of families and creates a network of belonging which fundamentally shapes our identity. It is a primary means of learning: it is how we pass on beliefs and customs which enable us to make sense of the world and gives us social capital from which we build our lives.

A RESTRICTED WAY OF LIFE

2. For the individual, marriage is a costly (and risky) solution to the human condition. It is conventionally grounded on unconditional promises and imposes far-reaching restriction on freedom—most obviously sexual continence, the obligation to co-habit for a lifetime, and the need to adjust oneself to a partner who is not fully known (on traditional models) until the marriage covenant is secure. Marriage is therefore a loud ‘No’ to the permissive society where promiscuity is endemic and where self-determination and self-fulfilment are non-negotiable rights.

ROMANTIC LOVE

3. Many couples enter marriage without adequate understanding of what they are committing themselves to. The liberalisation in the law over wedding venues has led to large numbers of couples designing their own weddings and expressing their own understanding of what marriage means—ordinarily an expression of romantic love. This has corroded the common understanding of marriage as an institution recognised by society for reasons which transcend romantic feelings.

EVERYONE’S BUSINESS

4. The arguments for same-sex marriage are frequently couched in terms of the right to love the person of your choice. But marriage neither enables nor prevents such a thing—most couples who marry are already living together. A familiar argument is that ‘who I choose to marry is no one else’s business’. But if marriage is about recognition, then who I choose to marry is everyone else’s business. That indeed is the meaning of marriage as an institution and a matter of public record. Marriage elevates private love to legal relationship by means of public ceremony. Legal recognition means legal definition. Changing that definition may have many unintended consequences without necessarily securing for gay and transgender couples the benefits they desire. Some of the benefits that accrue from marriage are integral to the husband and wife relationship and are not simply socially conditioned through legal recognition. You cannot legislate against biology.

CONFLICTING DEFINITIONS

5. The case for the Bill rests on the rights and interests of those the present law restricts. But millions of couples already have a huge stake in marriage because they have entered it in good faith—and in doing so have irrevocably shaped their own identities and that of their families. Every couple married hitherto in England and Wales has done so on an express definition of husband and wife. This Bill subverts that by providing a new and different definition of marriage. That is a serious issue for the many for whom marriage isn’t primarily a matter of legal definition but of personal belief—which includes at least all those who have married in church (because marriage services clearly articulate belief about marriage).

FREEDOM OF EXPRESSION

6. For such people the Bill presents a threat both to freedom of expression and freedom of conscience. ‘Marriage’ will be a word whose meaning has been hi-jacked. This is serious not just because it is an everyday word about a ubiquitous institution which shapes the identity of so many, but because of the unyielding hostility of some who have embraced the ‘equality’ agenda.

NOT JUST MARRIAGE CEREMONIES

7. Protections for churches and ministers of religion are important, but they are unlikely to be enough. The difference between this reform and previous changes in the law of marriage is that there those who lobby for ‘equality’ are relatively well organized and funded and have strong ideological commitment—and the Human Rights Act makes litigation by (or supported by) campaigners almost inevitable. It is a very odd state of affairs when the national church is prohibited from doing something which is lawful anywhere else.

RELIGIOUS FREEDOM

8. But ministers of religion and marriage ceremonies are only one issue. Many institutions, most obviously in the public sector, have equality policies which curtail or prohibit expressions of belief which fail to conform to their particular orthodoxy. Teachers, doctors, nurses and NHS staff, civil servants and local government

employees, employees of large progressive corporations (and in all likelihood the employees of those companies with whom they contract) will all be particularly vulnerable and therefore forced into a quiescence or risk losing their job. Religious freedoms are routinely trumped by rights rooted in sexual identity and expression: same-sex marriage focuses conflicting rights and is liable become a vexed and costly battleground.

AN EXPRESS RIGHT TO DISSENT

9. We therefore need an express right of freedom to express views about marriage which differ from those in the bill. Failure to do this will remedy one perceived injustice for the few at the cost of a far greater infringement of liberty for the many. Otherwise the Bill risks not being the permissive reform that is promised, but a coercive and inherently illiberal piece of legislation.

February 2013

Memorandum submitted by Dr George Strang (retired consultant) (MB 71)

Thank you for the opportunity to comment on the proposal to redefine marriage and introduce same-sex marriage.

I believe that the government is proposing undemocratic, unnecessary, dangerous, divisive legislation, undermining a foundation in society, without the nation's support and should abandon completely its intention to redefine marriage and introduce same-sex marriage. It can be opposed from a Biblical point of view and in several other ways.

1. Democracy has been ignored. The government has no mandate; no mention was made in the pre-election manifestos and the government's consultation which 'received over 228,000 responses' according to its Direct Communications Unit, was flawed and has been outnumbered by the Coalition for Marriage petition which has more than 640,000 signatures and has been ignored. The government is catering for a minority of a minority for whom civil partnership exists, but the whole population will be affected if same-sex marriage becomes legal. The YouGov/Sunday Times survey sent to me by my MP, the Right Hon. Don Foster, purports to show support for same-sex marriage, but the sample size was 2030 adults, which included some from Scotland, but the population of England and Wales in the most recent census was 56.1 million. Scotland is being considered separately in the proposed legislation. The sample size cannot be considered to be representative. The government would probably not have been elected if the electorate had known of its intention. Serious division in the Conservative party and its supporters has resulted and many former supporters will not vote for it again. This process has set a dangerous precedent in parliamentary procedure, because the electorate will not trust pre-election manifestos again.

2. Equality is mentioned as a reason for same-sex marriage, but certain facts, notably the ability to procreate naturally, makes same-sex relationships very different from the union of a man and a woman. Serious moral, medical and legal problems will result. There is a difference between equality and sameness. Same-sex marriage may look equal legally, but it can never be in any other way. Many people would like to see the government attend to the inequalities that affect far more of us than inequality in marital status. Access to and standards of health care, educational opportunities and opportunities for employment, to mention three, are much greater priorities for most of us. It is reminiscent of Nero fiddling while Rome burned.

3. The long term consequences of redefining marriage have not been considered adequately. The union of a man and a woman in marriage is a foundation of stability and altering it will cause increasing breakdown in society. David Cameron claims to support marriage and the family, but serious confusion will result for children, parents, teachers and ministers of religion in particular. We cannot foresee the consequences of same-sex marriage on the basis of what has happened in civil partnerships in recent years. Long term effects on society may not be apparent for many years. When abortion was legalized years ago, the current extent of its use was neither intended nor envisaged. The union of a man and a woman is the best environment in which to raise children. It would be a dangerous and unpredictable experiment in social engineering to introduce same-sex marriage.

In view of rulings by the European Court of Human Rights, we cannot believe any assurances given by the government that freedom of expression and of conscience will be preserved. An excellent summary of this was raised by Edward Leigh [Conservative] in a private member's bill amendment a few weeks ago. If the proposed bill becomes law, we can expect a huge amount of legal wrangling.

4. Her Majesty the Queen is the head of The Commonwealth and is likely to be embarrassed if same-sex marriage were legalized, because it is unacceptable to many Commonwealth nations, as it is unacceptable to Middle and Far Eastern countries. International and diplomatic relationships would be strained. Threats to our society are growing and the perceived decadence and lack of democracy of the proposed legislation, is likely to encourage radical views in the Middle East. While we are right to expect tolerance, it is wrong to expect other countries to be more lenient to homosexuality, when same-sex marriage is unacceptable to them, culturally, morally and from the point of view of their faith.

5. Christians believe that the Biblical view of marriage is correct and most adhere to it. The union of a man and a woman was ordained by God thousands of years ago in Genesis 2:24 and was emphasized by Jesus in

Matthew's gospel 19:4–6. Biblical marriage is a covenant; it is not a contract. Same-sex marriage is unacceptable to many people of other faiths.

6. No information on the cost of the proposed legislation has been published. Redefining marriage will entail changing many articles of law and this and the time and effort taken to date to introduce the proposed change must be very expensive at a time when the country cannot afford it.

7. Over the past few months public opinion has been divided sharply by this issue as shown by the amount of mail received by MPs and it has proved to be far more divisive than the government had envisaged. The government is supposed to serve the country, not oppress it. Marriage between a man and a woman has been the norm worldwide for most people for thousands of years. No previous legislation on marriage has considered altering the union of a man and a woman and it is folly to attempt it.

February 2013

Memorandum submitted by Voice for Justice UK (MB 72)

INTRODUCTION

1. Voice for Justice UK is a Christian campaigning group working to uphold traditional values of faith and morality; of freedom of speech without threat of fear or intimidation; and the freedom to manifest belief. We work to defend any and all who are abused, oppressed or marginalised—for whatever reason—who cannot speak out for themselves. We have particular experience of family and relationship problems, sexual abuse and exploitation, and right to life issues covering both the beginning and end of life.

2. We consider the introduction of the Marriage (Same Sex Couples) Bill (the “Bill”), insofar as it seeks to redefine the long-established institution of marriage, to be misconceived, discriminatory and likely to undermine the traditional form of marriage as demonstrably the best and most stable form of family unit in which to raise and nurture children.

3. We consider that the Bill's provisions give rise to the following areas of grave concern:

- Their deleterious effect on the institution of marriage itself and on families;
- The creation of two classes of married couples with differing obligations;
- The inevitable impact on the freedom of speech of those opposed to same sex marriage, including the impact on the education of our children and on their teachers;
- The increased financial burden on the National Health Service;
- The likelihood of a successful legal challenge to the provisions designed to protect the position of the Church of England.

THE INSTITUTION OF MARRIAGE AND THE FAMILY

4. At present, marriage is defined as “The voluntary union for life, of one man and one woman, to the exclusion of all others” (“man-woman marriage”). This reflects the Biblical position and the position of the Church of England, the Established Church of this realm.

5. Experience shows that man-woman marriage is the best and most stable way of raising children in a family unit. Many social surveys show that children raised in single parent homes fare less well at school and in employment and are at greater risk of engaging in drug abuse and other criminal behaviour. A primary reason for the family failings of boys in single parent homes is widely recognised to be the absence of a father to provide a positive role model and to instil moral standards and good behaviour in sons. It is difficult to see how young children are not going to be confused in their emotional development if they are raised in the home of a same-sex couple as to which parent is their “father figure”. Likewise, if young children are taught in school that same-sex marriage is “normal”, will those children from the home of a man-woman couple begin to question whether their own situation is, therefore, “abnormal”? The proposed legislation prioritises the wishes of a small minority adult class over the needs and best interests of children, who require both care and protection from behaviours and environments that might put them at risk.

6. So far, the Bill only seeks to change the first limb of the current definition of marriage by removing the restriction to persons of the opposite sex. However, whether it is the Government's intention or not, once the Bill has passed into law, experience in other legal jurisdictions (such as Brazil, The Netherlands, and Canada) shows that pressure will be brought to change the second limb of the current definition of marriage by removing the restriction so as to permit polygamy, polyandry and polyamory (“plural marriages”). The arrangements in place in Brazil and The Netherlands are, strictly speaking, only forms of cohabitation agreement which, in our view, are merely another step on the road to forcing the acceptance of plural marriages.

7. The Prime Minister has stated that, provided two people (of the same sex) demonstrate “love and commitment” to each other, they should not be denied the legal status of being married, as if that phrase encapsulated the fundamental and irreducible tests of marriage. Such tests would be satisfied in the case of a father and daughter or a brother and sister as well as in the case of parties to plural marriages who claimed such love and commitment.

8. Put simply, once you open the door to same-sex marriage, logically and intellectually you cannot long resist pressure to extend the benefits of marriage to other relationships, or even to requests to lower the age of consent for sexual relations. Any such extension is likely to lead to increased discord in homes and to a breakdown in society. In sum, this Bill is a step on the road to rendering meaningless the institution of marriage, which is the bedrock of our society, thus destroying it.

9. We view the purpose of the Bill to be a Trojan Horse presented to our Government by elements of our society who seek to expand sexual freedom as far as possible without regard to the potentially disastrous effects which this will have on our society, our children and public order. The entire Bill should be rejected for this reason alone. Such elements seek to take advantage of our society's attitude of tolerance to dissenters and minorities stemming from the very Christian Heritage which they openly despise and seek to destroy, as per Peter Tatchell in his article, 'Beyond Equality, "...queer politics has an agenda beyond law reform and legal equality. Its aim is the transformation of society to ensure sexual liberation for everyone.... It seeks an end to heterosexual hegemony and to all erotic guilt and repression...".

TWO UNEQUAL KINDS OF MARRIAGE

10. It is widely acknowledged that civil partnerships give same-sex couples all the legal benefits and protections they need. However, the fact of the Bill suggests that they are calling for something more in the name of "equality". In fact, the effect of the Bill will be to create two classes of married couples with different obligations and incidents to their relationship giving rise to new, and entirely avoidable, inequalities between man-woman couples and same-sex couples.

11. Not surprisingly, the draftsman of the Bill has been unable to prepare provisions concerning the obligation of a married couple to consummate their union within one year of the marriage ceremony or to provide for sexual relations with a person of the same sex outside a same-sex marriage to constitute adultery as a ground of divorce. See *paragraphs 3 and 4 of Part 3 of Schedule 4 to the Bill*. Thus a person in a man-woman couple will:

- a) have a duty to consummate their marriage or face the possibility of annulment proceedings; and
 - b) risk divorce proceedings if they commit adultery with a person of the opposite sex,
- whereas a person in a same-sex couple will not. How does creating these new inequalities for the vast majority of married couples outweigh any possible inequality which gives rise to the alleged need for the Bill?

12. Likewise, the children of a woman in a same-sex couple are to be denied the benefit of the presumption of legitimacy enjoyed by the children of a man-woman couple. See *paragraph 2 of Part 2 to Schedule 4 to the Bill*. The effect of the presumption is to make the husband responsible for children borne by his wife, so why should the other woman in a same-sex couple not be made responsible in the same manner? The issue should not turn on who provided the sperm or egg, but on who the other member of the couple is. This is another inequality which favours same-sex couples.

13. Likewise, the presumption of legitimacy cannot arise in the case of a same-sex couple comprising two men. Again, this is another inequality which favours same-sex couples.

FREEDOM OF SPEECH AND CONSCIENCE

14. The introduction of the marriage of same sex couples will inevitably impinge on the rights of Christians and those of other faiths as well as people of conscience whose beliefs lead them to oppose same-sex marriage. The freedom of such people to hold such beliefs and, as importantly, to manifest such beliefs in the public arena, are already, and will increasingly, be attacked by those elements of society who seek to stop the mouths of Christians in particular, and to marginalise them by attacks in the media and by bringing legal actions against them on the grounds of alleged discrimination against persons of LGBT orientation.

15. Given the Biblical position on marriage, it is likely that Christians will increasingly find themselves on the wrong side of the law when they express opposition to, or disapproval of, same-sex couples, eg when discussing their faith in public or in private with new acquaintances; with fellow workers or customers at their places of employment; in the classroom; or when deciding whether to provide business services to same-sex couples.

16. This potential gagging of Christians and people of conscience will be particularly aggravated in the context of sex education and teaching on the make-up of families in schools. It has always been the duty and privilege of parents to raise their children and to have them taught in line with their philosophical and religious beliefs. It should be the choice of their parents whether children are exposed to teaching about homosexuality as a normative and healthy expression of relationships and sexuality, including the assertion that living as a same-sex couple constitutes an acceptable and normal lifestyle. Younger children will be particularly confused to hear one thing at school (ie same-sex couples—good) and another thing at home ((ie same-sex couples—bad) and will be torn by peer pressure to fit in at school, thus putting them in conflict with their parents.

17. Likewise, teachers in non-faith schools who are Christians may feel constrained by the provisions of the Education Acts and associated Regulations to teach children in their charge about the supposed acceptability and normality of same-sex couples when they find the lifestyle and practice of such couples to be in conflict with the Word of God and their Biblical beliefs. This will be a particular problem in non-faith schools, where Christian

teachers may be forced to choose between their beliefs and their teaching careers. At the very least they could risk some form of disciplinary procedures for alleged misconduct.

18. In the case of Christian schools, and possibly those of other faiths, the children may be presented with two conflicting views of same-sex couples (ie same-sex couples—good; same-sex couples—bad) and the teachers will have to explain that the law of the land has got out of step with the Law of God. Of course, there is the risk that a non-believing parent of a child in a Christian school will object to their child being given a view opposing or condemning same-sex couples and will seek to have the teacher concerned disciplined or dismissed. Older children who are Christians or of other faiths which do not accept the practice of homosexuality do not appear to have the right, under current legislation and practice, to opt-out of lessons on this topic but must submit to what is, for all practical purposes, indoctrination.

INCREASED FINANCIAL BURDEN ON THE N.H.S.

19. Same-sex couples cannot have their own children and must therefore resort to IVF treatment or adoption. It appears that the Government is to give free IVF treatment to every same-sex couple who seeks it. The cost of a course of IVF treatment is very high compared to the cost of a natural birth and, given the dearth of babies available for adoption, as the number of same-sex couples grows, the number of requests for IVF treatment will rise disproportionately compared with requests by man-woman couples and single women. Furthermore, recently published research suggests that children born via IVF treatment are more prone to certain chronic conditions, such as asthma, which require long-term medical care. This situation will lead to an increased financial burden and operational pressure on an already over-stretched National Health Service (“NHS”).

20. In the context of IVF treatment, given the anonymity of many donors and the expected rise in the number of same-sex couples undergoing IVF treatment, there is a real risk of near relations being donor or donee of eggs or sperm, giving rise to the possibility of genetic defects and inherited diseases becoming more widespread. This would also place an increased burden on the NHS.

21. In future generations, it is not beyond the bounds of statistical probability that the “offspring” descendants of same-sex couples may marry a blood relation because of their ignorance of the identity of the donor of the egg or sperm used in their ancestry.

PROTECTION OF THE CHURCH OF ENGLAND

22. The Bill is not intended to extend the ability to carry out same-sex marriages to the Church of England. The Bill includes, among other things, a number of provisions designed to protect the Church of England, as the Established Church of the realm, from the risk of challenge by same-sex couples who desire to be married in accordance with the rites of the Church of England and to leave the Canon law of the Church of England unaffected by the introduction of same-sex marriage (the so-called Quadruple Lock).

23. The Government has stated its intention to protect religious organisations, including the Church of England, from successful legal challenge before the European Court of Human Rights (the “ECHR”) on the basis that the rights enshrined in the European Convention on Human Rights put the protection of religious belief “in this matter” beyond doubt.

24. However, we understand that Coalition for Marriage, a Christian campaigning group, report they have obtained advice from Mr Aidan O’Neill QC, leading counsel who is an acknowledged expert in the fields of judicial review and human rights, to the effect that the Government could be in breach of the European human rights laws if it allows the Church of England to refuse same-sex weddings.

CONCLUSION

25. For the reasons set out above, we consider that the extension of the definition of marriage to same-sex couples as contemplated by the provisions of the Bill is, first, misconceived, discriminatory and likely to undermine the traditional form of marriage as demonstrably the best and most stable form of family unit in which to raise and nurture children and, secondly, a step too far taking us down the road to destruction of the institution of marriage, which is the bedrock of our society, with the inevitable reconfiguration of the family and consequential social problems.

SUMMARY

26. **Voice for Justice UK** is a Christian campaigning group working to uphold traditional values of faith and morality; of freedom of speech without threat of fear or intimidation; and the freedom to manifest belief. We have particular experience of family and relationship problems, sexual abuse and exploitation, and right to life issues covering both the beginning and end of life.

27. We consider the introduction of the Marriage (Same Sex Couples) Bill (the “Bill”), insofar as it seeks to redefine the long-established institution of marriage, to be misconceived, discriminatory and likely to undermine the traditional form of marriage as demonstrably the best and most stable form of family unit in which to raise and nurture children. The Bill’s provisions give rise to the following areas of grave concern:

Their deleterious effect on the institution of marriage itself and on families

Marriage as “the voluntary union for life, of one man and one woman, to the exclusion of all others” (“man-woman marriage”) reflects the Biblical position and the position of the Church of England. Experience shows that man-woman marriage is the best and most stable way of raising children in a family unit.

Once you open the door to same-sex marriage, logically and intellectually you cannot long resist pressure to extend the benefits of marriage to other relationships, so as to permit polygamy, polyandry and polyamory, or even to requests to lower the age of consent for sexual relations. Any such extension is likely to lead to increased discord in homes and to a breakdown in society.

Equally, the Prime Minister’s test that two people (of the same sex) who can demonstrate “love and commitment” to each other should not be denied the legal status of being married would be satisfied in the case of a father and daughter, or a brother and sister, as well as in the case of parties to plural marriages who claimed such love and commitment.

The proposed legislation prioritises the wishes of a small minority adult class over the needs and best interests of children, who require both care and protection from behaviours and environments that might put them at risk.

We view the purpose of the Bill to be a Trojan Horse presented to our Government by elements of our society who seek to expand sexual freedom as far as possible without regard to the potentially disastrous effects which this will have on our society, our children and public order.

The creation of two classes of married couples with differing obligations

The Bill creates two classes of married couples with different obligations and incidents to their relationship giving rise to new, and entirely avoidable, inequalities between man-woman couples and same-sex couples.

A person in a man-woman couple will:

- a) have a duty to consummate their marriage or face the possibility of annulment proceedings; and
- b) risk divorce proceedings if they commit adultery with a person of the opposite sex,

whereas a person in a same-sex couple will not.

The children of same-sex couples are to be denied the benefit of the presumption of legitimacy enjoyed by the children of a man-woman couple.

The inevitable impact on the freedom of speech of those opposed to same sex marriage, including the impact on the education of our children and on their teachers

The introduction of the marriage of same sex couples will inevitably impinge on the rights of Christians and those of other faiths as well as people of conscience whose beliefs lead them to oppose same-sex marriage.

Given the Biblical position on marriage, it is likely that Christians will increasingly find themselves on the wrong side of the law when they express opposition to, or disapproval of, same-sex couples.

Teachers who are Christians may feel constrained by existing laws to teach children in their charge about the supposed acceptability and normality of same-sex couples when they find the lifestyle and practice of such couples to be in conflict with the Word of God and their Biblical beliefs. This will be a particular problem in non-faith schools, where Christian teachers may be forced to choose between their beliefs and their teaching careers.

The increased financial burden on the National Health Service (“NHS”)

As the number of same-sex couples grows, the number of requests for IVF treatment by such couples will rise disproportionately. Recently published research suggests that children born via IVF treatment are more prone to certain chronic conditions which require long-term medical care. This situation will lead to an increased financial burden and operational pressure on an already over-stretched NHS.

In the context of IVF treatment, given the anonymity of many donors and the expected rise in the number of same-sex couples undergoing IVF treatment, there is a real risk of near relations being donor or donee of eggs or sperm, giving rise to the possibility of genetic defects and inherited diseases becoming more widespread.

The likelihood of a successful legal challenge to the provisions designed to protect the position of the Church of England

Coalition for Marriage report that they have obtained advice from Mr Aidan O’Neill QC to the effect that the Government could be in breach of the European human rights laws if it allows the Church of England to refuse same-sex weddings. In summary, this Bill is a step on the road to rendering meaningless the institution of marriage, which is the bedrock of our society, and thus destroying it.

Memorandum submitted by Changing Attitude England (MB 73)

SUMMARY

Changing Attitude England represents lesbian and gay Anglicans who wish to be married in church according to the rites of the Church of England, including families, friends and colleagues and congregations wishing to contract same-sex marriages. Changing Attitude believes the attitude of the Church of England to same-sex relationships and equal marriage is undermining the mission of the Church in England and its witness to the infinite love of God for all people.

1. CHANGING ATTITUDE ENGLAND

1.1 Changing Attitude England is an organisation which has campaigned since 1995 for full equality for LGB&T people in the Church of England. We fully support equal marriage for lesbian and gay Christian couples and welcome the government's bill.

1.2 Changing Attitude has local groups in eight dioceses and gay and straight supporters, lay and ordained, in every English diocese. From our extensive parish and pastoral experience we believe the majority of members of the Church of England support equal marriage.

1.3 Changing Attitude represents those lesbian and gay Anglicans, their families, friends and colleagues and the congregations where they worship, who wish to be married in church according to the rites of the Church of England.

1.4 Many lesbian and gay couples in the Church of England have already contracted civil partnerships and wish to convert to marriage or are waiting to marry when the bill is passed.

1.5 Social approval of same-sex marriage and civil partnerships has transformed the status of lesbian and gay couples in the UK, including those who are Christians and members of the Church of England. This is a matter of justice and equality, both fundamental biblical values. In 2013 it is unacceptable that people should be discriminated against on the grounds of sexual orientation. Lesbian and gay couples have just as much right as straight couples to have their relationships recognized socially and legally as marriages.

2. THE CHURCH OF ENGLAND

2.1 The Church of England claims to welcome lesbian, gay and transgender people as church members, to support civil partnerships and to affirm lay people in lesbian and gay relationships. It does not accept lesbian and gay clergy and accredited lay ministers in same-sex relationships unless, in theory, they confirm that the relationship is non-sexual. The meaning of non-sexual is not defined.

2.2 The Church wants to affirm partnered lesbian and gay people while requiring legally secure protection against holding same-sex marriages in Church of England buildings conducted by Church of England clergy.

2.3 When asked bishops are unable to explain why they are preparing to allow lesbian and gay relationships to be blessed in church following a civil partnership but cannot describe how this legal relationship differs in substance from marriage.

2.4 The Church of England does not have unambiguously clear teaching and practice in relation to marriage as claimed by the Bishop of Norwich. Bishops are not able to explain what differentiates the substance of same-sex and opposite sex marriage. Neither are they able to say what the Church will offer same-sex couples liturgically that will be the equal of marriage in substance but is not marriage in reality.

2.5 Dr Jeffrey John, as he said in his testimony to the committee, is certainly not a lone voice. We also suspect that a majority of people in the Church agree that there should be some kind of recognition for civil partnerships, such as a blessing ceremony.

2.6 We believe a significant number of bishops, and quite possibly the majority, agree but feel that they cannot say so publicly. There is a real divergence in the Church of England between the teaching that is put forward publicly on same-sex relationships and what is said and done privately. There is a huge gulf between the public morality of the Church and the private morality adopted by bishops and Church leaders. It is one of the most corrosive things at the heart of the Church which the Church needs to address.

3. THE BILL DOES NOT REDEFINE MARRIAGE

3.1 The Church of England's theology of marriage is rooted in God's covenant relationship with his people in creation. Changing Attitude believes the relationships of both gay and straight people are enhanced by the kind of covenant framework in which to live and love someone else in order to achieve their maximum fulfilment and happiness in life. The name given to this covenant relationship is marriage.

3.2 Other churches within the Anglican Communion also agree that same-sex relationships are equally deserving of recognition and celebration: the Church of England's official position on same sex relationships is one possible Christian/Anglican viewpoint, but not the only one:

“So we have begun to consider that Christians of same-sex and other-sex affections are equally called... to the holiness of God... The Episcopal Church has called all in relationships of sexual intimacy to the standard of life-long commitment ‘characterized by fidelity, monogamy, mutual affection and respect, careful, honest communication’ and the ‘holy love which enables those in such relationships to see in each other the image of God’ (Resolution D039, 73rd General Convention of the Episcopal Church). The experience of holiness in some same-sex unions has called for and deepened our sense of how these life-long unions of fidelity can be seen to manifest God’s love.” To Set Our Hope on Christ: A Response to the Invitation of Windsor Report Para 135, (2005) Part II, 2.25, p 26 <http://www.episcopalchurch.org/documents/ToSetOurHopeOnChrist.pdf> (accessed 16.11.10)

3.3 Marriage is a social and legal relationship. The legal ceremony may, but need not be, religious in nature.

3.4 There is at present no statutory definition of marriage, although the Matrimonial Causes Act 1973 specifies the grounds on which a marriage is void or voidable at common law. The ground relevant to the Bill is found in section 11(c) MCA 1973: a marriage shall be void on the ground that the parties are not respectively male and female. Section 11(c) MCA 1973 implicitly incorporates the common law definition in *Hyde v Hyde and Woodmansee* [1866] L Rev 1 P & D 130 that marriage is ‘the voluntary union for life of one man and one woman to the exclusion of all others’. (This was a case concerned with a potentially polygamous Mormon marriage.)

3.4 The Bill proposes to omit section 11(c) MCA 1973 in Schedule 7, Part 2, clauses 23 & 24. This is the deletion of one ground of nullity.

3.5 In making the marriage of same-sex couples lawful in principle, the Bill ends the primary legal discrimination against same-sex couples. This, of itself, has no necessary effect on the religious conception of marriage. The amendments to the law proposed in the Bill are analogous to the decision by the Church of England to ordain women taken in 1992. When the Church of England ordained women priests it did not redefine priesthood or the sacrament of ordination. The Church simply admitted the other half of the human race into ordained ministry. Introducing same-sex marriage is a much less radical and revolutionary theological development than is claimed by the Church.

4. DAMAGING THE MISSION OF THE CHURCH OF ENGLAND

4.1 Changing Attitude believes the attitude of the Church of England to same-sex relationships and equal marriage is undermining the mission of the Church in England and its witness to the infinite love of God for all people. The Church is perceived to be prejudiced. The Church is perceived to discriminate against women (because they are not allowed to be bishops) and lesbian, gay, bisexual and transgender people, because their identities and relationships are understood to be less acceptable than those of cisgendered and heterosexual persons.

4.2 Jesus’ message is of love for God, neighbour and oneself. The Church of England is currently committed to teachings which prejudice our ability to share God’s love with all. The Church enshrines prejudice and judgement against LGB&T people in particular.

4.3 Bishops talk about the wonderful breadth and comprehensiveness of the Church of England, but it is not at all broad or comprehensive in its attitude to equal marriage; it is extremely exclusive. The attitude of senior church leaders is having a disastrously damaging effect on people’s perception of the Church of England and of the nature of Christian faith and the message of Jesus Christ.

4.4 The Church of England’s legal ability to discriminate harms the image of the Church in the public consciousness. The country is not “pretty divided on same sex marriage” as claimed by senior Church of England staff. All of the opinion polls (except those with very leading questions commissioned by the Christian Institute) show clear majorities, including majorities of people of faith, in support of equal marriage.

4.5 God is infinitely more compassionate and positive about lesbian and gay people than the Church. The love of gay people comes from God, and we have no doubt that God wants to bless, strengthen and protect the love shared in a gay relationship. The Church is misrepresenting God in opposing equal marriage and requiring legal protection.

4.6 The Lord Bishop of Norwich referred to the extensive empirical research recently undertaken by the Church of England which revealed that nine and a half out of 10 of all the couples who were married in church said that the most important element in their marriage was the vicar. The relationship they had formed with the priest as they prepared for their marriage helped them feel that they belonged connecting them with the wider community. That is one of the things that the Church can do extremely well and is why lesbian and gay members of the Church of England want the freedom to marry in church. The bishop revealed his hope that the Church will one day be able to change its mind more completely.

5. LEGAL PROTECTION—THE SO-CALLED QUADRUPLE LOCK

5.1 Changing Attitude thinks the provision of the so-called quadruple lock for the Church of England is unnecessary and highly regrettable. We believe parish churches wishing to offer same-sex marriage and clergy who wish to solemnise same-sex marriages should be free to do so.

5.2 Changing Attitude believes all members of the Church of England who welcome equal marriage as a covenantal relationship appropriate for both same and opposite sex couples should be respected and free to act according to conscience. The Church of England and the Church in Wales should be as free to opt in to the provisions of this legislation as other religious bodies.

5.3 We also believe no religious body or individual should be compelled to act against conscience.

5.4 We believe the Church of England should adopt a permissive stance. Every parish wishing to register to conduct same-sex marriages should be free to do so and every clergy person should be free to solemnise such marriages in their legal role as registrars.

5.6 We oppose any additional legal exemptions which might inhibit the Church of England from opting in. They will compromise the religious freedom of those in the Church of England who are in favour of equal marriage. The Church would be much more genuinely Anglican and Christian if people were allowed to follow their conscience.

5.7 The proper solution would be the one that obtains now with respect to remarriage people who have been divorced. The decision is the responsibility of the parish priest, in consultation with the bishop and with the consent of the PCC.

5.8 When the Church of England accepts same-sex marriage and revises its doctrine, this will require a change to canon law. An amending canon will be required, passed by the General Synod and granted a royal licence, and in addition a measure will have to be passed by the General Synod because it would involve a doctrinal change. That measure would also make the necessary changes to the Marriage Act, making it possible for Church of England clergy to conduct same-sex marriages. These legal requirements protect the Church of England from being required to solemnise same-sex marriages.

5.9 Transgender Anglicans welcome the bill because married transgender people who apply for full gender recognition will no longer have to dissolve their marriages. The fee should be waived for those transgender couples who are now in a civil partnership because they had to dissolve their marriage to gain full gender recognition and who now wish to convert their civil partnership (in their case back to) marriage.

5.10 While a minority within the LGB&T community think that the term 'marriage' has negative cultural overtones of patriarchy and female submission, it is also the case that many who would not want to enter the institution of marriage themselves would not wish to deny others the opportunity to do so.

5.11 The spectre of litigation has been raised. There has been no successful litigation by divorced people forcing the Church of England to remarry them in their parish church against the wishes of their local priest. We believe, therefore, that the fear the Church has of litigation is unfounded.

6. THE CHURCH OF ENGLAND'S ATTITUDE TO EQUAL MARRIAGE

6.1 The Church of England's official submission to the consultation on equal marriage does not reflect our views, or the views of many others within the Church of England who are in favour of equal marriage in church.

6.2 The Church of England is divided on the ethical issues around same-sex relations and the acceptability of civil partnerships and equal marriage. This division is contextualised within broader debate and disagreement within the Anglican Communion as a whole.

6.3 Church House commonly issues statements which claim to speak for 'The Church of England'. We have questioned the appropriateness of such statements when the Church of England is divided on major issues such as women in the episcopate, equal marriage and clergy in civil partnerships. There is no unanimity of view about same sex marriage in the Church of England.

6.4 There is a distinction between the doctrine of the Church of England as set out in canons and liturgy and what members of the Church think. The official teaching of the Church also differs significantly from the practice of the Church in congregational life and worship.

6.5 Changing Attitude accepts that the teaching of the Church of England is defined by the House of Bishops and by documents published by the House. However, there is a clear distinction between the doctrine and teaching about the purpose of marriage which bishops claim is definitive, the variation in teaching found in different marriage services and in the practice of individual clergy and parishes.

6.6 When questioned, the Bishop of Norwich thought it possible that Church of England understanding of the status of same-sex relationships and how they are treated will change but that this would not necessarily lead automatically to the Church approving of same-sex marriage.

6.7 The Bishop of Norwich said the Church of England's understanding of marriage is "rather unambiguously" set out in Canon B 30, which says marriage is the union of one man and one woman for life to the exclusion of all others according to Christ's teaching.

6.8 Despite the unambiguous statement in Canon B30 the Church of England's current practice does not conform to this teaching. The Church of England does not limit its practice of marriage to Canon B30 or the text of the Book of Common Prayer 1662. The Church of England recognises that marriages fail and couples

divorce and many clergy and parishes in England marry couples where either the bride or the groom or both are divorced. There are several bishops who have remarried following divorce or married a divorcee.

6.9 Although all three prefaces and Canon B 30 affirm the Church of England teaching that marriage is between a man and a woman Changing Attitude believes there are good biblical and theological reasons for revising the theology and extending marriage to same-sex couples.

6.10 The 1928 Prayer Book's "natural instincts and affections, implanted by God, ... hallowed and directed aright" and "The growing together in love and trust" and "the acts of tenderness and love" of the Common Worship preface are qualities desired of same-sex as well as heterosexual relationships.

7. CHURCH OF ENGLAND ATTITUDE TO CIVIL PARTNERSHIPS

7.1 The damage done by failure of the Church of England to welcome, support and celebrate civil partnerships is now being exacerbated by its opposition to equal marriage. The House of Bishops has since revised its position and seems to be preparing the ground for accepting civil partnerships when the review group chaired by Sir Joseph Pilling reports in the Autumn.

7.2 Changing Attitude endorses the Christian call to fidelity in marriage. There is no difference between the theology that would justify a sexually active civil partnership as being faithful and based on monogamous promises and the theology of a covenant relationship that underpins marriage. If the Church accepts the validity of monogamous civil partnerships it is de facto accepting marriage.

7.3 Accepting civil partnerships may well bring about the very thing the Church says it fears, which is that the idea of faithfulness and monogamy will be diluted. The danger of accepting civil partnerships as an alternative to marriage is that they will be seen as "marriage-lite" with a lower standard of fidelity. It will be ironic if civil partnerships continue because the Church will be accomplishing the very thing it says it wants to avoid, which is to undermine the call to unbreakable fidelity in marriage.

8.0 Scripture and homosexuality

8.1 Teachings about marriage and homosexuality in Scripture—certainly in the New Testament—do not address the pattern of life lived by lesbian and gay Christians today. St Paul, the only person in the New Testament who addresses the issue of homosexuality, clearly never takes into account the situation of two adult Christians wanting to commit to each other for life.

8.2 Paul makes two assumptions about homosexuality. First, Paul believes that homosexual acts are committed by people who are essentially heterosexual. That is why in Romans 1 he talks about exchanging "the natural use". It is quite clear in the way Paul writes that people are not homosexual by nature or orientation but are heterosexuals who have chosen to do engage in sexual activity unnatural to them.

8.3 Secondly, Paul was attacking the prevalent forms of homosexuality that he witnessed in Greek society—pederasty and paedophilia.

APPENDIX

CANON B 30 AND THE BOOK OF COMMON PRAYER 1662

The Church of England's theology of marriage and the legal foundation of Church teaching is contained in Canon B 30 and the 1662 BCP service. The teaching of this service has, however, already been significantly modified by the 1928 and Common Worship services and this revised teaching gives authority to a theology of marriage which is significantly different from 1662 BCP and Canon B30.

The preface to the Book of Common Prayer of 1662 gives three reasons for marriage. First, the procreation of children; second, for a remedy against sin and to avoid fornication; third, for the mutual society, help and comfort the one ought to have of the other.

The preface to the alternative 1928 service more commonly used prior to the introduction of Common Worship revises the text. The first reason for marriage in the 1928 service is for the increase of mankind according to the will of God, and that children might be brought up in the fear and nurture of the Lord; the second, that the natural instincts and affections, implanted by God, should be hallowed and directed aright; the third is identical with 1662.

The Common Worship preface, the one most commonly used today revises both the order of priorities and the text. First, it is given that as man and woman grow together in love and trust, they shall be united with one another in heart, body and mind; second, marriage brings husband and wife together in the delight and tenderness of sexual union and joyful commitment to the end of their lives. Third, it is given as the foundation of family life in which children are [born and] nurtured.

We think the Bishop of Norwich inadvertently provided the committee with incorrect information about Church of England teaching on marriage. The procreation of children is no longer placed first in the Common Worship preface and the bearing of children is no longer essential, the words "born and" being in brackets. Because of this, the church is prepared to marry couples who may be past child bearing age, may be infertile or

may have no intention of bearing children. Contraception is accepted by the Church of England as a legitimate way of preventing the conception of children.

The objection raised by many Christians that every marriage must be open to the nurturing of children is something fulfilled by many lesbian and gay couples. Couples have their own children through adoption, artificial insemination and surrogate parenthood. The 1928 phrase, 'the increase of mankind', is a value restricted by birth control.

The Bishop of Norwich said the first purpose of marriage is for the procreation of children and that when the Church of England marries someone, the preface in the Book of Common Prayer is recited even when the woman is past child-bearing age. This is simply not true. The Book of Common Prayer preface is rarely used now. A rubric in both the 1662 and 1928 services says the prayer for the procreation of children may be omitted when the woman is past child-bearing.

February 2013

Memorandum submitted by David Burton (MB 74)

I am currently and have been for many years, a Christian youth leader working with young teenagers, both boys and girls.

I am concerned on three issues which have not been dealt with, as far as I can see, in the proposed legislation.

These are:

1. Safeguards for Christian Youth Leaders in the face of this legislation.
2. Safeguards for Churches and Clubs in their use of public and/or private buildings for their services and activities.
3. The unfinished nature of this legislation.

1) The roll of Christian Youth Club Leaders if this legislation is passed. I understand that the government does not expect teachers in schools to promote same sex marriage or use material which does so if it is against their conscience to do so. How well that will stand up against European Court of Human Rights rulings is very questionable should a case of discrimination be brought against a school or teacher as it is unclear at present and will remain so until the legislation is tested in Court. How long into the future the government safeguards are kept is also unclear. What about Christian Youth Club Leaders who may well be asked about sexual orientation issues by children and teenagers in their care? Some questions may be pernicious and designed to catch the leader out, but most are genuine questions to do with sexual orientation. Will we be free to continue to teach the Biblical Christian position that same sex sexual acts are sinful and therefore same sex marriage is also sinful? Will we be in danger of court action?

2) What will the position be of churches and youth clubs that use public buildings such as Village Halls or School Buildings for their services or activities. Will they be in jeopardy for teaching what they believe to be the Biblical teaching on sexual orientation? Could the Village Hall or School be forced to exclude the Church or Youth Club from using their premises? Will parents or members of the public be able to bring court action against Trustees of Village or Town Halls or Schools and thus force them to deny the use of their premises to Churches or Clubs?

3) With this kind of legislation there tends to be a desire to push the boundaries of the legislation just as has happened with Civil Partnerships where the Christian public, and the Nation as a whole was assured that Same Sex Marriage would not become legal in the future. Many MPs in the debates both in the House of Commons and subsequent Question Time appearances have stated that this is the beginning of a journey just as Civil Partnership legislation was and that few people now object to Civil Partnerships, so with Same Sex Marriage, the expectation being that in a few years time the majority will wonder what all the fuss was about. Christian concern is that this legislation has a sinister agenda of social engineering that aims to change society as we know it. My concern is that this is not good for Society, leading as it inevitably will, to further changes in the future which will force Christians either to go against their consciences or lose their jobs as they will be forced out of their work place, bullied and denigrated in public office and their influence and voice silenced.

4) Some libertarians want this legislation to lead eventually to the abolition of marriage altogether, not, as has been stated by some politicians, to strengthen marriage. Some even want legislation eventually to allow anyone to have sex with anyone, including paedophiles with children, incest between brothers and sisters and parents and children as well as with animals. Whilst I am sure that the government would be as appalled as I am, the fact is that there is an agenda around this legislation which aims at going much further than many MPs realise. Once marriage has been redefined to include same sex couples for equality reasons, there is no boundary to stop further redefinitions should powerful enough lobbies wish to do so.

5) Baroness Varsy is on public record that Faith groups, including Churches and Christian organisations do good, providing countless hours of free voluntary work running all kinds of public benefit clubs and schemes, from Food Banks to Street Preachers. They do so because of a conviction that they are to love their neighbours as themselves and so want their contacts to hear the same message of salvation as they have heard and responded

to. This legislation will not just be of interest to a tiny minority who might take advantage of it, but it will also put in jeopardy a huge number of independent churches and charities which do not believe this is either good or right for society. The pressure will not necessarily come from government either national or local, but from the Charity Commission, Insurance Companies, and possibly even Banks and other organisations who will want to promote this Equality Legislation to its limit.

6) Things that are equal are not necessarily the same. Men and women were created equal in the sight of God, but they are not the same. They complement each other. Both are needed for the creation of children and both bring different qualities to the care and upbringing of their children. This legislation does not address the needs of children for their biological parents. A man has never given birth to a baby nor has one ever, to my knowledge, suckled his baby. That is the responsibility and joy of the mother. Medical wisdom is that mother's milk is better by far for the baby than manufactured milk. To try and change the roles of mothers and fathers or deliberately deny either a mother or a father their responsibilities to their children is a very dangerous route with unforeseen consequences which greatly concern me and countless others who hold similar views.

February 2013

Supplementary evidence submitted by Dr Augur Pearce (MB 75)

SUMMARY

In relation to the Church of England, I believe that the parishioner's right to have his marriage solemnized in his parish church (or a church with which he has a sufficient connection) should continue, modified by clause 1(1), but that clergy who would normally have to officiate should be dispensed from doing so if they have conscientious scruples.

If a minister does not have such scruples, the parishioner's right should prevail and be a sufficient shield for the minister against pressure on the part of other ecclesiastical authority. There should be no exemption in relation to the calling of banns, itself a purely legal formality.

Thus I do not accept that 'opting in' by any ecclesiastical authority other than the individual officiating minister should be required.

I also do not accept that there should be any further 'opting in' to the use of a Church of England rite by willing ministers in forces chapels, in shared churches, or in the case of a housebound, detained or terminally-ill person. There is no common law obligation in any of these cases, but in relation to forces chapels it would be wise for the Bill to make clear that a serving chaplain cannot be ordered by superior authority to officiate at such a marriage.

I believe such an outcome would be compatible with European Convention rights. It would take full account of the conscientious positions of the couple, and of both willing and unwilling ministers. It would take account of the couple's Article 14 right not to be discriminated against by public authorities in the exercise of other Convention rights, in this case the Article 12 right to marry.

It would not treat the positions of local congregations opposed to same-sex marriage as decisive, nor those of the General Synod, its electorate or its House of Bishops; but I do not believe legitimate rights of any of these groups are engaged by what I propose. It could not be inconsistent with what has been called 'the canon law of the Church of England', because there is no law governing the Church of England distinct from the law of the land.

Whether my suggestions should, or should not, cover the Church in Wales depends how Parliament assesses the logic of the 1914 settlement.

ABOUT MY EVIDENCE

1. On 14th February I gave oral evidence to the Committee as a nominee of the United Reformed Church. My evidence then concerned where the URC currently stands on the underlying question of same-sex marriage, the polity of that Church and the diversity in its members' views lying behind that position, and aspects of the Bill which I believe can be improved, in the interest of providing a framework for marriage formation within which religious groups who do not accept same-sex marriage and religious groups who do may each act accordingly.

2. During my evidence two members of the Committee addressed to me questions concerning the Church of England and Church in Wales. The position of these bodies in relation to same-sex marriage is not something that has ever been discussed in the councils of the URC: indeed they might feel it wrong to make any corporate statement on such a matter. Because of this, I said that I myself did not feel it right to make such a comment whilst I was before the Committee as a URC witness.

3. When pressed, however, I admitted I did have a personal view on the issues raised by members, and indeed generally on the Bill's provisions concerning the Church of England. At the Chairman's suggestion I undertook to make this view clear in further written evidence. I do so in this Memorandum. This time I do NOT speak for the URC, and I doubt whether any council or representative of the URC would reason in these terms. But I

write as an elector and as a parishioner of an English parish.²²⁹ I write also after some ten years of legal practice with a specialism in matters affecting the Church of England followed by twenty years of academic study and research in this field.

THE QUESTIONS PUT TO ME, AND MY ANSWERS IN BRIEF

4. The questions put to me were as follows. Mr Kwarteng asked my personal view about the Bill's 'protection' for the Church of England against having to facilitate same-sex marriage. Mr Kirby asked whether I thought the Church of England and Church in Wales needed 'a different route to opt in' because of the unique legal framework within which they operate.

5. My answers on these points appear in the Summary above and are not repeated here. But clearly each of my points requires explanation. I shall seek to justify each proposition in turn.

THE RIGHT TO SOLEMNIZATION

6. In principle any parishioner has hitherto enjoyed the right to solemnization of his marriage in the parish church. This is the corollary of the parish minister's duty to officiate (in person or by a deputy, typically an assistant curate). The duty was established by case law,²³⁰ but implicitly recognised by the statutory dispensations referred to at paras 17–18 below. It is extended by legislation to parish centres of worship²³¹ and to the churches of parishes with which a party has a qualifying connection.²³² Strictly speaking, the option for a regular worshipper to marry in his 'usual place of worship'²³³ was not accompanied by an additional duty on the minister of that place, though the point is unlikely to be taken.

7. Some of the language of the Bill, and indeed of the Measure of 2008, reads as though the ground were being prepared for a challenge to the existence of this duty and corollary right. The 2008 Measure refers to 'the like, but no greater, right ... as [the person intending marriage] has to have the marriage solemnized in the parish church of the parish in which he or she resides'. The Bill refers at clause 1(4) to '*Any* duty of a member of the clergy to solemnize marriages (and *any* corresponding right ...)' (my italics). There has indeed been some academic speculation that the caselaw does not establish what over two centuries of legal writing has claimed for it; but I personally find the speculation unconvincing. I believe there are indeed such a duty and right, enforceable by either ecclesiastical disciplinary process or a mandatory order in judicial review proceedings or both. Of course, the cautious language just quoted may merely take account of the dispensations referred to below.

WHY SHOULD SUCH A RIGHT EXIST?

8. This right is consistent with parishioners' other rights. Although the parish minister has legal possession (and, unless there is an impropriate rector, the freehold) of the parish church and churchyard, he possesses them not for his own enjoyment but 'for the use of the parishioners, subject to the control of the Ordinary'.²³⁴ Any parishioner, regardless of baptism or personal convictions, is entitled to attend divine service in the church,²³⁵ to be heard when alterations to the fabric are under consideration,²³⁶ and to be buried (if there is space) in the parish churchyard.²³⁷ All parishioners have a voice in the choosing of churchwardens,²³⁸ and until recently any parishioner could serve in that capacity.²³⁹

9. There are, to my mind, two reasons why such rights should exist. First, I see the Church of England as, amongst other things, a public service, 'the religious establishment of the realm',²⁴⁰ and the General Synod's electorate are not the only people with an interest in it. As Chief Justice Holt said, 'parishes were instituted for the ease and benefit of the people, and not of the parson, that they might have a place certain to repair to when

²²⁹ It is important to appreciate from the start that a parishioner is an inhabitant of a parish, and that a parish is a geographical unit (whether or not it has been divided 'for ecclesiastical purposes', and whether or not it is still served by a civil parish council or meeting). Everybody living in England (except in some peculiar places, few of which have residents) is a parishioner. I ceased to conform to the Church of England in 2001 but I remain a parishioner of the Parish of the Ascension Cambridge.

²³⁰ *Argar v. Holdsworth* (1758) 2 Lee 515

²³¹ Pastoral Measure 1983 s.29(3) (centre to count as parish church 'for the purposes of ... any other ... rule of law requiring ... any service or ceremony to be held ... or other thing done in or at the parish church')

²³² Church of England Marriage Measure 2008 s.1(1)

²³³ Marriage Measure 1930; see now Marriage Act 1949 s.6(4)

²³⁴ *Griffin v. Dighton* (1864) 5 B&S 103

²³⁵ *Cole v. Police Constable 443A* [1937] 1 KB 316

²³⁶ *Kensit v. Rector of St Ethelburga Bishopsgate Within* [1900] P 80

²³⁷ *Kemp v. Wickes* (1809) 3 Phil Ecc 264

²³⁸ Churchwardens Measure 2001 s.5(1)(b)

²³⁹ Eligibility was limited by the Churchwardens (Appointment and Resignation) Measure 1964, but on the basis of communicant status rather than the church electoral roll.

²⁴⁰ *Town of Pawlet v. Clark* (1815) 13 U.S. 292: 'The phrase "the Church of England", so familiar in our laws and judicial treatises, is nothing more than a compendious expression for the religious establishment of the realm ...'. 'Establish' is used here in a different sense from Sir Walter Phillimore's better-known assertion that 'a Church which is established is not thereby made a department of the State'; *Marshall v. Graham* (1907) 2 KB 112.

they thought convenient, and a parson from whom they had right to receive instruction'.²⁴¹ Significantly, this passage couples parishioners' rights with a duty on the parish officer (the minister) who is to satisfy them: in the case of a liturgical rite such as the solemnization of matrimony, the case for a duty is stronger since normally only he (and those with his authority) can officiate in the church.²⁴² It is no more acceptable for ministrations in the parish church to be denied to certain classes of inhabitant on the basis of distinctions which the law does not make than for National Health Service staff to decide to treat only female patients. I elaborate on this assertion in paras 39–43 below why I make this assertion, and deal at 28–33 with the counter-argument that in this case 'canon law' *does* make a distinction.

10. The second reason is more resource-focussed. England's parish churches are themselves *public* ecclesiastical assets: some provided, almost all once maintained, out of public funds or compulsory levies. Some early churches were erected with royal funding before there was any real distinction between Crown revenues for governmental and personal purposes; many later churches were erected using a parliamentary grant from general taxation (most recently under the Church Building Act 1831); and the naves of all churches were, at common law, repaired by a levy on all ratepaying parishioners until the Compulsory Church Rate Abolition Act 1868.

11. Since such funding has ceased, my second reason is an historical argument whose force diminishes with time, but I submit it is not yet irrelevant. Voluntary donations from churchgoers (with the same grant aid as is available for any historic building) have admittedly borne the lion's share of repair costs since 1868. But had the forebears of today's parishioners not been obliged to pay church rate, some churches would have fallen into ruin before the mid-nineteenth century and not be standing today at all. Others would not exist had our ancestors' taxes not been appropriated to build new churches.

12. One important clue to the status of parish churches and churchyards as public property is that they are not regulated by charity law. The law deals with their consecration, vesting, control and use, repair, alterations and disposal, but in its ecclesiastical branch, not in the law relating to charities and their property. Charities are private initiatives for the public benefit; but parish churches, like regimental barracks or town halls, benefit the public by *public* initiative.

13. Another clue is that Parliament felt itself (rightly) entitled to dispose afresh of the parish churches and churchyards of Wales when the decision was taken in 1914 to cease any public religious establishment in that principality. The land was vested, with other property, in statutory commissioners²⁴³ whose primary function was to realise or reallocate Welsh ecclesiastical property as Parliament directed. I deal with its subsequent fate in para 44 below.

PAST MODIFICATIONS TO THE RIGHT

14. The right to marry has not remained static. Marriage was once denied to those who had made vows of priestly or monastic celibacy. It was once allowed to children of the Sovereign even when they married against the royal wishes. It was once denied to a divorced adulterous spouse, or to couples related in certain ways through another marriage. Each of these impediments was modified or abolished by authority of Parliament. Legislation has only recently made it possible for a transgender person to marry in the assigned gender.

15. Each of these changes occasioned some religious controversy. Roman Catholics would not accept that a priest could validly marry with no dispensation; nor that the 1785 marriage of George, Prince of Wales to Maria Fitzherbert was void and, consequently, his marriage ten years later to Caroline of Brunswick valid. A minority of Church of England clergy rejected the automatic right to remarry accompanying judicial divorce from 1857; more rejected the changes to affinity law from 1907; more still condemned the widened availability of divorce from 1937. There are some who believe a child's physical characteristics at birth indicate a gender determined by the Creator, which no human power can alter: concluding that a female-to-male reassignment is meaningless, and the subject's marriage to a woman effectively a same-sex union.

16. But on each of these occasions the law of the land changed in all its branches, including the ecclesiastical. If the sovereign Parliament enacted that a marriage was valid, then that marriage was not only valid for purposes of property, financial provision between spouses, succession, pensions, social security, parental responsibility, immigration, nationality and bigamy; it also bore implications for ecclesiastical discipline and the obligations of the clergy.²⁴⁴

PAST CONCESSIONS TO CLERICAL SCRUPLES

17. As opposition amongst Church of England clergy to these reforms grew, so Parliament responded with more generous dispensations from the parish minister's obligation to solemnize. No dispensations accompanied the Reformation changes or the Royal Marriages Act 1772. But in 1857, though a decree absolute of divorce allowed the parties to marry again as if the former marriage had been dissolved by death, no clerk in holy orders

²⁴¹ *Britton v. Standish* (1705) Holt KB 141

²⁴² Revised Canons Ecclesiastical, Canon C8 para 4

²⁴³ Welsh Church Act 1914 s.4(1)(b)

²⁴⁴ See also para 32 below

of the Church of England was compelled to solemnize the guilty party's second marriage.²⁴⁵ A judicious balance was struck between the parishioner's rights and the minister's scruples, in that the refusing minister (although usually free to prohibit any other minister officiating within the parish) was bound to permit any other minister entitled to officiate within the diocese to do so.²⁴⁶ This would obviously be a willing minister acceptable to the bridal couple.

18. From 1907 a less even balance was struck. Archbishop Randall Davidson secured an amendment to the Deceased Wife's Sister's Marriage Bill removing the obligation on the parish minister to let a willing substitute replace him. The parish minister could, therefore, in effect deny the use of the parish church altogether to a parishioner taking advantage of the new Act. The change was strongly criticised in the House of Commons, but allowed to remain to secure the Bill's passage before the session ended. The number of affected marriages was, of course, very small, and it usually proved easy for a couple in these circumstances to establish residence in a parish with a less scrupulous minister: hence there was only modest resistance when the '1907 approach' was extended in 1937 to divorce, whatever the ground. Nor did the Gender Recognition Act 2004 require a parish minister to let a colleague substitute for him.²⁴⁷

19. In passing, one other qualification to the parishioner's right should be noted. In 1836 a superintendent registrar's certificate joined other possible preliminaries to a Church of England marriage. For twenty years there was no reason to believe the parishioner's right would not apply to a marriage under certificate as it did to marriages after banns or by licence. But then it was provided that the parish minister's consent was required to marriages under certificate in the parish church (presumably because a certificate was not considered a genuinely 'ecclesiastical' preliminary). This right of consent (or conversely, veto) has survived to the present.²⁴⁸

20. Although parish ministers can decline to officiate whenever the relevant circumstances obtained, they have no reason to do so apart from conscientious scruples about the marriage. Such might flow from personal conviction or from deference to the counsel of other ecclesiastical authority, such as the convocations or the diocesan bishop. But such authorities can *only* counsel: they cannot direct a minister to officiate or to refuse, since his duty to officiate flows from the common law and his right to refuse flows from statute. Parliament has never empowered any group of clergymen to override either. The House of Bishops of the General Synod has issued advice regarding the remarriage of divorcees, but recognises it cannot coerce a minister's discretion, nor make him pretend to scruples he does not in fact have.

APPLYING THE ANALOGY OF PAST REFORMS TO THE CURRENT PROPOSAL

21. My view²⁴⁹ is that the couple being of the same sex has been, up to now, one marriage impediment amongst others. Certainly it is considered by many to go to the root of what marriage is; yet so (once) was indissolubility, creating an absolute bar on either spouse marrying again whilst the other partner lived. That view did not stop Parliament permitting cuckolded spouses remarrying (in Divorce Acts from the seventeenth century), nor allowing both parties to do so from 1857. The change now proposed is not, therefore, so fundamental that objections to it would not be adequately addressed by the 1857 or the 1907 approach described above. In saying this I recall that the 'official' Church of England response to the Government consultation on the current Bill has been disowned by many parochial clergy, as well as more senior figures: clearly there would be a reasonable number of parishes in whose churches same-sex marriage could be solemnized if my arguments were accepted.

22. I personally support contemporary critics of Davidson's 1907 approach, and would prefer to restore the obligation on parish ministers to let willing substitutes replace them, so that a parishioner could rely on marrying a same-sex partner in his own church, rather than having to establish temporary residence in (or a 'qualifying connection' with) another parish. But I accept that to restore the 1857 approach also to divorce and affinity would go beyond the scope of the current Bill, so I would be content with the 1907 approach for now.

THE OPPOSITION VOICED FROM CHURCH HOUSE WESTMINSTER

23. I am aware of a range of resolutions passed and positions taken regarding same-sex relations by the General Synod and its House of Bishops, and of spokesmen for both who have made public statements and 'official' responses to Government on the current proposals. Where same-sex marriage is concerned, a sufficient summary is that these statements (whose authors I shall group generally under the designation 'Church House') oppose equal access to marriage in English law generally, but also indicate particular unwillingness to see same-sex marriage solemnized under Church of England auspices.

24. To judge by the First Reading form of the Bill (which one may assume was discussed more thoroughly with Church House than with representatives of England's other religious traditions), Church House wishes to see no right for parishioners to have a same-sex marriage solemnized in the parish church, and no discretion in Church of England ministers to solemnize such a marriage even if they believe it right to do so. Church House further wants a ban on solemnization of such marriages (wherever they may take place) with the marriage liturgy

²⁴⁵ Matrimonial Causes Act 1857 ss. 57 and 59

²⁴⁶ *ibid.* s.58

²⁴⁷ Dispensations from officiating given by these or successor Acts now appear as Marriage Act 1949 ss. 5A and 5B and Matrimonial Causes Act 1965 s.8.

²⁴⁸ Marriage Act 1856 s.11; see now Marriage Act 1949 s.17 (proviso)

²⁴⁹ Arguably borne out by how grounds of nullity are listed in ss. 11 and 12 of the Matrimonial Causes Act 1973.

prescribed by law. This may possibly extend to preventing same-sex marriages, even by *other* religious rites, in a forces chapel or jointly-used religious building.

25. So far as jointly-used buildings are concerned, I have already commented in my earlier written evidence and in the oral evidence I gave on behalf of the United Reformed Church. I do not believe *any* religious group should be entitled to restrict the activities of another simply because they use the same building.

26. Generally, I do support a ‘rites-focussed’ approach whereby (for instance) a Roman Catholic governing authority could forbid the use of the Catholic marriage liturgy at a same-sex deathbed wedding. But I do not support such a ban in respect of Church of England marriage liturgies, because I regard rites authorised by law as common property. The fact that the authorisation of most such liturgies is currently delegated by Parliament to the General Synod²⁵⁰ does not alter my view. A person is no less a parishioner because illness, detention or military service prevent easy access to his own parish church; many parish ministers and institutional chaplains see officiating in such circumstances as an important part of their pastoral calling.

27. The main issue, however, is with same-sex marriage in the parish church, which in my submission should be possible whenever the parish minister is willing (or, under the ‘1857 approach’, whenever any willing minister can be found). Here it will be argued that such ministers are themselves under authority; that they cannot expect to officiate with impunity at rites which the General Synod, as liturgical authority of their Church, rejects, even if their own individual consciences allow. It will be argued that the rules of that Church allow for the marriage of opposite-sex couples only, and will continue to do so until altered by the Synod; and that the parish church is set apart by consecration for the Church’s authorised rites alone. These arguments really break down into two: (a) that the Church has a separate body of law which would not change even if the general law of marriage changes, and (b) that, even if Parliament could change the law governing the Church of England, it should not do so whilst the General Synod stands opposed.

CANONS AND ‘THE CANON LAW’

28. The first argument was expressed during the consultation, in the Church House submission and the Government’s response, in references to ‘the Church of England’s canon law’. If that was intended to postulate a body of law governing the modern Church of England which is distinct from the law of the land, my answer in brief is that there is no such thing.

29. The law of general application governing the Church of England is found in Acts of Parliament, in Measures ‘intended ... to have effect as an Act of Parliament’,²⁵¹ and in delegated legislation. It is also found in the indigenous common law and ‘such canons and constitutions ecclesiastical as have been allowed by general consent and custom within the realm’.²⁵² This last source comprises those rules of the mediæval canon law which, as Parliament declared in 1533, ‘by sufferance of Your Grace [the King] and your progenitors, the people of this your realm have taken at their free liberty by their own consent to be used among them, and have bound themselves by long use and custom to the observance of the same’.²⁵³ Many such rules—including the impediment to marriage in the couple being of the same sex—were so adopted; others were not.²⁵⁴ Adopted rules were said by Lord Blackburn in 1881 to be part of ‘the common law, in that wider sense which embraces all the ancient and approved customs of England which form law’.²⁵⁵ In short, all such binding rules applicable to lay people (including the great majority of parishioners) can be categorised either as common law or as primary or delegated legislation.

30. If Church House’s ‘canon law’ references were specifically directed to Canon B30 of the Revised Canons Ecclesiastical, or to the authorisation under canon of marriage liturgies which presuppose an opposite-sex couple, they have slightly more substance. Canons made in England must have the royal licence and assent and be consistent with the general law of the land; they either restate existing law or bind the clergy in spiritual matters.²⁵⁶ B30 was made in 1969 by each convocation for its province, before their power to regulate the clergy by canon was transferred to the General Synod. It defines marriage as ‘in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side’, and states its purposes. As additional authority the Canon cites the marriage service of the Book of Common Prayer, but I accept that the opposite-sex understanding of marriage goes back much further, being amongst the canonical rules originating outside England but adopted into the common law before the Reformation. This is an example, therefore, of a canon that restates existing general law, rather than one making new provision for the clergy alone.

31. Clause 1(3) of the Bill asserts that a canon such as B30, which makes provision about the opposite-sex nature of marriage, ‘is’ not contrary to the requirement of consistency with the general law. This is a strange way

²⁵⁰ Church of England (Worship and Doctrine) Measure 1974

²⁵¹ Church of England Assembly (Powers) Act 1919 s.1(5)

²⁵² *Mackonochie v. Lord Penzance* (1881) LR 6 App Cas 424, 446

²⁵³ Ecclesiastical Licences Act 1533, preamble

²⁵⁴ A test to determine adoption or non-adoption was laid down by the House of Lords in 1868; *Bishop of Exeter v. Marshall* (1868) LR 3 HL 17

²⁵⁵ *Mackonochie v. Lord Penzance* (1881) LR 6 App Cas 424, 446

²⁵⁶ Submission of the Clergy Act 1533, ss. 1 and 3; *Middleton v. Crofts* (1736) 2 Atk 650

of putting it, since a canon denying that ‘marriage of same-sex couples is lawful’ would clearly be inconsistent with the law as contained in clause 1(1). The intention is presumably that such a canon should be exempt from the consistency requirement.

32. Without such an exemption, a canon becomes ineffective as soon as the general law changes to produce an inconsistent result. The former canons of 1603–05 were amended on several occasions to take account of statutory changes,²⁵⁷ but inconsistent canons were already revoked by implication. The idea that there could, within the Church of England, exist some separate ‘law of the church’ which might not change when the law of the land changed was effectively exploded by a judgment of the House of Lords in 1912 that a layman who had married his deceased wife’s sister after Parliament declared that relationship to be no impediment could not be subjected to ecclesiastical discipline as an offender. Even though the then Canon 99 had not been amended, and the Act in question had called such marriages valid ‘as a civil contract’, Lord Ashdown said that those words ‘cannot make duality in marriage’.²⁵⁸

33. If exempted from the consistency requirement, Canon B30 would no longer be declaratory of the general law but would have effect as a rule binding the clergy, exposing ministers officiating at a same-sex marriage (for example by another denomination’s rites in its building) to ecclesiastical discipline. I consider this unnecessarily restrictive and that clause 1(3) should go. However, provided clause 1(4) is dropped from the Bill, the common-law duty to marry parishioners would apply to all couples (subject to a ‘conscience clause’) and would justify the ministers who chose to perform it, as the equivalent duty already justifies ministers remarrying divorcees. As to the marriage service, unless the General Synod is willing to provide an alternative wording for same-sex couples, the Bill should itself authorise officiating ministers to make the necessary adaptations.

THE ROLE OF THE GENERAL SYNOD

34. The Synod, it should be remembered, is the old Church Assembly renamed.²⁵⁹ The architects of the Church Assembly were very clear that it was not a statutory body, but was created *before* the ‘Enabling Act’ of 1919.²⁶⁰ It was therefore, and consequently remains today, in essence the leading committee of a voluntary association: a product of the (wholly extra-legal) development whereby, from the 1860s, certain bishops encouraged parish clergy to set up councils of active churchgoers, and themselves summoned lay and clerical representatives to diocesan conferences on ecclesiastical affairs. By 1903 these initiatives had resulted in the creation of a ‘church electoral roll’ of laypeople, who chose the lay element in these councils.

35. Except insofar as they gain powers from a competent legislator, voluntary committees cannot speak for or take decisions affecting people they do not represent. The Synod is representative of two constituencies: (a) those who accept ordination by a Church of England bishop, participating as clergy in the synodical structure, and (b) laypeople voluntarily entered on the church electoral roll. It does not, however, represent all parishioners—those whose rights would be affected by the provisions Church House seeks in the present Bill. It cannot therefore (apart from ‘provision by or under [an Act or] Measure’) make any ‘provision’ affecting them.²⁶¹ At best, therefore, what it can do is to express an opinion, which Parliament is entitled to weigh against the evidence available to it of other parishioners’ opinions, and indeed the evidence of dissatisfaction with the Church House position on the part of many Church of England ministers.

BANNS OR SUPERINTENDENT REGISTRAR’S CERTIFICATE

36. Acceptance of the general principle that willing Church of England ministers should be free to solemnize same-sex marriage would have implications for preliminaries. Most Church of England marriages are currently preceded by banns or a bishop’s licence. The prevailing view is that the issue of a licence is discretionary, but publication of banns is obligatory²⁶² on the ministers concerned: the conscientious dispensations from officiating do not extend to banns publication. Marriage under superintendent registrar’s certificate is also possible, but parish ministers have a discretion whether to allow this in the parish church.²⁶³

37. To give substance to parishioners’ rights and willing ministers’ freedom, either the publication of banns for same-sex marriages must also be obligatory or, if the ‘conscience clause’ follows the ‘1857 approach’, the discretion not to allow a marriage by certificate must go. This discretion did not in fact exist between 1836 and 1856 and seems to serve no useful purpose generally; but equally, the present obligation to publish banns for remarrying divorcees does not seem to pose a major conscientious challenge to indissolubilists.

EUROPEAN CONVENTION RIGHTS

38. It will no doubt be argued that the amendments to the Bill I have suggested would infringe the collective Article 9 right of ‘Church of England members’ to manifest their religion in worship and observance, by (a)

²⁵⁷ e.g. as to doctrinal subscription in 1865, as to extended hours for marriage in 1887 and 1936, as to impediments of affinity (finally) in 1946

²⁵⁸ *Thompson v. Dibdin* [1912] AC 533, esp. Lord Ashbourne at 543: ‘[even] the words “as a civil contract” cannot make duality in marriage.’

²⁵⁹ *ibid.* s.2(1)

²⁶⁰ Church of England Assembly (Powers) Act 1919 s.1(1)

²⁶¹ See the functions of the Synod as now listed in Synodical Government Measure 1969 Sch 2 para 6.

²⁶² See the mandatory ‘shall’ wording in Marriage Act 1949 ss. 6(1) and 7.

²⁶³ Marriage Act 1856 s.11; see now Marriage Act 1949 s.17 (proviso).

exercising appropriate discipline over their ministers and (b) restricting the use of their own marriage rites to appropriate situations. If the ‘1857 approach’ were adopted opponents might conceivably allege interference with the peaceful enjoyment of possessions under Article 1 of the First Protocol to the Convention, based on the parish minister’s freehold of the parish church. A Convention argument might also just possibly be raised on behalf of the regular congregation of a particular church where same-sex marriages took place.

39. I believe these arguments would be very difficult to sustain. It is the General Synod electorate (through the Synod) which objects to same-sex marriage. This is clearly a faith group entitled to assert the Article 9 right; but the ministers and liturgies of the Church of England are not the exclusive property of that group. Nor does a congregation or a parochial church council own the parish church: the parish minister holds his freehold for the very parishioners whose rights my proposals would uphold. A congregation would not, of course, have to attend a ceremony of which it disapproved.

40. The public liturgy exists for everybody and has been regulated by Parliament since 1548. That control is now delegated to the General Synod, but neither that, nor the Archbishop’s Council’s copyright in certain services, means the liturgy has become a purely sectional interest nor that Parliament has lost its ability to protect the religious rights of society as a whole.²⁶⁴

41. Ministerial discipline would be a stronger argument if Church of England ministers were appointed simply by and for the General Synod electorate. But, although they serve members of this electorate, they also serve the wider public. Their appointment, tenure and discipline are governed by the ecclesiastical law of the land, not (like other ministers) the rules of a voluntary society. They are not just office-bearers in a faith group, but officers of the national religious establishment. Their functions in relation to marriage are public functions, shared with civil registrars, though unlike registrars I do not envisage any unwilling minister having to officiate.

42. On the other hand, I believe it is indeed likely (as suggested in the Church House submission) that the Court in Strasbourg would connect Article 14 to Article 12 so as to hold it incompatible with the Convention for member states who recognise same-sex marriage to make this available on different terms from opposite-sex marriage. What voluntary religious bodies do is up to them and protected by Article 9; but what the religious establishment does is something for which the United Kingdom must answer, and the changes I propose would prevent human rights complaints by gay or lesbian parishioners denied rights in the parish church accorded to heterosexual counterparts.

43. To this extent I find myself at odds with those Lords of Appeal who suggested in *Parochial Church Council of Aston Cantlow v. Wallbank* that the Church of England as a whole has spiritual goals which cannot be goals of government.²⁶⁵ The voluntary structures associated with the Church of England may indeed have a non-governmental purpose; but its legal position, its role in marriage and the parish church network are explicable only in terms of the earlier identification of the Church with the nation.²⁶⁶

THE CHURCH IN WALES

44. Wales has had no public religious establishment since 1920. Today’s Church in Wales is a voluntary society of Cranmerian Episcopalians similar in most respects to any other religious group. But until 1920 the arguments made in paras 10–11 above could be made with equal force in relation to Welsh parish churches. These were then transferred free of charge to the new church’s Representative Body;²⁶⁷ but the transfer was subject to existing public rights²⁶⁸ and, before it took effect, it was enacted that the disapplication of ecclesiastical law in Wales²⁶⁹ would not affect the law governing marriage.²⁷⁰

45. From this it has been concluded that banns can be published and marriage solemnized in Welsh parish churches on the same basis as in their English equivalents, albeit by the voluntary body’s ministers and with its own liturgy, and that the inhabitants of Welsh parishes have the same rights as Englishmen in their parish church. The Marriage Act 1949 covers this by an interpretation provision, and the dispensation from marrying divorcees is expressly applied to the Church in Wales.²⁷¹

46. The Bill’s provisions relating to same-sex marriage in the Church of England are, generally speaking, applied equally to the Church in Wales, whose Governing Body has so far voiced no willingness to facilitate

²⁶⁴ I do not accept, incidentally, that ‘the constitutional rights of all His Majesty’s subjects’, which the Church of England Assembly (Powers) Act 1919 s.3(3) makes the special concern of the Ecclesiastical Committee, refers only to secular interests.

²⁶⁵ [2004] 1 AC 546

²⁶⁶ ‘When we oppose the Church therefore and the Commonwealth in a Christian society, we mean by the Commonwealth, that society with relation unto all the public affairs thereof, only the matter of true religion excepted. By the Church, the same society with only reference unto the matter of true religion, without any other affairs besides.’ Hooker, *Laws of Ecclesiastical Polity*, Book VIII, c.1599 (posthumous pub. 1648). Phillimore’s rival theory in *Marshall v. Graham*, above, is answered by the point that the Reformation Parliament, which consistently denounced clerical authority in religion as usurped, would never have ‘established’, or continued the ‘establishment’ (in Phillimore’s sense) of, the sort of episcopally-led institution in which he believed.

²⁶⁷ Welsh Church Act 1914 s.8(1)

²⁶⁸ *ibid.* s.8(2)

²⁶⁹ *ibid.* s.3

²⁷⁰ Welsh Church (Temporalities) Act 1919 s.6

²⁷¹ Marriage Act 1949, s. 78(2); Matrimonial Causes Act 1965 s.8(2)

such marriages under its auspices. But clause 8 allows a future decision by the Governing Body to allow same-sex marriage to be accommodated without new primary legislation.

47. The existing public rights in Welsh parish churches can be explained as a *quid pro quo* for their free allocation to the Cranmerian Episcopalian body. No consideration was given in 1914 to same-sex marriage, and it is hard to say whether (in the unlikely event that Parliament had then envisaged the scope of marriage widening in the near future), extended rights of parishioners would have been made ‘part of the deal’ or not. I believe it is for Parliament now to judge what is fair, given the logic of the 1914 arrangements. I should not object either to the same course being taken as I advocate for the Church of England, or to the Bill’s Church in Wales references being left as they stand.

DRAFTING IMPLICATIONS FOR THE BILL

48. I have not considered all drafting implications, but I should ideally like to see

- (a) The current clauses 1(2)-(4), 6(2) and 11(5) deleted, or confined where appropriate to the Church in Wales;
- (b) Modification of any religious protections to ensure ministers remain obliged to publish banns for all classes of marriage;
- (c) A dispensation for members of the clergy from officiating at same-sex marriage, modelled either on Matrimonial Causes Act 1857 ss.57 and 58 or on Matrimonial Causes Act 1965 s.8 (see paras 17–18 and 22 above);
- (d) An Equality Act exemption for clergy who invoke the dispensation just mentioned;²⁷²
- (e) The new s.26(e) of the Marriage Act 1949 to refer to ‘a marriage of any couple’; and
- (f) A liturgical provision as proposed in para 33 above.

49. In relation to armed forces chapels I should like to see

- (g) Transitional provisions ensuring that any bishop’s licence granted under s.69 of the Marriage Act 1949 applies to the marriage of all couples, or (if bishops are unwilling for this to be the case) an amendment to s.69 permitting marriage by Church of England rites in forces chapels without such a licence; and
- (h) An express right for forces chaplains in holy orders of the Church of England and Church in Wales to decline to officiate at same-sex marriages, with corresponding Equality Act exemption.

There is no right for any couple to marry in an armed forces chapel, but the right in (h) would prevent chaplains being ordered to officiate by more senior chaplains or other senior officers.

February 2013

Supplementary evidence submitted by R Goldspink (MB 76)

MARRIAGE (SAME-SEX COUPLES) BILL—SURVIVOR BENEFITS FOR OCCUPATIONAL PENSION SCHEME MEMBERS

1. I write to support the evidence given to the Committee by Liberty on 14th February, as regards pension benefits, and specifically survivor benefits.

2. When the decision to restrict survivor benefits under occupational pension schemes for surviving civil partners was made (or rather, to allow their restriction), the argument given was that it was inappropriate to place a retroactive burden on pension funds and their sponsoring employers. Comparison was also made to the way in which widowers’ benefits were restricted to service after 1988 in the state scheme.

3. The big flaw behind that argument, of course, is that employers and the state in 1985 knew which employees were female and which male, and that forecasts made in 1985 could therefore be made in certain knowledge of which employees were accruing potential survivor benefits (males) and which not (females)—albeit that even then it was not clear whether any specific male employee would indeed leave a widow, nor how long that widow would be able to draw the widow’s pension.

4. In the case of civil partners and same-sex marriage, however, pension funds and employers are not able to make that calculation, given that they do not have reliable information on the sexual orientation of their members/employees. Responsible pension funds in 2000 would not, therefore, have been taking into account that they would not be providing survivor benefits to a given percentage of their employees’ spouses based on sexual orientation. As a result, they would not be adversely impacted by having to pay survivor benefits for periods of service prior to December 2005.

5. The government itself acknowledges that two thirds of pension funds already do not avail themselves of the exception under the Equality Act. Ben Summerskill of Stonewall indicated that whenever that organisation has been called on to assist individuals get their scheme rules amended, that has been achieved, while Liberty

²⁷² Compare Equality Act 2010 Sch 3 para 24(1)

pointed out that it has supported a successful case at an Employment Tribunal seeking to have the exception declared unlawful.

6. It cannot be right that Parliament is leaving it to individuals to contest provisions which could potentially substantially reduce the amount of survivor benefit a bereaved same-sex spouse will receive.

7. Now is the time for Parliament to right this wrong.

February 2013

Memorandum submitted by Judith Willcox (MB 77)

I have a marriage of 32 years' standing and have raised two children. In the course of a long career as a legal adviser in a Magistrates Court and also since retirement as a volunteer debt adviser I have had many opportunities to observe what might be called ordinary families under stress in this country.

I have many grave concerns about the proposed legislation to redefine marriage so as to make it available to same sex couples. My concerns centre firstly on the disregard for democratic process that has characterised the progress of this Bill and the consultation process leading up to it.

I am also concerned at the lack of evidence to support the contention that this legislation will benefit our society, particularly in the light of the experience of other countries that have followed this route.

I also take issue with the assumptions being made by those who support this Bill, and am concerned at its likely consequences.

1. UNDEMOCRATIC

This proposal was not in any Manifesto, nor in the Coalition Agreement. It is being rushed through Parliament ahead of manifesto commitments and after a consultation process that can hardly be dignified with the name. The consultation was wide open to abuse, and there is no evidence (nor as far as I am aware, even any enquiry made) that abuse did not in fact happen. Any consultation that receives anonymous submissions without limit on the number of submissions each person can make or indeed even a limit on being in the UK cannot in my view claim to be a reliable indicator of feeling in this country. Furthermore no account was taken of the C4M petition of over 600,000 signatures opposing the redefinition of marriage **even though an assurance was given that that it would be taken into account.**

2. QUESTIONABLE BENEFITS

The social benefits that it is claimed will flow from redefining marriage are assumed rather than evidence-based. There is a huge amount of evidence from many sources that a stable marriage tends to be an environment where children can flourish. Children may no doubt also do well in other models of family life but this cannot yet be taken as axiomatic. It is premature to accord equal protection and validity under the law to experimental social family groupings which have not proved their benefit either to any children involved, or to society. The assumption behind these proposals appears to be that marriage can be defined solely in terms of a voluntary commitment between two adults. **The validity and value of marriage as an environment for the raising of children has been left out of the equation altogether.**

3. OTHER COUNTRIES' EXPERIENCE

In other countries where same-sex marriage has been legalised, (Spain and the Netherlands) the number of marriages has fallen, which suggests to me that the benefits being claimed are not likely to be realised.

There is also evidence from other countries to suggest that redefining marriage in this way will only be a first step: for example in Mexico there is now a legal form of marriage lasting for a set period only (2 years); in Canada there are demands for marriages between more than two parties to be made legal. **Are we as a society really prepared for our Parliament to become embroiled in questions of this sort at a time of financial crisis and social hardship?**

4. ABOLITION OF ADULTERY

The proposal that adultery will not apply to same-sex married couples introduces in effect different marriage obligations for different types of marriage partner. **This is unsustainable (in view of anti-discrimination legislation) and an illogicality,** especially in view of the assumption that marriage is only about commitment between the partners.

5. CONSEQUENCES FOR ADVOCATES OF MARRIAGE

There are considerable doubts about the position of churches which do not wish to conduct marriages between same-sex couples, also teachers and others especially in the public sector whose conscientious objections on the subject may displease their employers. The government's "quadruple lock" cannot possibly guarantee that such people do not fall foul of the European court. There have already been many situations where it was thought that

domestic law would give adequate protection but the European court has decreed otherwise. **This legislation will endanger the freedom of conscience of many hard-working and principled people.**

February 2013

Submitted by Mr Stuart William Ramsay BA Hons (Oxon) (MB 78)

I am a student of moral philosophy, political science, political philosophy, and theological ethics, currently involved in Parliamentary politics.

1. Case law (*Hyde v Hyde* 1866) has defined marriage previously as the “voluntary union for life of one man and one woman to the exclusion of all”

2. Though the Bill before the Committee does not include within in it a substantive definition of marriage, it implicitly rejects the existing definition of marriage by the inclusion of same-sex couples. The statements made by the Secretary of State at Second Reading and in her Statement to the House suggest that the new definition is approximate to a declaration of love and commitment (c.f. “The depth of feeling, love and commitment between same-sex couples is no different from that depth of feeling between opposite-sex couples. The Bill enables society to recognise that commitment in the same way, too, through marriage.” Rt Hon Maria Miller MP, Official Record, 5 Feb 2013 : Column 125)

3. I submit that *conservative institutionalism* suggests that marriage as it stands in law ought not to be altered.

4. Let us understand “conservative institutionalism” to be the claim that institutions matter, because (a) whilst we shape our institutions, they also shape us, through social norms and cues; and (b) much learning is (unconsciously) stored in institutions over time. Both sides of this debate accept the basic claim that institutions matter, because access to the legal and fiscal benefits of marriage, as well as the expression of commitment through civil partnerships, is seen to be insufficient. This can only be because *marriage matters as an institution*.

5. Conservative institutionalism (thus defined as the recognition of unconscious learning and cues stored in institutions) suggests that we ought to be attentive to how the the legal institution of marriage as it stands both *grounds* and *encourages* the norms which make it of value, such as fidelity, complementarity, and exclusivity.

6. The relevant social cues are expectations that the norms of marriage (such as fidelity, exclusivity, and having and raising children) will be fulfilled, and processes to facilitate such norms such as marriage preparation classes and marriage counselling.

7. There is good reason to suppose that the current norms and social cues surrounding the institution of marriage are a result of a number of factors including: (a) its theological underpinnings, which have heavily shaped the English law; and (b) the natural features of the current legal conception of marriage, such as sexual union and procreative-orientation.

8. The Bill recognises that, of necessity, concepts of adultery and consummation cannot apply to same-sex couples. Sexual fidelity and consummation arise as norms due to the natural features of marriage; however, the Bill recognises, in disapplying these concepts for same-sex couples, that these norms cannot apply without the presence of the natural features which underpin it. Moreover, the Bill therefore implies that these norms are not essential to the concept of marriage.

9. It is part of the nature of institutions that changing their essential features (what makes the institution what it is) will change the norms and social cues which surround it. Conservative institutionalism therefore suggests that the change in conception within law of what marriage is could alter the social cues and norms that currently underpin marriage as an institution.

10. The consequences of this could be reasonably expected to include the rejection of the norms of sexual fidelity and consummation as essential or important to marriage, and lack of support from social cues (eg within marriage preparation or marriage counselling) for such norms. In the long run, marriage could lose its social value and esteem as a result of the loss of these norms and social cues.

11. The reason for wishing to conserve marriage as a legal institution in its current form need not be conservation for its own sake. Rather, if the conception of marriage as it stands in law is (implicitly or explicitly) redefined, we may lose the norms and social cues that assure its importance and value as an institution, and which are the very reasons for which the Secretary of State wishes to see marriage extended to same-sex couples.

February 2013

Memorandum submitted by Sarah Haines (MB 79)

SUMMARY

I believe that marriage should be kept to one man and one woman and that there should be a drive in society to preserve and celebrate this holy union between man and woman defending it all times and keeping it safe from further dismantling and destruction from well meaning individuals who wish to make change for its own sake

without looking at the consequences for this generation and for generations to come. Overall the whole impact of this redefinition of marriage on children and families should be considered in much more detail and with more children centred arguments rather than focusing on the adults rights and needs.

PERSONAL BACKGROUND

1. I am a mother, wife and qualified Primary School Teacher and I write in a personal capacity. My husband and I have three daughters who are 12, 10 and 8 years. I am 41 years old and my husband is 40 years old. We have been married for almost 17 years.

2. We have lived in Hampshire for six years and our children go to the local state schools of which we support and are very grateful for. Over the last four years I have been doing local supply teaching whilst studying part time for a three years Masters in Education course. Before that period I supported my husband by travelling to Sweden and living there for 3 years and then moving back to England and settling into family life with three children under the age of 4 years. I then spent the next 8 years raising a family. During that time I volunteered and helped at playgroups and the children's local schools and also became a parent governor at my daughter's infant school. I decided to take the personal choice of raising a family with some financial and emotional sacrifice. However, I am so glad that I did and continue to do so today!

3. I have just recently passed a Masters in Arts in Education and graduate from the Open University in April 2013. My Masters degree particularly focused on children's development, child psychology and children's rights both in the U.K and other countries.

4. Both my husband and I are committed Christians. I became a Christian as a 13 year old through my mother becoming a Christian, first through her local church and from reading her Bible, and then my observing her change of moral and emotional character which then led to my own conversion. My parents met in the 1960's and have been married for 45 years.

5. I met my husband at university. He also is a committed Christian and comes from a loving Christian home whereby his parents have been married for over 40 years, and we were privileged to see his mother's parents celebrate their 60th anniversary.

POINTS FOR SUBMISSION

6. In the last couple of months, when this redefinition of marriage came up for debate and there was a suggestion that the marriage bill was going to be changed to allow same sex couples to marry, my heart and mind have been deeply troubled. Firstly, my husband and I were gravely disappointed that this was not in the Conservative's party manifesto when they were trying hard to be elected. Before the 2009 election I had been a Labour voter, however, I felt that over the years Labour were in power, their moral muscle had grown slack and most of the structure that had been in place was gradually being dismantled (eg good honest and married couples were being turned away when they were wanting to adopt as opposed to single parents and same sex couples). We voted Conservative hoping that the traditional values especially focusing on the family would become strong once again and that it would be recognised as a respected and admired institution of British society which helps to keep our country strong and safe for future generations.

7. Unfortunately, I believe that if this redefinition of marriage takes place, we as a country will reap grave consequences, particularly for our children and future generations. Little evidence has been sought from this committee from psychologists and childrens' charities that deal with children. I believe that the child is being left out of this whole redefinition of marriage which will lead to moral confusion of what is right and wrong.

8. The Jewish and Christian Bible tells us that the best foundation for a healthy and secure family is for a child to grow up in a family where there is a father and mother. Many studies from psychologists have confirmed that this is the case. As a married woman for over several years, I have experienced married life to have many challenges with my husband working very long hours and often working away. This demands me to trust my fidelity and I his and that I will also look after the children and keep them from harm and the house secure. Our marriage has provided the glue to keep us together but I have also accepted my role to complement his. My role as a mother is far different to his because I need to be more submissive to serve my children and their needs. He wants to provide and bring in money to the family as well as providing a fatherly presence. However, he also has to be submissive by putting his wife and children first when needed.

9. I believe Marriage and its definition, one man and one woman, should be kept sacrosanct at any costs. In the marriage vows, marriage is described as a holy mystery where God is invited to be in the union and should be kept as a relationship as exclusive to all others. I believe over the last 50 years marriage has become undervalued and people have forgotten those vows. One vow that stands out for me personally is to love 'for rich and for poor', 'in sickness and in health', as well as 'forsaking all others'. These are very high ideals to aim for, however, with God's help I believe marriage can last a life time. If redefinition is allowed to take place, I believe this will devalue marriage even more as statistics show that same sex marriages in other countries eg Holland, Spain end far more in divorce than those under the traditional definition of marriage (Vital Statistics and Basic Demographic Indicators, 2011 and 'The tenth Anniversary of Dutch same sex Marriage: How is marriage Doing in the Netherlands?', 2011).

10. Another question that comes to mind about redefining marriage is why does it need redefining? Polling show that only 39% of homosexuals see marriage as a priority (Civil Partnership survey 2012) and many homosexuals are happy to stay unmarried and don't want children. If marriage is not broken why is the present coalition government trying to fix it? For many children and young people traditional marriage (one man and one woman) is something to aspire to and they long to find their future husband or wife. If same sex marriage is put on the same pedestal as heterosexual marriage this will blur the boundaries to what relationship is a healthy relationship which will ultimately lead children away from a union that has been recognised for generations to be for the procreation of children. Same sex couples do not naturally lead to children, therefore should they have a choice to decide to bring up a child thinking that their roles will provide a good environment for a growing child? It is important the needs of children are considered first rather than the needs of adults who want a relationship.

11. If the redefining of marriage takes place what will prevent this from redefining once again in a number of years with another government? This make a very grim future for our children, as if law follows a person's wish to marry their cousin or aunt if they are in love why shouldn't they be allowed to do so? Again the Bible tells us that this is forbidden for the very reason that the offspring will be unhealthy and will ruin the next generation building an unhealthy society. I really believe that these guidelines were given to us generations ago to protect us and prosper us, and these guidelines also apply to marriage being between one man and one woman.

12. If the marriage bill is changed the legal implications will be even more complex with mother and father omitted out of legal terminology (this has happened in Spain where progenitor 1 and progenitor 2 is used in order to not identify sex). We will all have to be very careful to state mother and father assuming that this will not be the natural state. As a mother myself, I do not wish to see any legislation that describes as something like parent 1, progenitor 1 or owner of a child—I am a mother, and society and government should be making every effort to reaffirm this, rather than meet the needs of a very small minority of people who wish to bring up children without any reference to a mother (or father).

13. As a teacher I am also hugely worried that teachers may be sued, ostracised, called bigots, and heavily criticised by pressure groups, other teachers, parents or local authorities if they refuse to admit books that promote and celebrate homosexuality, surrogacy, transgender (eg books like 'Hello Sailor, Daddy's Roommate' and Josh and Jaz have three mums' printed by Stonewall). At the moment a school is no under obligation to use or purchase these books. If redefining takes place homosexuality will come under equal opportunities, and there could then be immense pressure for teachers/librarians etc who believe in the traditional view of marriage to promote material that is not in accordance with their beliefs and importance they place to the current form of marriage.

14. There is also the risk that a homosexual life style and transvestitism is likely to be encouraged by exposing children to books suggested by Stonewall and for the majority of primary school children these issues are far removed from normal lives. In making these books available and celebrated we are making this a general and accepted fact of life whereas it is a minority of people who struggle with gender identity- If this goes ahead we may be encouraging a wider range of sexual behaviour at a time when children are struggling naturally with their identity in adolescence.

15. Any legislation that aims to protect religious groups by simply not allowing them to conduct such marriages because of their beliefs will fails to protect members of these groups (or other individuals) in other occupations that hold the same beliefs. The proposed "quadruple" lock is of no benefit if Christians (who are not vicars conducting marriages) can be accused of breaking the law if they fail to uphold the beliefs that the government wishes them to express under the new legislation.

16. Having read the draft Bill, it is apparent to me (as a legal lay person) that there has been too much focus on what specific church leaders think and not enough on what the church goes and the general public really think and what this may mean for children and future generations.

Thank you for reading these considerations.

February 2013

Memorandum submitted by Christopher J H Rogers (MB 80)

Born 1936 in Iran.

Brought up and educated in the UK.

1960–66 under Crown Agents for Overseas Government and Administration as Agricultural Officer in Tanzania.

1967–1996 school Teacher, Biology and some Religious Studies;

Retired from full-time teaching 1996:

Hon. Assistant Chaplain in the same school, an independent boarding school to date.

I have a Niece in a Civil Partnership and I attended her ceremony and they have visited us and stayed in our home.

I am grateful for this opportunity to make a submission at the Committee stage for the above Bill.

1. I find it inconsistent that a bill is being prepared to give 'equality' to same-sex couples so that their relationship may be called 'marriage' when heterosexual married couples who might like to, may not have a Civil Partnership. Where is equality in that?

2. This bill is being pushed forward with its costs on changing existing legislation [in these stringent economic times] without any mention before the last Election in any manifesto and without Green or White Papers. We the electorate were given no chance to respond to this move by the way we voted.

3. I understand that over 600,000 signatures against the re-definition of marriage were not given their democratic 'voice' when the reported response of the electorate was mentioned. Had these 'votes' been included in the responses to the government's consultation, I understand that over 80% of the electorate would be found to be against the redefinition.

4. Although loud voices are raised to encourage this Bill forward, these voices are on behalf of a very small minority of a minority in our population. There are many in Civil Partnerships who would not want their relationship to be called 'marriage'.

5. Little mention has been made in Government statements that Civil Partnerships already have all the legal benefits that are available to married couples.

6. For thousands of years²⁷³ 'marriage' has been understood as the relationship between a man and a woman that is sealed by sexual intercourse which may be followed by the procreation of a child. This is physically and biologically the result of being a man and a woman. For a same-sex couple the 'apparatus' is just not there, and what is there is not designed (? or intended) to be used in this way.

7. Marriage and the procreation of children is the bed-rock of every society and celebrated by family, clan and tribe. My experience in East Africa and the social structures of the tribes I had the good fortune to work amongst, underlines this foundational place that marriage has in these societies.

8. These Developing Countries have an in-built aversion to homosexual relationships, and while this is a fact, our country's standing in the eyes of those nations that we seek to assist through aid and education will be undermined as they look amazed at what we are doing in the United Kingdom to the institution of marriage if it is redefined.

9. When I taught 'Physical Social and Health Education' in my school, I could speak about the fact of homosexual relationships and same sex partnerships, but I personally could not teach about them as being equal to or the same as marriage.

10. The Government speaks of respecting those with traditional views of marriage, but recent legal challenges show that people can lose their jobs if they are unwilling to adopt so called 'up-to-date' or 'enlightened' views on this relationship.

11. To push ahead with a change in the definition of marriage in response to the clamour of a tiny minority of the population is undemocratic and will threaten the wellbeing of very large sections of the population who feel they are not able to 'go along' with it.

12. Why contemplate making such a drastic and far reaching alteration to an historical and foundational relationship as marriage?

13. I fear that if the Government goes along with this plan to redefine marriage—there will be 'unforeseen consequences'. As an example—when the Abortion Act was passed in 1967, who would have believed that by 2012 4 million healthy foetuses would have been killed, and abortion would be used as a form of contraception?

March 2013

Memorandum submitted by The TUC (MB 81)

THE TUC

The Trades Union Congress represents 53 unions with six million members. TUC equality structures include a committee elected at the annual TUC LGBT conference which advises the organisation on matters related to LGBT equality. The position of the TUC on the Marriage (Same Sex Couples) bill has been agreed by this committee.

SUMMARY

The trade union movement is committed to the achievement of full equality for lesbians, gay men, bisexuals and transgender people both in terms of legal equality, and also to challenge prejudice against LGBT people

²⁷³ This information is available from the Jewish/Christian Bible in the earliest books of the 'Old Testament' or Torah. See Genesis 2 verse 24 'For this reason an man will leave his father and mother and be united to his wife and they will become one flesh' quoted by Jesus in his teaching: see Matthew 19: verses 4–6.

that remains in British society. Therefore the TUC supports the Marriage (Same Sex couples) bill as a step towards both objectives, but does not believe that the Bill as it stands achieves equality, and is also concerned at retrograde steps included within the bill represented by the strengthening of exemptions from equality law with particular concerns about education. The TUC would welcome and support amendments that remedy the existing deficiencies.

CONTEXT: A VOCAL, ORGANISED BUT MINORITY RESISTANCE

1. Enormous progress has been made in the willingness of people in the UK to accept their lesbian, gay and bisexual (and to a much lesser extent, trans) fellow citizens as equals over the last 15–20 years. The process has been accompanied by a sea-change in the willingness of politicians to give their public backing. Steps being taken towards establishing equal marriage in Europe and elsewhere confirm that this is now seen as the next critical measure of practical support for equality.

The furious backlash led by representatives of the Roman Catholic Church and the Church of England, supported by a minority of MPs, confirms that there remain people who have never supported any step towards LGBT equality and who probably never will. It is unfortunate that the attention they have gained has drowned out the voices of other, more liberal, religious figures who do support equality, and ignores the repeated surveys that show that the majority of people of faith in the UK are not opposed to LGBT equality, in contrast to the views of their leaders.

THE TUC POSITION ON THE BILL

2. *Basis of TUC position.* The basis on which the TUC supports the legislation is support for equality and human rights. The government proposal is rooted in the proposition that marriage is good for a stable society. The TUC stance is based on the proposition that lesbian, gay, bisexual and transgender people continue to face prejudice and discrimination, and that the denial of the right to get married that is available to opposite sex couples is discriminatory. It is not, therefore, a position either for or against people getting married, it is that access to this institution must not be denied to people because of their sexuality or gender identity.

3. There remains widespread (though now minority) hostility and prejudice towards LGBT people, confirmed by the most recent British Social Attitudes Survey in which nearly one third of people identified that this was their view. The consequences for young people coming to terms with their sexuality or gender identity in hostile homes or schools, and for LGBT workers in homophobic workplaces, are serious. In the most extreme cases, this prejudice converts into hate crime, of which trans people in particular have been disproportionately victims. Creating equal marriage rights for LGBT people will help challenge these attitudes about what is “normal”.

4. *Making civil partnership available to all.* Because of the TUC’s approach (para. 2), the TUC believes that civil partnership should also be made available to opposite sex couples. It calls on MPs to back amendments to this effect. The Government has rejected this even though a majority of respondents to the consultation supported the idea. Although the TUC accepts that there is no substantial evidence either way of popular demand for this among opposite sex couples, it is a question of equality. The example of France is instructive, where more than 90% of those taking up the option of PACS are opposite sex couples. The TUC understands that PACS differs considerably from civil partnership in terms of the rights and responsibilities attached to it, but this does not lead to the conclusion that offering civil partnership as an alternative to marriage would not find resonance among opposite sex couples desirous of having a formal status for their relationship, but unwilling (for whatever reason) to marry. In the current proposal, to restrict CPs to same sex couples when all can marry both creates a reverse inequality, and also potentially devalues civil partnership. The TUC knows of many trade union members who have entered into civil partnership and who will not opt to convert this into marriage, and who are concerned at the possibility that their partnership will become seen as less than equal.

5. *Position of faith groups.* The TUC supports the position that faith organisations that wish to administer same sex marriages are enabled to do so, but also accepts the view that religious groups that are opposed should not be compelled to do so, on the basis of the principle of religious freedom. Because of this, the outright ban on the established Church of England from participating is not appropriate, as it would add an additional hurdle to that church changing its position on this question, and the same constraints would seem to apply even to the disestablished Church of Wales. The “quadruple lock” represents an unhelpful additional barrier. Nor will it succeed in deflecting the opposition of the leadership of the Church to the bill. Instead, it leaves members of the Church, and clergy who support equality, in a very difficult position.

6. *Exemptions to equality law.* The TUC has always opposed the idea that it is permissible to discriminate against LGBT people on grounds of belief; this is to negate the principle of equality itself. The TUC position has been consistent—it coordinated the High Court challenge to the religious exemptions introduced into the employment anti-discrimination regulations in 2004 (the “Amicus” case). Furthermore, it appears that the bill’s “quadruple lock” has no purpose other than to attempt—in vain—to buy off the opposition to equal marriage. In the process of doing so (and failing in this objective), it will strengthen the exemptions in existing legislation for religious organisations from equality law. To create more exemptions is a retrograde step that reinforces the reality and the perception that prejudice against LGBT people can be justified legally but also socially. Prejudice inevitably leads to inequality and discrimination. The only basis on which prejudice can be challenged effectively is for lesbians, gay men, bisexuals and transgender people to be presented positively as fully equal members of a society where difference and diversity is welcome accompanied by a clear message that the law supports this

approach. The Equality Act 2010 for the first time placed sexual orientation and gender reassignment on an equal footing with the other protected characteristics; to strengthen exemptions from this sends a wholly wrong signal.

7. *Gender reassignment.* The TUC is pleased that provisions within the bill remove the requirement on people undergoing gender reassignment to divorce an existing spouse before they can receive a full gender recognition certificate. This requirement, introduced with the Gender Recognition Act with the explicit purpose of preventing same sex marriage, has caused immense hardship for many trans people in situations where both parties wished to remain in a committed relationship, but had first to undergo a divorce before being able to re-establish their commitment through a civil partnership.

8. *Occupational pension rights.* The TUC is disappointed that the Government chose not to use this bill to create equal occupational pension rights for people in same sex relationships. The government proposes to treat same sex marriages in the same way as civil partners, that is, civil partners and same sex married partners will only be entitled to equal treatment in terms of access to benefits dependant on marital status from 5 December 2005. In the case of occupational schemes contracted out of the State Second Pension, service can be backdated to 1988 (following TUC lobbying in 2005). For pensions not contracted out, there is no legal obligation to backdate service beyond 2005 for the purpose of calculating survivor benefits for partners. In justification, the government claims that to establish equality would impose an unplanned-for cost on pension schemes—a flawed argument given (a) that the actual cost would certainly be minimal, because of the small number of people who would benefit, and (b) the government’s own recognition of the fact that two thirds of schemes already pay equal survivor benefits voluntarily. The TUC would welcome and support amendments to remove, at last, this anomaly.

9. *Education.* In light of what was said in paragraphs 3 and 6, the TUC is deeply concerned at the message being given out by the government on what can be taught in the growing number of faith schools. Ministers have explained that it is not a problem for teachers to promote the view of their faith on what constitutes “proper” marriage. The TUC has engaged in extensive correspondence challenging education ministers on the difficulty in a classroom context of teaching both that only heterosexual relationships are acceptable, and teaching acceptance of all people as equals. Government responses have stressed that such teaching is lawful provided it does not promote (unlawful) harassment. In cultures where homo-, bi- and transphobic bullying continue to be a serious problem (as confirmed year by year by many reports, most recently the 2012 Stonewall School Report), it is clear that this distinction does not work in practice, and the evidence of even higher rates of bullying in faith schools serves to confirm this conclusion. In addition, the position of staff in Catholic faith schools who wish to enter into same sex marriages appears to be under threat following news (Sunday Times, 28 January 2013) that the Department for Education has declared that “faith schools can consider whether a person’s conduct is in line with their religious views when dismissing teachers”. The stated position of that Church has always been clear on this (covering divorcees and registry office weddings), but there is case law suggesting that the current exemptions to the Equality Act do not extend so far as to allow this discrimination (following judicial clarification after the Amicus case that has been applied subsequently in discrimination cases). The fact of this being the DfE response is alarming and sends out unacceptable signals that justify the TUC’s fears expressed in this submission that the proposed exemptions and the way they are being presented will lead to the worsening of the position for staff who wish to promote equality in schools, and for all the pupils (not just those growing up LGBT or T) where prejudiced views are dominant.

IN CONCLUSION

10. The Marriage (Same Sex Couples) Bill therefore represents an important step forward for LGBT equality, but in its present form retains inequalities that Parliament is urged to remove by amendment, and by strengthening exemptions from equality law threatens to impede progress rather than overcome the barriers to equality in important areas.

March 2013

Memorandum submitted by Dr Clare Greed (MB 82)

THROWING THE LAITY TO THE LIONS

SUMMARY: Whilst the quadruple lock protects the conscience and beliefs of the clergy it disregards the rights of the laity that is those ordinary working people who cannot subscribe to the principle of same sex marriage. The Bill needs to include ‘adequate accommodation’ and ‘opt out’ provisions to cover the general population not just the religious elite.

1. I have watched all the BBC Parliament transmissions covering the committees held to discuss the Marriage (Same Sex Couples) Bill, read all the relevant legislation and proposed legislation, and wish to offer some feedback. I am commenting on these matters from a personal perspective, not that of the organisations to which I belong. I am Emerita Professor of Inclusive Urban Planning at the University of the West of England, Bristol, having recently taken retirement. I have for many years researched, campaigned and published on how to mainstream equality issues into urban policy making, with particular reference to gender (Greed, 2005). I am a member of the Construction Industry Council, diversity panel and RTPI UK gender representative with the

Commonwealth Association of Planners, and have been involved in many equality and diversity projects and committees over the years. Diversity issues intersect and cross cut each other in an individual's life and within society; as we are not mono-dimensional beings, and cannot be reduced just to our gender, sexuality or class, without reference to our beliefs and culture. My main research has been on 'planning for the city of everyday life'. I am concerned with how the planning system deals with the components of everyday life such as local amenities, public transport and church buildings. Whilst my main interest is in urban strategic policy making, I have been better known because of my campaign for public toilet provision, a very practical topic which manifests so many of the paradoxes and debates within the diversity agenda (Greed, 2003). I have given evidence to Parliamentary committees, been a member of various DCLG committees, and a member of the code-setting British Standards committee 6465 on Sanitary Installations.

2. In this submission, I want to raise equality concerns, rather than citing legal detail which have been stated by others and recorded in the committee minutes. I will make comparisons between the gay toilets and gay marriage debates so we can see the issues from a wider perspective. Both are heavily contested spaces. People of all sorts of people share the same facilities within toilets, and 'all human life is there' with gender and sexuality being key dimensions (Molotch and Noren, 2010). Increasingly I have got involved in the 'gay toilets debate' and the questions of whether toilet provision should be mixed or separated on the basis of gender, sexuality, age, disability and so forth (Cavanagh, 2010; Greed et al, 2012). There are clear parallels with accommodating everyone within the institution of marriage, yet respecting the differences particularly in relation to gender, sexuality and religion. I do not represent any particular church, but I am concerned about the way the Bill is going, as a free thinker, a feminist, and a Christian. I realise this is a heady mixture but the secret of true diversity individually and in society, is to be aware of the contradictions and potential conflicts and still keep all the balls in the air. As to political affiliation I have voted for a range of different parties over the years, and have explored all the ideologies across the spectrum from Left to Right, from Red to Blue, from Green to Pink, and wish we could take the good bits of each and make a new party.

3. Regarding the Bill, I have had a lengthy and encouraging correspondence with my local MP Dr Liam Fox and met with him a week ago to discuss our shared concerns. **Whilst the Bill promotes the rights of the clergy to be guided by their conscience and beliefs, even allowing them to opt out of undertaking gay marriage services, there is no commensurate provision for the laity, or for that matter for the general public, or the workforce, most of whom are not churchgoers but may still hold strong beliefs.** Thus the provisions of the Bill seem to be deeply unequal, classist, elitist and discriminatory towards non-clergy, that is the rest of the population. In spite of the all the reassurances given by the committee, many public sector employees do not have a senior QC on hand if their poorly-informed bosses exceed the law in their enthusiasm for the PSED and condemn them for being guided by their religious beliefs.

4. I am also concerned about the unrepresentative nature of the statistics given, the opinion polls undertaken and the composition of the committee and the witnesses called. The Government statistics on those in favour were based upon surveys of very low numbers, which would be considered statistically insignificant if this were Research-Council funded research. The internet-based polls were alarmingly 'open' with little supervision or recording of 'who' was voting, with no requirement for participants to state whether they were UK voters, and no control on how many times respondents voted. Many ordinary people did not think to vote on the internet and they were unaware this plebiscite was taking place. The recent shambles regarding the Police Commissioners elections shows that unless people get a proper leaflet through their letter box they do not realise anything 'important' is happening.

5. Another worrying issue is the nature of the questions asked that resulted in the government imagining that a majority of the population are in favour. The 600,000 strong petition against gay marriage organised by one Christian organisation was dismissed as being loaded with leading questions. But the Government's methodology is even more suspect in terms of the nature of the questions asked. The postbag of many MPs has been overwhelming against but such results have often been dismissed as being provincial, suburban and unrepresentative.

6. I was concerned to find that the witnesses called were not representative of the main religious groups in society. Where were the Baptists, Methodists, Pentecostals, Moslems, and the mainstream Jewish organisations? Liberal Jews and Quakers together comprise around 30,000 people, far less than the 40,000 state school teachers who have expressed concern about the Bill. The Church of England was predictably conciliatory (Anglicans being masters of the arts of compromise) and their spokesmen were not representative of either the Evangelical or Anglo-Catholic majorities therein. The Roman Catholics came over more forcefully. The committee composition itself appeared heavily loaded towards pro-gay marriage, in spite of the majority of the Conservatives voting against the Bill. Dr Fox would have been an ideal committee member but he is caught up in dealing with Defence issues.

7. My main concern is the lack of protection of 'belief' and 'freedom of conscience' amongst people who are Christian, Moslem and of other faiths, or who hold personal views or doctrinal beliefs that would not enable them, in good conscience, to condone same sex marriage. Thus employee rights, and indeed self-employed rights are poorly served by this Bill. Being used to balancing a range of rights and laws, in my own policy research work, it seems to me that it is assumed that 'gay marriage' rights trump or trounce, all other equality rights and considerations. Contrary to the Equality Act, and other UK, EU and UN Directives, (Article 9 and so forth) which make religion a human right, and belief a protected category, there is a clear political pecking order as

to which rights count more than others and a disturbingly illiberal, totalitarian attitude towards the beliefs of people of faith.

8. Let me digress, by way of illustration, into the parallel world of public toilets in relation to gender and gay issues as we may learn something on how to deal with gay marriage in a way that inconveniences no-one. Public toilets are one of the last bastions of extreme gender inequality; women still have less than half the provision of men. But this is not considered a major human rights violation but just a joke. Inadequate toilet provision has major racial and religious implications too. Few people have ever heard of Gwendolyn Jenkins, who was arrested in the 1960s in Jackson, Mississippi for daring to try to use the white women's toilet in the days of segregation, but she is not recognised to be as important as Rosa Parkes (whose example is often mentioned to support gay rights, forgetting she was actually a conservative Christian). In my travels, I still see such inequality at the global scale, as women are strongly discriminated against in relation to toilet provision and for example in Sub-Saharan Africa 50% of girls give up school because of lack of toilet provision when they are menstruating. But these issues are not seen as serious human rights issues but as a rather eccentric amusing anecdote.

9. Over 52% of the world's and the UK's population is female and yet 'gender' is not sexy enough for anyone to bring in serious legislation to reduce such practical, daily inequalities, even though both gender equality and sanitation are key issues in the Millennium Development Goals requirements to which all UN member states are subject. In contrast, statistically, around 5 % of the UK population identifying themselves as gay (Doan, 2011, a reference from my own field) with around 50,000 civic partnerships taking place each year, and around 1% of households comprising gay couples and around 1 in 30,000 men and 1 in 100,000 women are transgender. Whilst many women and disabled people find there is inadequate provision for them, under gay pressure, some local authorities are now de-gendering public toilets (as in Brighton, but also in several North American cities such as Toronto and parts of New York) to accommodate gay people. Granted many gay people experience extreme homophobia if they are thought to use the 'wrong toilet'. From the research we have always said that those people who are 'mid-operation' in terms of gender reassignment should have safe, clean toilet private toilet provision away from prying eyes. I have always tried to speak up for all groups, including gay people, who are adversely affected by inadequate provision, with the proviso that adequate provision must be maintained (or in the case of women increased) in a sensitive manner that benefit everyone else too. Abolishing male and female demarcations makes many women very uneasy for personal safety and modesty reasons, further compounding the lack of provision they already experience. Everyone has the right to have adequate facilities and services, provided it does not impinge on other people's rights and beliefs, whether it be toilets, marriages, housing, hotels, schools or whatever. So a balance of rights and duties is essential be it loos or marriage.

10. The secret to dealing with the concerns about the gay marriage issue, in the words of one of your committee members, is to make '**adequate accommodation**' and to provide **greater opt-out provisions** and flexibility **for laity as well as priests**. The Netherlands has introduced the principle of adequate accommodation within its Emancipatory Laws, significantly, the country where pillarisation developed, which enabled different church denominations and social groups to live side by side within their own space without impinging on the beliefs of the other. Live and let live. This approach shows a more sophisticated approach to the balance of human rights, and demonstrates the principle of proportionality. The alternative is to denigrate everyone else's deeply held beliefs and overnight to criminalise ordinary workers and people who do not go along with the beliefs behind the Act. There have been several high-profile cases of Christians being unwilling as registrars, teachers, nurses, and other public sector workers, to acquiesce to the harsher requirements of the PSED regarding gay marriage. Case law has already shown the weaknesses in protecting the religious beliefs of individuals against equality-related employment law, as epitomised by Lillian Ladele the Registrar. Furthermore there are thousands of other employees who are uneasy about 'promoting' gay marriage as school teachers.

11. Now there would be a right old fuss if the Equality laws were taken to mean that in state schools belief and religion (which are also protected categories) must be actively promoted and anyone who did not 'believe' would be fired! But in reality religion and belief have very little weight amongst the other equality issues. In research on balancing 'God and Gender' on the implications of secularisation and equality measures on urban expressions of religion it was found that both the Bible and the Koran narrowly escaped being rendered illegal under the PSED (Greed, 2010). An element of flexibility, accommodation and understanding needs to be introduced, particularly at workplace level. In the past secular society was characterised by relativism, humane humanism and a lack of absolutes. Gay issues were a matter of sociological debate, personal preference and academic discussion not Stalinist laws. It would seem that the committee is of the view that there is only one right answer and it is theirs, introducing a new form of religious fundamentalism based on gay tenets. So why should your 'absolute beliefs' trump mine? Why is your religion truer than mine? On what authority are you intervening in theological doctrine, sociological debate and church business? In the past, as one of your witnesses attested, many women, gay people and others saw marriage as a prison. Only 1 in 5 gay people are in single-person relationships. Do all gay people want gay marriage? As we found from public toilet research many gay men are not 'out' and some find public toilets one of the few neutral public spaces where they can meet other men for sex. Since many are already in straight marriages the issue of gay marriage does nothing to help them.

12. Nowadays gay issues have become very respectable and middle class, and have lost both their revolutionary fervour, and gay marriage is all the rage. This is all rather quaint and old-fashioned. The angry young men of each generation always become the respectable establishment leaders of the next, whether they started off as socialists, environmentalists or gay activities. In contrast many believe that 'religion is the new Marxism' as we move into the new post-secular age, in which debates about sexuality becomes all rather irrelevant for the

younger generation. Many people have other issues to deal with such as unemployment, lack of housing, and poor public transport and so they are bewildered why the government is using up legislative time on this Bill.

13. This brings us back to the question of what are the implications of having a belief or a religion in the public sphere. For Christians and the other main religions, a person's belief cannot be contained or restricted to church buildings or ceremonies. A Christian life requires that all aspects of a person's work, family life, culture and activities are an outworking of their faith. This is why I find the Bill so discriminatory in that it restricts religious freedom only to what happens within church buildings. In Pentecostalism, a clear principle is that the Four Square Gospel affects mind, body, soul and spirit. There is little place for individual pietism, as true religion should be manifested in the social, economic, physical and political arenas. I cannot relate to what I would see as traditional clergy, mainly male and middle class, hiding behind their quadruple lock, whilst they throw their laity to lions of authoritarianism, secularisation and christophobia in the workplace. The use of buildings for worship will also be affected, if congregations are refused permission to hire out school and community halls for worship. Likewise Christian charities and church Trust Deeds will be adversely affected. As for planning law research, already there is a high level of refusal for church-building related applications—which is racist—as it affects growing Black Pentecostal congregations disproportionately (Greed, 2011).

14. Therefore there needs to be provision in the Bill which acknowledges the existing rights of individuals to freedom of conscience and belief. These factors inform the laity's lives, especially at work, and affect the use of the whole built environment. In implementing gay marriage, please do not trample over the beliefs and conscience of large numbers of people, in order to impose the personal beliefs of a small minority upon society, by applying a 'one size fits all' approach to marriage. Find a more sophisticated less totalitarian way of solving this problem to the satisfaction of all citizens. Make provision in the Bill that enables people to exercise discretion, tolerance and flexibility towards the beliefs of others, as not everyone holds the same personal beliefs as you. Unless revisions are made, its operation is likely to be classist, sexist and racist because of its emphasis upon only protecting the rights of the established clergy and not protecting the rights of ordinary people. Have a proper referendum too!

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March 2013

Memorandum submitted by Peter Scott (MB 83)

I am writing as an ordinary member of the public to express my opposition to the Marriage Bill which is currently at the Committee Stage in the House of Commons.

I believe that the bill if it becomes law will fundamentally change the nature and understanding of marriage in this country and in the long term lead to a serious decline in the role of marriage as the natural context for creating and raising children. Although marriage has come under great pressure in the West in recent decades as a result of major technological and social changes, nevertheless, as research has shown, it remains the most benign environment for the successful upbringing of children, children who will form our next generation of leaders and citizens.

For this to continue to be the case, the traditional understanding of marriage as a comprehensive, exclusive and lifelong relationship between a man and a woman must be maintained, because only such a relationship can provide the security, stability and complementary male and female parenting gifts required to raise children successfully.

By allowing same sex couples to 'marry', the key elements of marriage in this traditional sense will be destroyed. By definition, a marriage between two men or two women cannot be comprehensive because it cannot

be consummated in any meaningful sense. All the research available also shows that same sex relationships are far less likely to be exclusive or lifelong than male-female relationships.

By passing this bill, Parliament will therefore be undermining family life in this country and storing up major social problems for generations to come.

I also have concerns about the way in which people like me that have a principled opposition to this measure will be treated in the future. I already have evidence that Christian groups and individuals who oppose same sex marriage are being discriminated against by public bodies.

For example, my son in law is pastor of a New Frontiers Church in Devon. The church does not have its own building and over the years has met in a variety of premises, including local schools. Recently the church started to meet in a town centre hotel which proved to be an ideal venue. However, they were asked to leave because the hotel is used for Civil Partnership ceremonies and the owners of the hotel did not want a church using the same venue because they are known to be critical of homosexual relationships. How long will it take before local schools are also forced to bar their doors for churches like this?

I therefore urge the Committee considering this Bill to decline to pass it. All the necessary legal provisions for same sex couples who want to consolidate their relationship are available in the Civil Partnerships measure and there is no need to make this fundamental change in our understanding of marriage, with all the foreseeable and unforeseeable negative consequences.

March 2013

Memorandum submitted by National Aids Trust (NAT) (MB 84)

SUMMARY

1. NAT is the UK's leading charity dedicated to transforming society's response to HIV. We provide fresh thinking, expertise and practical resources. We champion the rights of people living with HIV and campaign for change.

2. NAT supports the bill to introduce civil marriage for same sex couples and the proposal to enable civil partners to convert their partnership to a marriage.

3. Evidence shows reductions in partner change will reduce sexually transmitted infections, including HIV. We believe introducing same sex marriage will encourage safer sexual behaviour among gay men as a result of fewer partner changes. It will also promote equality regardless of sexual orientation. This in turn will have a positive impact on the physical and mental well being for all gay people.

THE IMPORTANCE OF SAME SEX CIVIL MARRIAGE FOR SAFER SEXUAL BEHAVIOUR

4. Current evidence shows that reductions in partner change is critically important for reducing sexually transmitted infections (STIs) and HIV amongst all sexually active people.²⁷⁴ A reduction in partner numbers and influencing partnership patterns is therefore a key intervention to promote good sexual health in general and HIV prevention in particular.

5. Influencing partnership patterns NAT believes is particularly significant for gay men as STI and HIV prevalence has been rising within this group²⁷⁵. The Gay Men's Sex Survey (GMSS) shows that almost 21% of those with 30 more partners in the last year were HIV positive compared with 6.6% of those with between two and four partners in the last year. For more detailed information please see NAT's (2010) report 'Partnership patterns and HIV prevention amongst men who have sex with men (MSM).'²⁷⁶

6. Whilst marriage is not the only valuable form of relationship for gay men—and individuals will make their own choices—we believe opening civil marriage to same sex couples will give gay men access to an institution that encourages, celebrates and supports stable, long term sexual relationships. This can only encourage consideration by gay men of options for their sex life which reduce HIV risk.

THE IMPORTANCE OF SAME SEX CIVIL MARRIAGE FOR EQUALITY

7. Many gay men and women continue to suffer from inequality and as a result, internalised low self esteem. Disbarring same sex couples from marriage sends out a clear message that same sex relationships are not equal or worthy of the same institutions as opposite sex couples. Whilst civil partnerships were a very welcome

²⁷⁴ See The Lancet (2008) 'HIV Prevention' and NAT (2010) 'Partnership patterns and HIV prevention amongst men who have sex with men' Available online at <http://www.nat.org.uk/media/Files/Publications/July-2010-Partnership-Patterns-and-HIV-Prevention.pdf>.

²⁷⁵ The latest HPA statistics show more gay men are living with HIV than ever before. In 2011 as estimated 40,100 men who have sex with men (MSM) had HIV in the UK. Gay men are also disproportionately affected by sexual ill health. For example, in 2007 gay men accounted for 30% of all men diagnosed with gonorrhoea, 40% of syphilis, 98% of LGV and 97% of hepatitis C. Please see Sigma Research (2009) 4.1.3: 'Testing targets: Findings from the UK Gay Men's Sex Survey 2007.'

²⁷⁶ NAT (2010) 'Partnership patterns and HIV prevention amongst men who have sex with men.' Available online at <http://www.nat.org.uk/media/Files/Publications/July-2010-Partnership-Patterns-and-HIV-Prevention.pdf>

introduction of equal legal rights and an important step forward, the retention of a ‘cordon sanitaire’ around marriage, excluding same sex couples, continues to communicate to the LGBT community an unmistakable message that same sex relationships are inferior. Introducing marriage for all couples regardless of their sexuality promotes a society where everybody is treated fairly with equal respect, dignity and worth. Equal rights for all will in turn encourage higher self esteem and psychological well being amongst all gay people.

8. Promoting higher self esteem for gay men and women is particularly important as it is shown to have an impact on self care and the decisions people make to preserve and promote their personal health. Poor mental health and low self esteem can result in greater risk behaviour such as high risk sexual activity or injecting drugs.²⁷⁷ Recent research by Stonewall²⁷⁸ and others including the Department of Health²⁷⁹ show for example that lesbian and gay men have higher levels of substance abuse and mental health concerns, due in considerable part to ongoing stigma and discrimination. Recent evidence suggests combating institutional discrimination through opening civil marriage to gay and lesbian people can significantly influence their patterns of health.²⁸⁰

9. NAT believes, same sex marriage is a key step towards ending stigma and discrimination towards gay people by encouraging current and future generations to treat everyone equally, no matter what their sexual orientation. The passing of this legislation will be a milestone in celebrating gay people, gay communities and gay sexuality. It also crucially helps to promote social, physical and mental health for all people in the UK.

10. The Same Sex Couples Bill as it stands makes it possible for a person to annul their marriage if a partner conceals a sexually transmitted disease, including HIV²⁸¹. The same provision exists for opposite sex couples so it is of course one current element of ‘full equality’. Whilst NAT would always encourage disclosure, the evidence collected shows the difficulties of doing so in an environment where HIV is stigmatised.²⁸² More generally, having an STI as one of the very few grounds on which a marriage is voidable seems to be now an odd and outdated perspective. NAT recommends a review of this provision as soon as practicable for both same sex and opposite sex couples.

February 2013

Memorandum submitted by Geoffrey R Larcombe (MB 85)

In accordance with the procedure for submissions to the Scrutiny Unit, I submit the following in response to the ‘Have Your Say’ webpage on the Parliament website:

1. PERSONAL DETAILS

I am a retired Baptist Church Minister, with experience of marrying many couples over the years. I am still actively involved in preparing couples for marriage and also in marriage counselling.

2. INCONSISTENCIES IN THE PROPOSED BILL

Although the bill portends to be about equality, and that appears to be an excellent principle, it is nonetheless unequal in its provisions. For example:

Why is there no equal provision made for heterosexual couples to have a civil partnership?

Why is there no equal provision made for married homosexual partners to divorce on the grounds of adultery with another person of the same sex, but only with a person of the opposite sex?

3. FUNDAMENTAL CHANGE IN THE NATURE OF MARRIAGE

It is claimed by the bill’s supporters that marriage has changed over the centuries, but although this is certainly true of its provisions in law, it is clear that the nature of marriage as a life-long union of a man with a woman has remained unchanged over centuries in the majority of cultures around the world. It is disingenuous to claim

²⁷⁷ See NAT’s (2012) work on HIV and people who inject drugs at: <http://www.nat.org.uk/Our-thinking/People-in-greatest-need/Injecting%20Drug%20Users.aspx>

²⁷⁸ Stonewall (2011) *Gay and Bi-sexual Men’s Health*. Available online at : http://www.stonewall.org.uk/documents/stonewall_gay_mens_health_final_1.pdf. Please also see National Institute for Mental Health In England (2007) ‘*Mental disorders, suicide and deliberate self harm in lesbian, gay and bisexual people.*’ Available online at: <http://www.nmhd.org.uk/silo/files/mental-disorders-suicide-and-deliberate-selfharm-in-lesbian-gay-and-bisexual-people.pdf>

²⁷⁹ DH (2007) *Mental health issues within lesbian, gay and bisexual (LGB) communities*. Available online at:http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_078346.pdf

²⁸⁰ Hatzenbuehler M, McLaughlin K, Keyes K and Hasin D (2010) ‘The impact of institutional discrimination on psychiatric disorders in lesbian, gay, and bisexual populations: a prospective study’ *Am J Public Health*, Mark,100 (3): 452-9. Riggle, E, Rostosky, S and Horne, S (2009) ‘Marriage amendments and lesbian, gay, and bisexual individuals in the 2006 election’ *Sexuality Research & Social Policy*, Vol 6(1): 80-89

²⁸¹ This is in reference to ‘Annulment of marriage, schedule 4, part 3 subsections (1), (2), (3) of the same sex marriage bill. This invokes (and amends) section 12 of the Matrimonial Causes Act 1973 which in section 12, subsection (e) says a voidable ground is: ‘that at the time of the marriage the respondent was suffering from venereal disease in a communicable form.’

²⁸² Please see NAT (2010) ‘HIV: Public Knowledge and Attitudes.’ Available online at: <http://nat.org.uk/media/Files/Publications/Jan-2011-HIV-Public-Knowledge-and-Attitudes.pdf>

otherwise. Marriage should not in my view be arrogantly redefined by contemporary Western culture to be a union and status resulting simply from romantic love and commitment. Historically it has meant more than that.

If marriage is redefined in this way, there is no reason in principle why further redefinition cannot occur to allow bigamous marriage or other variations. This important point is often brushed aside by proponents of the bill. Such variations are beginning to be introduced in The Netherlands and Canada and in my view this trend will surely increase.

4. THE BILL IGNORES THE COMPLEMENTARY NATURE OF MEN AND WOMEN

Women and men are equal but thankfully they are different, complimenting one another in providing role models for children of womanhood and manhood, which no homosexual marriage can provide.

5. 'TRIPLE-LOCK' PROTECTION?

Despite the reassurances the bill promises, I am not convinced that these will be effective in the event of challenge on equality grounds in the ECtHR. In any event, what will be the position of persons like myself as I continue to provide marriage preparation and guidance only to heterosexual couples, using Christian materials? I fear that my position could well become legally untenable.

I am also concerned about the position of Christian school teachers who believe only in heterosexual marriage. Are they, in spite of the reassurances currently being given, likely to be challenged on the grounds of equality legislation and placed in a moral dilemma in relation to their conscientious beliefs? I fear that this will prove to be a legal minefield and that only lawyers will benefit as a result.

6. AFFIRMATION OF MARRIAGE

Great play has been made by the bill's supporters, including our Prime Minister, of their claim that the intention of the legislation is to support and strengthen marriage. I do not doubt the genuineness of these claims, which are made in good faith, but experience in countries where homosexual marriage is now practiced shows us the opposite, namely that the number of couples wishing to make marriage vows has markedly declined as, for example, in Spain.

7. SUMMARY

In summary, I submit that the legislation, although well intentioned, has been inadequately thought through, and hurriedly produced without any adequate democratic mandate.

February 2013

Memorandum submitted by Nigel Whitaker (MB 86)

I wish to express my strong opposition to any proposed legislation which aims to change the meaning of the word 'marriage'.

Children in society desperately need a stable home life where their parents are committed to each other for life in a self sacrificial loving environment of a mother and father. We are experiencing the consequences of a breakdown in traditional family life and part of this is a crisis in masculine identity in our society. Ours children need strong role models of both the masculine and the feminine. This is the only way for a strong and healthy society.

Why does the UK have such a poor record in the areas of youth depression, binge drinking etc? I suggest the evidence is strong that there is a clear link between this and the breakdown of traditional marriage and strong family life. I travel much and have lived in other societies and always find it depressing coming back to the UK and seeing the low value placed on family life here.

Whilst recognising that it is not always possible for every child to have the ideal home environment it is foolish to ignore the evidence which tells us that this should be pursued as the norm. Incredible damage is done to children and to society as a whole when we deviate from this. It may not be the politically correct thing to pursue but that does not mean it is not the correct thing to pursue. Can I plead for our political leaders to pursue what is correct and be less concerned about image. History will vindicate such even though they be vilified by some in the present.

We are fooling ourselves if we think that same sex 'marriage' is a suitable alternative. If we don't accept this now, we will learn the hard way.

For the sake of our nation please, please, please take note.

February 2013

Memorandum submitted by Daniel Moody (MB 87)

SUMMARY:

“Any redefinition of the legal institution of marriage will unavoidably entail a legal reconfiguration of what it means to be a parent. The legal understanding of parenthood will cease to have any link to the physical reality of parenthood. All children will lose the right to know their parents, and all parents will lose the right to know their children”.

1. My name is Daniel Moody. I live in Dorset. I am a genius. As with all issues that I write about, I am happy for my statements on marriage to be judged according to their own internal logic. My statements can be misunderstood (and/or poorly articulated), but they cannot be refuted. My particular interest lies in revealing truth, in the nature of rights, and in the interplay between the natural world and the legal world.

2. I ask you kindly to observe that this submission makes appeal to neither religious belief nor moral evaluations of sexual behaviours. The marriage debate can be comprehensively understood in terms of a clash between the legal recognition of nature (harmony) and the legal denial of nature (legal fiction/disharmony).

3. This submission revolves around the issue of natural rights, and the fact that any redefinition of the legal institution of marriage necessarily entails changing the legal understanding of parenthood—away from a (passive) acceptance of parenthood (legal protection of biological parenthood), into an (active) assignation of parenthood (no legal protection of biological parenthood).

4. This change translates as a loss of legal protection of natural rights for all children and all parents. All biological parents will have their legal parental status downgraded to the level of foster parent. This phenomenon has been well explained and documented by—among others—Professor Margaret Somerville (McGill University, Montreal) (i) and Dr Jennifer Roback Morse (Ruth Institute, U.S) (ii). Both reach the (correct) conclusion that, where the legal institution of marriage is redefined, the exception (a legal assignation of parenthood [adoption]) becomes the legal norm for all children.

5. In order to become aware of the origins of this phenomenon, three things are required: a) an understanding of the nature of rights; b) an understanding of the nature of marriage; c) an awareness of international and domestic law, with regard to the rights applicable to a marriage.

6. a) Rights: the U.S. Declaration of Independence, the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR) were all written according to an understanding of rights usually known as Natural Law. This is the simple acceptance that, as humans, we have certain rights that reside at the level of our bodies. These rights are unalienable. The State can neither create them nor destroy them. Instead, the State can either protect them or deny them. Legal human rights are not active permissions granted by the State. Instead, they are passive protections guaranteed by the State. For instance, the right to own property does not translate as “we, the State, permit you to own property”. Instead, it translates as “we, the State, will ensure that nobody prevents you from owning property”.

7. b) Marriage: the definition of marriage represents three different things.

8. b1): natural marriage. We do not need State permission to form a life-long sexual union with one person of the equal and opposite sex. Men and women have been forming this relationship since men and women existed. The definition of a marriage accords with a natural state, and as such cannot be redefined. This is what people mean when they say that marriage is instituted by God. Substitute God for Evolution, and we have the same outcome: the fact that we have two sexes allows for the possibility of procreation and, in turn, parenthood. Marriage exists because men and women are physically different. The purpose of this natural relationship is to bind procreation to parenthood.

9. b2): natural parenthood. The human body is itself a union of two other bodies—one male and one female. When new life comes into the world, the two adults who create that new life not only become permanently and exclusively linked to the body of their child—they also become permanently and exclusively linked to each other, through the body of their child. The parameters of a marriage are identical to the parameters of the parenthood—permanence, heterosexuality (both sexes), and exclusivity (two people).

10. This phenomenon (of two different things sharing a common definition) is called Relationality—the state of existing in relation to a relationship. Marriage is “two adults in relation to one another”, and parenthood is “those same two adults, but in relation to their children”. Parenthood exists in relation to the relationship of marriage. Parenthood is a relationality of marriage. The reason the two different relationships have the same definition is that only one thing separates them—time. This is why international and domestic law gives marriage as a compound right: the right to marry and to found a family (see paragraph 13). As with natural marriage, parenthood is a natural state, and as such cannot be redefined.

11. b3): the legal institution of marriage. Unlike marriage and parenthood, the legal institution does not represent a physical reality. As a man-made construct, it can be redefined. The legal institution came into existence solely to allow for the legal recognition (protection), regulation and reward of natural marriages. The purpose of a natural marriage is to bind procreation to parenthood. The purpose of the legal institution of marriage is to protect the natural rights inherent to natural marriage. This can be illustrated quite clearly by observing the fact that, were the State to abolish the legal institution, men and women would continue to marry

(form the relationship). Some say marriage cannot be redefined. Some say marriage can be redefined. Both are wrong, and both are right.

12. While not every natural marriage will produce children, all children produce parents—one man and one woman. Natural marriage is the only relationship that needs legal recognition, as it is the only relationship that can ever result in the creation of children (who then have natural rights in relation to their parents) and parents (who then have natural rights in relation to their children and to each other). The only legal definition that can protect these rights is the definition that accords with the physical realities of marriage and parenthood. A call to protect the rights is simultaneously a call to protect the definition.

13. c) Law: UDHR (article 16), the International Covenant on Civil and Political Rights (article 23) and ECHR (article 12) all give marriage as a compound right: the right to marry and to found a family (iii). We in England and Wales are tied to the ECHR via the Human Rights Act 1998. Understood as written (in terms of Natural Law), the legal protection of the right to marry and to found a family translates as “We, the State, will ensure that nobody prevents men and women from forming the relationship of marriage and, we, the State, will ensure that nobody prevents a marriage from founding a family”. If, for whatever reason, a marriage cannot found a family, the State has no further obligation, since it has already protected the right of the particular man and woman to form the relationship of marriage.

14. Since physical reality can only ever be defined correctly in one way, any redefinition of the legal institution of marriage would necessarily leave a definition that does not accord with the natural definition of parenthood. But, crucially, we would be retaining the compound right to found a family. The new definition, in conjunction with the old context, results in a legal reconfiguration of what it means to be a parent. The only way to prevent the loss of legal protection of natural rights is to first amend the UDHR/ECHR, etc—something that nobody is seeking to do. I would not want them to, as the UDHR/ECHR already defines the rights of marriage correctly.

15. Where the definition of the legal institution of marriage no longer accords with the physical realities of marriage and parenthood, man-made law has a definition of parenthood that does not accord with nature. To grant the right to found a family to any combination of two adults is to create a right that does not occur in nature.

16. It is important to realise that this legal transformation of parental status flows directly from the redefinition of marriage. It is the one consequence that cannot not happen. The continuing legal protection of natural rights is MUTUALLY EXCLUSIVE to any redefinition of the legal institution of marriage. A good way to demonstrate this is to look at the other elements that make up the definition of a marriage, and to see that a change to any one of those elements would also result in the loss of natural rights. A natural marriage is sexual, permanent, heterosexual (containing both sexes) and exclusive (containing only two people). The debate wrongly focuses on the question of whether marriage is necessarily heterosexual. If the State were to propose, for example, three-person marriages (while retaining the right to found a family), the State would be talking about a form of legal parenthood that does not accord with biology. Equally, were the State to propose impermanent marriage (which is not the same as allowing divorce), the State would be declaring that parenthood was impermanent. This, too, would be a legal understanding of parenthood that does not accord with biology.

17. It is impossible to redefine the legal institution of marriage without redefining the legal understanding of parenthood. In doing so, we will be removing from all children and all parents—of this generation and all generations to come—the right to have the physical reality of their relationship respected (protected) in law. This is a peculiar concept to grasp, as it entails differentiating between the legal world and the natural world. In the legal world, every parent would have had their blood rights sold and exchanged for purely legal rights. But because the change takes place in the legal world, nobody feels a thing in the natural world. This is why the phenomenon has gone largely undetected.

18. To conclude by way of an analogy: imagine two stacks of house bricks—one four feet high, the other five feet high. In the context of their substance (bricks), the stacks are equal. In the context of their height, they are unequal. Since the four feet stack is not five feet high—but since the five feet stack is in fact also four feet high—the only way to declare them to be of equal height is to declare them both to be four feet high. By ignoring the superior foot, an illusion of equality has been created. The four feet high stack is still only four feet high, and is correctly regarded as being four feet high. The five feet high stack is still five feet high but is now incorrectly regarded as being four feet high. Nobody has gained anything, but the five feet stack is now regarded as being less than it actually is. The enterprise is wholly destructive.

19. In the context of their substance (people), all relationships are the same since all people are of equal dignity. In the context of founding a family (the context provided by international and domestic law) a natural marriage is “higher” than all other relationships, since it is the only combination of people who can be physically related to a child—one man and one woman. Since no other combination of two people can be physically related to a child, the only way to declare all combinations of two people to be of equal “height” is to declare them all to be physically unrelated to a child. Natural marriages (one man and one woman) are still physically related to their child, but are now incorrectly regarded as being less than they actually are. The enterprise is wholly destructive.

20. Where the legal institution of marriage has been redefined, the right to found a family has been granted to any two adults. This is not a right found in nature. Parenthood has been transformed, for everybody, into a purely legal concept. The cost of creating this legal fiction has been the legal denial of protection of natural right of all parents and all children. This is most clearly evident in Canada, where the phrase “Natural Parent” was

previously in legal use. Upon redefining the legal institution, the phrase was replaced with the phrase “Legal Parent” (iv). Similarly, the legal redefinition of parenthood has made it possible to legally jettison the terms Father and Mother.

FOR YOUR REFERENCE:

- (i) Professor Margaret Somerville—<http://www.theaustralian.com.au/opinion/its-all-about-the-children-not-selfish-adults/story-e6frg6zo-1226099613917>
- (ii) Dr Jennifer Roback Morse—<http://www.marriagelibrary.org/2011/02/dr-morse%E2%80%99s-testimony-to-the-rhode-island-legislature-regarding-same-sex-marriage/>
- (iii) ECHR—http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf
- (iv) Bill C-38 The Civil Marriage Act (Canada)—http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c38&Parl=38&Ses=1

February 2013

Memorandum submitted by David Shepherd (MB 88)

SUMMARY:

1. Clause 2 of the Same-Sex Marriage Bill is declared by the EHRC to contradict the Article 9 rights of religious organisations. It will have to be amended to prevent interference with the freedom of religious organisations.

2. A Stated Aim of the Bill: ‘to protect religious organisations and *individuals* from being forced to conduct same sex marriages’

3. An amendment to Clause 2 (as suggested during EHRC testimony before the Public Bill Committee) will leave conscientiously objecting ministers who belong to ‘opt-in’ religions exposed to coercive religious sanctions for non-compliance, thereby defeating one Stated Aim of the Bill.

4. A Stated Aim of the Bill would be compromised.

1. One stated aim of the bill is through: *‘provisions intended to protect religious organisations and *individuals* from being forced to conduct same sex marriages. The proposals have proved highly controversial with interested parties expressing strong opinions both for and against same sex marriage’.*

2. John Wadham of the EHRC appeared before the Public Bill Committee on 14th February and explained a part of their submission that he authored, to wit: *‘However, our legal opinion suggests the bill in its present form could amount to the state acting unlawfully by interfering with the freedom of religious organisations...to enforce their religious doctrines within their particular organisation.’*

3. In response to question 343, in which the conscientious objection to solemnising same-sex marriage by members of a church or religion was compared to the *Ladele v. Islington* case, he stated, *‘I do not think that those are parallel circumstances. A registrar’s responsibility, as a public official, is to deliver a service to the wider public. As for a member of a Church or a religion, the responsibility of that person is to follow the doctrine of the Church or religious organisation. Those are two different things. We are saying that it is for the religious organisation to be allowed to police those circumstances. That is not on a parallel with the Ladele point.’*

4. Instead of Clause 2(2): *‘may not be compelled...to conduct a relevant marriage’*, he tentatively suggested, *‘A person may not be compelled by a couple wishing to get married’*

5. The proposed Equality Act amendment is clearly an effort to ameliorate the impact of the government’s bill on both corporate and individual religious freedom, yet John Wadham expressed the requirement, on account of the Article 9 rights of religious organisations, to abandon the clause 2 protection of individual conscientiously objecting ministers belonging to ‘opt-in’ religions.

6. There are instances of statutory conscience clauses that pre-date the European Convention on Human Rights.

7. S.8(2) of the Matrimonial Causes Act 1965 provides a partial solution (the famous ‘conscience clause’) to the disparity between Canon Law and Civil Law in respect of re-marrying divorcees in church.

8. S.5A of the Marriage Act 1949 confers similar protection on clergy (like Canon Thompson in *Banister v Thompson*) who object to solemnising marriages which would formerly have been void by reason of prohibited degrees. S.5B extends the protection to clergy who ‘reasonably believe’ that one of the parties to the marriage has had a sex change under the Gender Recognition Act 2004. (Quoted from **Marriage and Divorce** by Philip Jones -/)

9. The EHRC is right to question this clause as it relates to proposed, rather than existing legislation.

10. The Right Hon. Maria Miller in her response to correspondence from the Catholic Bishops Conference stated: '*Clause 2 of the Bill protects anyone who takes part in the solemnisation of a religious marriage*'. (<http://thetablet.co.uk/images/letter%20from%20Maria%20Miller%20to%20Archbishop%20Smith-%201.2.13.pdf>)

11. Again, she explained, '*we are completely confident that the Convention does not require the UK to force religious organisations to conduct marriages for same-sex couples if that is against their religious doctrines*'. This focuses on the organisation, rather than the individual: it's (to reverse the adage) 'not seeing the trees for the wood'. Hence, she says in furtherance of Article 9 rights: '*any interference in the rights of a same-sex couple would be justified*'.

12. If, as the EHRC submits, Clause 2 must be amended in line with the European Convention on Human Rights to do no more than protect clergy and authorised persons from the legal compulsion of the couple alone, it is because the EHRC believes that there is no prospect of successfully protecting individual ministers from the compulsion of the religious organisation that opts in to same-sex marriage.

13. Professor Ian Leigh of Durham University wrote in **Balancing Religious Autonomy and Other Human Rights under the European Convention**—Oxford Journal of Law and Religion (<http://ojlr.oxfordjournals.org/content/early/2012/01/24/ojlr.rwr015.full>): '*It might be thought that domestic courts are free to grant additional constitutional protection against non-governmental bodies where Strasbourg would not do so but even this raises potential difficulties. Religious organizations have Convention rights of their own and to tip the balance too far in favour of the individual at the domestic level could leave the state open to challenge by the organization at the Strasbourg level.*'

14. Last year, the United Reformed Church and the Church of England participated in a Service of Reconciliation, Healing of Memories and Mutual Commitment at Westminster Abbey. The service marked the 350th anniversary of the Great Ejection of 2,000 nonconforming ministers following the 1662 Act of Uniformity.

15. In spite of this affirmation of individual religious freedom, there is a serious prospect that legislating for same-sex marriage 'opt-in' for religious organisations will likely lead to incursions on the religious freedom of individual ministers who dissent from conducting same-sex marriages: those for whom Strasbourg offers no remedy.

16. If the choice is (a) to restrict the religious freedom of churches by the proposed Clause 2, it interferes with Article 9 rights of those denominations.

17. If the choice is (b) to alter the amendment to prevent no-one else but the couple alone from compelling a minister, the exposure of conscientiously objecting ministers to the religious sanctions of opt-in religions defeats the purported aim of the bill: '*provisions intended to protect religious organisations and individuals from being forced to conduct same sex marriages*'.

18. In accordance with a stated aim of the bill, no-one wants this government-initiated legislation to precipitate another Great Ejection of conscientious objectors. Yet neither alternative can meet the stated aim for religious organisations and individuals like.

March 2013

Memorandum submitted by Michael Hobbis (MB 89)

The Chairman the Public Bill Committee for Marriage (same sex couples)

MY ORGANISATION

Honourable Sir, I am the National Coordinator and a member of the committee of Christian Watch, a protestant organisation with many members nationwide. We exist primarily to stand as a witness in this land to the foundational truths of Holy Scripture, and in opposition to the current tide of ungodliness which is sweeping across this nation. Our position on religious faith would I am sure be very similar—if not identical—to that of David Burroughs the honourable member for Enfield -Southgate and a member of your committee.

THE SUBMISSION

I wish to raise several submissions for your consideration. If, as I anticipate, you feel unable to entertain some of these on the grounds that because of their religious reasoning they are not to be considered as properly part of the bill; then I submit that in the course of your deliberations many references have been made to the Bible, the Church of England, and religion generally, by the Honourable members David Burroughs, Chris Bryant, Stephen Williams and others.

In truth the very foundations upon which parliament rests—including the Queen's Coronation Oath—are the protestant religion and the Holy Oracles of God Almighty

Therefore the concerns that I would express in regard to your consideration of the details of the Bill before you are as follows:

1. Since the bill obviously does re-define marriage, then any discussion of amendments on the basis of the historical argument against same sex marriage, must take into account the Biblical authority for marriage being solely between one man and one woman; even though the bill has passed its first two stages. Historically, the institution of marriage is as old as time itself. I quote the words of the Lord Jesus Christ who said:

“Have ye not read, that he which made them at the beginning made them male and female,

Mat 19:5 And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?

Mat 19:6 Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.”

Jesus—who the gospel of John tells us made the worlds—said ‘at the beginning’, there can be no greater final authority for the historical foundation of heterosexual marriage than this from the mouth of God incarnate— not even the Parliament of the United Kingdom.

2. There has it seems been ridicule expressed in committee by the references to homosexuality in the book of Leviticus, particularly by Chris Bryant M.P. in his reference to the website of another parliamentary member. However, it should be noted that the moral law of God is universally regarded as being for all men for all time. Indeed Christ Himself refers to Moses and many other Old Testament Scriptures when referring to the binding authority of the Ten Commandments. I will not mention other Scripture references in the New Testament which condemn same sex relationships, for they are well known to all men. Suffice it to say that every nation and empire which fell into oblivion, practiced unclean acts in an unrestrained way immediately prior to their demise and destruction; whether Rome, Athens, Babylon or Sodom and Gommorah.

3. It is of particular concern that after this bill has passed through its various stages that Her Majesty the Queen must give her royal assent by way of subscribing to it. This she cannot do unless by so doing she repudiates her coronation oath, which is as follows:

The Archbishop of Canterbury. "Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?"

Queen. "All this I promise to do".

Since neither the Church of England’s 39 articles have changed, or the protestant reformed religion, Then this bill in its present form presents our Queen with Hobson’s choice: refuse to sign and bring down a constitutional crisis; or condemn her soul by breaking her solemn vow made in the presence of Almighty God and with her hand upon His Book; the One from Whom she receives her authority and power. These are not matters of opinion, but irrefutable truth witnessed in the sight of the people.

The doctrine of the Church of England and that of the Protestant reformed religion of evangelical dissenters which the Queen has sworn to uphold, both concur that same sex liaisons are an abomination and contrary to Holy Scripture. No true Christian man of this realm (and I may add Moslem) will ever countenance such a thing whatever Parliament may say. To call evil good and good evil is shown in Isaiah Chapter 5 verse 20; to be a mark of a corrupt and degenerate society.

4. To scrutinise this bill without reference to the Bible and its statutes is to despise the God who gave it, and an affront to the One Who has so graciously blessed this land in times past.

Every blessing in this nation can be traced to the fear of God and respect for His laws. While every departure from His ways has been accompanied by great distress and trouble. God is not mocked for he asks in Psalm 94:20; Shall the throne of iniquity have fellowship with thee, which frameth mischief by a law?

IN SUMMARY

To summarise the bill itself cannot pass through all its stages without each stage bringing those who have had a hand in these matters under the displeasure of God. Each stage is but another hedge broken through against conscience. However, what should concern all is that the Queen by the passing of this bill is put into a position where she must either concur and sign it to the detriment of her own soul and that of her realm—or refuse to give her royal assent and provoke a constitutional crisis.

March 2013

Memorandum submitted by Godfrey Haverson (MB 90)

I am a consultant radiologist (retired). I have had a special interest in uro-radiology, regularly seeing men to perform ano-rectal ultrasound examinations and prostatic biopsies. I also practised general medicine in the UK and Thailand.

I am married, with four married children and 11 grandchildren.

There are several points which the committee should include in their consideration of this Bill.

1. DEFINITION OF MARRIAGE

Augustine observed three components to marriage- Proles (progeny), Fides (trust) and Sacramentum (commitment or sacrament). These are widely recognised, having been incorporated within the marriage service in the Anglican Book of Common Prayer (1662).

Christ refers to a man and woman's uniting in marriage to be 'one flesh', 'from the beginning' of time.¹

A detailed examination of marriage in church and state was made by TA Lacey (1912).² His book explores the natural constitution of human society and the essential nature of marriage. He viewed marriage to be an inseparable life-long bond, as brother and sister. Laws relating to marriage are studied. In the section, 'the legitimacy of a power controlling marriage', it is stated that 'human law may directly contradict the law of nature, forbidding what God commands, or commanding what God forbids... Regulations so made may be unworthy of the name of Law.'

2. THE RIGHTNESS OF THE SAME-SEX RELATIONSHIP

Features highlighted are:

1. Innate. Orientation is considered intrinsic rather than acquired, even though a distinct genetic make-up has yet to be shown.
2. Permanent. Aspired to but not always experienced.
3. Accepted as equivalent to the heterosexual life. The desire for legitimacy is an important reason for seeking equality.

A strong mutual attraction provides motivation for long term commitment. As it feels right it is staunchly defended against those who regard this as deviating from the natural and normal. Prejudices of those considered homophobic are attacked on grounds of equality and human rights.

Sexual gratification is commonly self- centred and does not form a basis for marriage. Same-sex attraction may be both strong and enriching, as with David and Jonathan (1 Samuel 20 v 41), but this friendship should not be construed as homosexual. No aspect of same-sex partnership qualifies for designation as marriage. It can neither be consummated nor annulled. There can be no table of affinity. Adultery is not a viable consideration.

3. THE TRUE MEANING OF WORDS

Redesignation can only be used to correct misconceptions and reflect changing attitudes.

Words must not be changed to become untrue.

What is commonly regarded as artificial, unnatural or deviant cannot be invested with a value of normality because a government seeks to make it so.

Sexual characteristics are defined by birth and genetics. Gender redesignation and anatomical reconstructive surgery do not alter a person's true identity or nature.³

4. THE IMPORTANCE OF FAMILY

Our roots are important in giving us our identity. Love and trust are expressed in the nuclear family, with support from grandparents enriching the lives of young children. The concept of liquid love with semi-detached couples contemplated by a sociologist, Zygmunt Bauman, has to be destabilising and destructive in relationships and for society.⁴

Children must be encouraged to seek the best in their lives. They must be protected from 'adult material' which will confuse, corrupt and destroy childhood innocence. To teach young boys and girls about same-sex relationships equates to grooming and may well encourage predatory adults to exploit innocent and vulnerable minors. Internet pornography is already a disturbing facet of modern childhood life which must be resisted.⁵ The Story of Esther Costello, by Nicholas Monsarrat, illustrates how care for a gifted blind girl, is followed by attraction, sexual abuse and progressive shameful deception.⁶

CS Lewis in his autobiography,⁷ considered pederasty less than other evils at his public school. Not sharing the vice, he felt a certain nausea, as for necrophilia. But for him it was an unnatural love affair. 'Eros, turned upside down, blackened, distorted and filthy, still bore the traces of his divinity'.

5. WHAT IS THE NEW MORALITY?

Values must be determined which will lead our nation forward.

The media commonly report on misconduct of celebrities and national leaders, describing shameful, brazen, or simply inappropriate behaviour. Rape, sexual or physical abuse, cruelty, infidelity and neglect reflect a general

concern for wrongs perpetrated. Equality and equal rights at times conflict with equivalent but opposite values of others.

When Lot invited two men to stay with him overnight the men of Sodom surrounded the house. “Where are the men who came to spend the night with you? Bring them out so we can have sex with them.” “Please don’t”, Lot begged. “Stand back!” they shouted. “Who do you think you are? We let you settle among us, and now you are trying to tell us what to do! We’ll treat you far worse than those other men!”⁸

Anselm (1033-1109) is quoted⁹ on the sin of sodomy, as saying that ‘it has been so public that hardly anyone blushes for it’. Vilification of those who fail to embrace the concept of redefined marriage is inevitable. There can be no common ground for those who hold to traditional values and others who chose to disregard them.

6. CONCLUSIONS

Fewer heterosexual couples at present seek marriage. Same-sex ‘gay’ marriage is being sought to justify and confer legitimacy on a relationship which some find unhealthy and inappropriate. The impact of this bill to redefine marriage would go far beyond what is envisaged and should not be undertaken in haste, without adequate debate and reflection.

7. REFERENCES

1. Matthew 19 v 4–8
2. Marriage in Church and State. T A Lacey 249 pp Robert Scott London 1912
3. Eros Redeemed, The Impact of Modern Sexuality. John White 1996
4. Liquid Love: On the Frailty of Human Bonds. Zygmunt Bauman 176pp Polity Press 2003
5. Searching for Intimacy. Lyndon Bowring 2005
6. The Story of Esther Costello. Nicholas Monsarrat 1952
7. Surprised by Joy CS Lewis Harcourt 1956
8. Genesis 19 v 5–9 New Living Translation Tyndale 2000
9. Christian Ethics and Modern Problems WR Inge 402pp Hodder 1930

8. SUMMARY

Heterosexual marriage differs fundamentally from same-sex partnering.

‘Gay’ marriage is sought to justify and legitimise a practice not generally accepted.

The impact of this Bill would reach far beyond what is generally stated.

March 2013

Memorandum submitted by Family Education Trust (MB 91)

SUMMARY

- We are not persuaded that the Bill achieves the government’s objective of putting same-sex marriage ‘on an equal footing with opposite sex marriage’.
- The fact that the Bill views consummation and adultery as exclusively heterosexual concepts is a tacit recognition of the fact that there is not, nor ever can be, parity between the marriage of a man and woman on the one hand and same-sex partnerships on the other.
- Under the government’s proposals, opposite sex couples would be deprived of an institution that has belonged exclusively to them from time immemorial, while same-sex couples who want to signify their commitment would be able to choose between a marriage or a civil partnership.
- The Bill provides no protection for a wide range of individual service providers and charitable organisations which could not in good conscience treat same-sex marriage on a par with marriage between a man and a woman.
- There are legitimate concerns that the present legislative proposals to redefine marriage could logically lead to further redefinition.
- The Bill reflects the government’s failure to adequately consider the meaning and purpose of marriage and the reasons for which the state has a legitimate interest in the institution.
- The effect of the Bill would be to enshrine in law a view of marriage that threatens to reduce it to an emotional bond and erode the norms of permanence and sexual exclusivity.
- The Bill carries serious and far-reaching implications for the school curriculum and for teaching staff in both primary and secondary schools.

- Teachers with a conscientious objection to same-sex marriage would not be in a position to teach ‘the nature’ of same-sex marriage, nor that it were equal to opposite sex marriage in terms of its ‘importance for family life’.
- The public bill committee should give careful consideration to the advice provided to the Coalition for Marriage by John Bowers QC.

1. INTRODUCTION

1.1 For over forty years, Family Education Trust has conducted research into the causes and consequences of family breakdown. By means of its publications and conferences, and through its media profile, the Trust seeks to stimulate informed public debate on matters affecting the family and the welfare of children and young people, based on reputable research findings.

1.2 Family Education Trust is a registered charity and has no religious or political affiliations.

2. THE QUESTION OF EQUALITY

2.1 According to the explanatory notes attached to the Marriage (Same Sex Couples) Bill, the government’s overriding motivation is ‘to put same sex marriage on an equal footing with opposite sex marriage’.[1] However, we are not persuaded that the Bill achieves this objective and, in view of the fundamental differences between same-sex and opposite-sex relationships, we question whether the government’s objectives are achievable.

2.2 Quite apart from the biological inequity that prevents two men or two women from producing a child, the legislative proposals highlight several other key differences between marriage as we know it and the institution the government plans to put in place for same-sex couples. For example, under section 12 of the Matrimonial Causes Act 1973, a marriage is voidable if it has not been consummated either due to incapacity or wilful refusal. However, the present Bill states that these provisions do ‘not apply to the marriage of a same sex couple’.[2]

2.3 The proposed law also recognises a significant difference between opposite sex marriage and same-sex unions when it comes to adultery. According to the Bill, only conduct with ‘a person of the opposite sex may constitute adultery’ in divorce proceedings.[3] In other words, adultery is a purely heterosexual concept and the government proposes to exclude from the law the very possibility of committing adultery with someone of the same sex.

2.4 Under the government’s proposals, same-sex couples who want to signify their commitment would have a choice: they could enter a newly-created genderless version of marriage or they could register a civil partnership, which would remain available exclusively to same-sex couples. But for opposite sex couples—the overwhelming majority of couples—there would no longer be an exclusive institution.

2.5 The effect of this would be to rob opposite sex couples of an institution that has belonged exclusively to them from time immemorial, while preserving for same-sex couples an institution that is uniquely their own in the form of civil partnerships.

2.6 The government states that the purpose of the Bill is to remove the so-called ‘unfairness of same-sex couples being excluded from marriage’[4]. However, the government appears indifferent to the fact that its proposals result in the ‘unfairness’ of preserving an institution solely for same-sex couples.

2.7 The amount of space the Bill devotes to the ‘quadruple lock’ suggests that the government views marriage as no more than a ceremony and imagines that, provided safeguards are in place to prevent ministers of religion being forced to conduct same-sex weddings in their places of worship, then every possible objection will evaporate. This, however, would be naïve. Marriage is far more than a ceremony and the implications of what the government is proposing extend far beyond the doors of any place of religious worship.

2.8 We are concerned that in its pursuit of a misguided notion of equality for the relatively small number of same-sex couples who want to marry, the government risks creating a whole host of real inequalities that would threaten the liberties and livelihoods of others.

2.9 Major doubts remain concerning the validity of the government’s assurances to faith groups,[5] but even if we could have cast-iron guarantees that the promised protections are watertight, they provide no comfort at all to ordinary people in the course of their everyday lives.

2.10 A priest, minister, rabbi or imam may be able to refuse a marriage ceremony to a same-sex couple in a church, synagogue or mosque, but the Bill offers no protection to a civil registrar or other service providers (photographers or chauffeurs, for example) who cannot, on grounds of conscience, agree to be involved in a same-sex wedding.

2.11 There are also no protections in the Bill for individuals and charities that provide marriage courses or offer an advice and counselling service to married couples, who could not in good conscience provide the same service to same-sex couples.

2.12 In spite of repeated government assurances that teachers who believe that marriage can only be between a man and a woman have nothing to fear, a senior source in the Department for Education has referred to an ‘inherent uncertainty’ about the implications of the proposals for teachers and schools.[6] We shall further address the implications of the Bill for teachers and schools in a separate section below.

2.13 We share the concerns of those who have warned that redefining marriage to accommodate same-sex couples and transsexuals will lead to calls to recognise those who identify as bisexual and wish to be married to a person of each sex simultaneously. While we recognise that the government has stated: ‘We have absolutely no plans to amend the law of marriage in any other area,’[7] we note that the Labour government offered similar assurances when it legislated for civil partnerships less than a decade ago.

2.14 At that time, the minister for constitutional affairs, Lord Filkin, told the House of Lords: ‘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 or allow it to take place.’[8] While we accept that no government can be bound by promises and assurances given by a previous administration, we mention this to illustrate the speed with which an idea which is rejected out of hand one year can be embraced and pursued with vigour and, as in this case, without an electoral mandate, just a few years later.

2.15 Strongly committed as it is to creating legal parity between opposite sex and same-sex relationships, in drafting the legislation the government has been unable to escape the fact that they are fundamentally different. No amount of rhetoric or manipulation of language will ever be able to make them the same. The whole notion of ‘equal marriage’ for same-sex couples is flawed.

2.16 We are concerned that, in pursuing something which does not and cannot exist out of a desire to accommodate the wishes of the few, the government will inevitably create a whole host of injustices and inequalities for the many.

3. THE MEANING AND PURPOSE OF MARRIAGE

3.1 In opting to consult on ‘how, not whether’ to legislate for same-sex marriage and in subsequently electing to rush the Bill through Parliament, the government has not permitted time for a considered and measured debate on the meaning and purpose of marriage and the reasons for which the state has a legitimate interest in the institution.

3.2 We are not persuaded that the government has honestly faced up to these foundational questions.

3.3 In response to a question about the meaning and purpose of marriage, the Secretary of State for Culture, Media and Sport told the public bill committee: ‘I see marriage very simply as an ability for two people to come together and stay together, and to pledge their commitment to stay together for life.’[9] Unlike the Shadow Minister for Women and Equalities, the Secretary of State at least recognises that marriage is a lifelong as opposed to a ‘longterm’ commitment. Nevertheless, her definition is inadequate and demonstrates how the government is proposing to fundamentally change the meaning of marriage in order to make it ‘fit’ same-sex couples.

3.4 Marriage is defined in law as ‘the voluntary union for life of one man and one woman to the exclusion of all others’. There are four key components in this definition: marriage is voluntary, heterosexual, monogamous and lifelong. These four elements belong together. If any one of them were to be amended or removed, it would change the definition of marriage and the meaning attached to marriage in society.

3.5 The government claims that the purpose of the Bill is to ‘extend’ marriage to same-sex couples, but since heterosexuality is one of the defining characteristics of marriage, in order to accommodate same-sex couples, it needs to redefine the terms of marriage so that marriage ‘fits’ both same-sex and opposite-sex couples. This necessarily involves reducing the meaning of marriage to a lowest common denominator.

3.6 If, as the Secretary of State suggests, marriage is to be reduced to no more than ‘an ability for two people to come together and stay together, and to pledge their commitment to stay together for life’, it is difficult to see any logical objection to permitting two close family members to marry.

3.7 In its proposals to redefine marriage, the government appears to have lost sight of the reason for which marriage has merited legal recognition historically. The law does not normally interest itself in the formation of close friendships and other emotional bonds, but it does recognise marriage because of its potential to produce children, because of the proven benefits it brings both to children and to society, and because of the web of intergenerational support it provides.

3.8 As the authors of a recent book on this topic have noted, the same-sex marriage debate represents a pivotal stage in a decades-long struggle between two views of the meaning of marriage: the conjugal and the revisionist. [10] The *conjugal view* defines marriage as a physical as well as an emotional and spiritual bond, distinguished by its comprehensiveness. It is a union inherently ordered to procreation and family life, and marked by lifelong fidelity. By contrast, according to the *revisionist view*, marriage is reduced to a loving emotional bond in which fidelity and longevity are ultimately subject to the desires of the individual.

3.9 If marriage is redefined to include same-sex partnerships, there is the danger that it will come to be seen as essentially an emotional bond rather than as a comprehensive union, and the norms of permanence and sexual exclusivity will be eroded. Indeed, there is no reason why a purely emotional union should be permanent or limited to two people. Since a strong marriage culture is good for children, spouses and for the economy, such an outcome would not serve the best interests of society.

3.10 If it is the intention of the government to replace the conjugal view of marriage in law with the revisionist view, it ought to be honest about what it is seeking to do. Rather than subject marriage to a hastily-formulated modernising agenda, the government should be willing to take time to subject its proposals to consultation on *whether* the public supports such a radical cultural change. Particular note should be taken of the views of married couples to ascertain whether they wish parliament to change the legal meaning of marriage.

4. IMPLICATIONS FOR TEACHERS AND SCHOOLS

4.1 If the government succeeds in its attempt to redefine marriage, there could be serious and far-reaching implications for the school curriculum and for teaching staff in both primary and secondary schools.

4.2 According to a legal opinion prepared by John Bowers QC on behalf of the Coalition for Marriage (C4M), schools could be required to teach pupils about the importance of same-sex marriage and teachers could face disciplinary action for refusing to use materials endorsing marriage between two men or two women.[11]

Implications for the curriculum

4.3 Section 403 of the Education Act 1996 requires the Secretary of State for Education to ‘issue guidance designed to secure that when sex education is given to registered pupils at maintained schools...they learn the nature of marriage and its importance for family life and the bringing up of children’.

4.4 If marriage were to be redefined, however, learning about ‘the nature of marriage’ and about ‘its importance for family life’ would take on a new meaning. It would involve subjecting pupils to teaching about same-sex marriage on the same basis as marriage between a man and a woman, and it would involve teaching them that each type of marriage is of equal importance to family life and the bringing up of children.

4.5 The claim has been made in the public bill committee that teachers who do not agree with same-sex marriage would be in a comparable position to teachers who do not agree with other sensitive issues such as abortion or divorce—ie they would be able to refer to it as a legal reality without personally endorsing it. However, there is a significant difference in relation to same-sex marriage. Sex education teachers are required to teach about ‘the nature of marriage’ and about ‘its importance for family life and the bringing up of children’ in a way that they are not required to teach about abortion or divorce.

4.6 While a teacher with a conscientious objection to same-sex marriage may be able to refer to it as a matter of law, he or she may not be willing to teach about ‘the nature’ of same-sex marriage nor teach that it was of equal importance for family life to marriage between a man and a woman.

4.7 Although primary school governing bodies have discretion as to whether or not they provide sex education, most do. Unless the law covering sex education is amended, primary schools that provide sex education will be obliged to give positive and non-discriminatory instruction about same-sex marriage in the context of teaching ‘the nature of marriage and its importance for family life and the bringing up of children’.

4.8 John Bowers QC is not convinced that opting out of teaching sex education would provide an adequate safeguard for primary schools that did not wish to broach the subject of same-sex marriage. Quite apart from the law on sex education, he writes:

‘In my view the Public Sector Equality Duty imposed under Equality Act 2010 would provide a legitimate basis for including not just the fact of same sex marriage but also an *endorsement* of it as part of the curriculum.’

Implications for teachers

4.9 While the government has repeatedly insisted that, ‘No teacher will be required to promote or endorse views that go against their beliefs’ if marriage is redefined, both Aidan O’Neill QC and John Bowers QC are not so confident. According to Aidan O’Neill, a teacher could be dismissed for refusing to comply with a headteacher’s request to use a book such as *King & King* because it went against her Christian convictions about marriage.[12]

4.10 In the view of John Bowers, as the law stands, there would be a duty placed on teachers to promote the new definition of marriage if the Marriage (Same Sex Couples) Bill receives parliamentary approval in its present form. He writes:

‘The stark position in my view is that 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.’

4.11 According to Mr Bowers’ advice, schools would no longer be free to present ‘marriage between people of the opposite sex as positive and marriage between people of the same sex as less positive or negative’. In fact, they would have a legal duty to ‘positively promote same-sex marriage within sex and relationships education’ and no sex education teacher would have the right to refuse to teach about the ‘importance’ of same-sex marriage.

4.12 In Mr Bowers’ judgment, ‘Elevating one kind of marriage over another is likely to amount to indirect or direct discrimination.’ In short, he writes that: ‘The position of the teacher who manifests a conscientious objection to [using materials endorsing same-sex marriage] is not enviable.’

4.13 According to a ComRes poll of teachers, 61% of primary school teachers are concerned that expressing support for traditional marriage could damage a teacher's career if marriage is redefined, while 19% of teachers think that it is right that a teacher face disciplinary action for refusing to teach about same-sex marriage.[13]

4.14 We have been dismayed by the manner in which the Secretary of State for Education brushed aside questions about the implication of the Bill for schools during his evidence session and by the manner in which the Minister has dismissed concerns subsequently. We would urge the public bill committee to give careful consideration to the advice provided by John Bowers QC.

REFERENCES

1. Marriage (Same Sex Couples) Bill, Explanatory Notes, para 101.
2. Marriage (Same Sex Couples) Bill, Schedule 4, Part 3, s4.
3. Marriage (Same Sex Couples) Bill, Schedule 4, Part 3, s3.
4. Department for Culture, Media and Sport, 'Myths about equal marriage—Setting out the truth', January 2013.
5. At Second Reading, the Second Church Estates Commissioner stated: '[A]s many other commentators have made clear, there is an inevitable degree of risk in all this, given that it would ultimately be for the courts, and in particular the Strasbourg court, to decide whether provisions in the legislation are compatible with the European convention on human rights. There is absolutely no doubt that once marriage is redefined in this very fundamental way, a number of new legal questions will arise and no one can be sure what the eventual outcome will be... On the specific protections that the Government are seeking to give to Churches that do not wish to perform same-sex marriages, I believe that they are being done in the best of faith and as robustly as the Government feel able, but I simply reiterate that there is no way in which any of us can know just how robust these protections will be until they are tested in the courts.' House of Commons Hansard, 5 February 2013, cols 144–145.
6. John Bingham and Tim Ross, 'Government "powerless to protect teachers from sack over gay marriage"', *Daily Telegraph*, 25 January 2013.
7. Department for Culture, Media and Sport, 'Myths about equal marriage—Setting out the truth', January 2013.
8. House of Lords, Hansard, 11 February 2004, col 1094–1095.
9. Marriage (Same Sex Couples) Bill, Public Bill Committee, *12 February 2013, col 5, question 6*.
10. Sherif Girgis, Ryan T Anderson, Robert P George, *What is Marriage? Man and Woman: A Defense*, Encounter Books, 2012.
11. Quotations in the paragraphs that follow are taken from the advice on the Marriage (Same Sex Couples) Bill provided by John Bowers QC to the Coalition for Marriage, 1 February 2013. <http://c4m.org.uk/downloads/johnbowersadvice.pdf>
12. Aidan O'Neill QC, Advice Re The implications for freedom of conscience and religious liberty arising from redefining marriage in England and Wales, 17 December 2012.
13. ComRes, Teacher Poll: Same Sex Marriage, January 2013.

March 2013

Memorandum submitted by Christians for Equal Marriage UK (MB 92)

Providing a voice for Christians who support the right of all people, irrespective of sexuality, to marry

REF: MARRIAGE (SAME SEX COUPLES) BILL

Dear MPs/Public Bill Select Committee Members,

1. We are a national organisation that has been established specifically to act as a voice for Christians who support equal marriage. Our team is a mix of heterosexual and homosexual people who feel called to stand up for those upon whom both society and the Church have sought to place the burden of exclusion.

2. Set up last year, we represent the views of thousands of Christians throughout the United Kingdom who support the right of two people of the same sex to be allowed to marry—both in state registry offices and in churches. We believe that marriage is between two people, irrespective of their gender and/or sexuality this, is a view that many in the church share.

3. We believe:

- Marriage should be available to all couples, same-sex or opposite-sex, within and outside the church;
- The struggle for equal marriage is a matter of social justice;

-
- The reason given in the Bible for people to marry is that ‘It is not good for man to be alone’. God’s love is not limited to one particular sexuality or type/genre of people.
4. We were thrilled, therefore, when the House of Commons voted to introduce Same Sex Marriage on 5th February. However, we are concerned that both the Church of England and Church of Wales will be prevented from opting in by the legislation and therefore banned from performing such ceremonies. Large numbers of Christians in these denominations support equal marriage, including many clergy. We have written to Equalities Minister, Maria Miller MP, expressing our concerns and would urge you to reconsider the proposed government position and to encourage further discussion of this matter with the Churches of England and Wales.
5. After all, to signal to a couple that their relationship is not blessed by God is particularly hurtful and stigmatising. In many cases, those who seek a Blessing or ultimately the opportunity to marry in church have been worshipping at their particular church for many years.
6. We believe homosexual relationships are entirely compatible with the Christian faith. Jesus demonstrated inclusivity and equality and actively went out of his way to support the marginalised in society. Lesbian, gay, bisexual and transgender people have been sidelined for too long. It is fast becoming clear that in a matter of a few years, this form of exclusion will be viewed in the same way as prejudice against mixed race couples now is. Along with the vote against women Bishops, this has done much to alienate ordinary people from the church. We do not consider that hostility among the African churches a valid reason to hold back, as we must stand up for what is right, regardless of the consequences. Furthermore, law has an educative purpose and to go along with the exclusion of same sex couples from the sacrament of marriage, is to signal to those churches in other parts of the world that their prejudices, which sometimes take on extreme and dangerous forms, are correct and validated by God. Since our group was established we have received support from both Christians and non-Christians right across the country.
7. During this committee/amendment stage of the Same Sex Marriage Bill we would urge you to include both the Church of England and Church of Wales as denominations where same-sex marriage could be permitted.
8. For more details about our organisation, beliefs and objectives please look at our website: www.christians4emuk.org.

March 2013

Memorandum submitted by Peter Heywood (MB 93)

1 BASIS FOR SUBMISSION

This submission is based on the understanding that it would be desirable in the Same-Sex Marriage Bill to achieve the following...

...to acknowledge and honour the love that homosexual people have for each other, so that they can get married

...while at the same time acknowledging and honouring the traditional understanding of marriage and family which is held by many people in the country.

In order to achieve this, here is a proposal for how the bill could be modified.

2 STARTING POINTS

For the proponents of traditional marriage, the key starting point is that heterosexual marriage and homosexual marriage are **different**. This is evident in terms of biology, and in terms of the ability of heterosexual couples to produce children.

For the proponents of homosexual marriage, the key starting point is that homosexuals should be accorded the **same rights** as heterosexuals, and that should include the right to marry.

3 PROPOSAL—SUMMARY

Based on these two starting points, the proposal is to create two types of marriage, with the ability of Celebrants and Buildings to be registered for either or both types of marriage.

Two types of marriage

The creation by law of two types of Marriage—to be called...

- Traditional Marriage or Heterosexual Marriage (but NOT Religious Marriage)
- Gay Marriage

These two types of marriage would need to be separately defined in terms of gender, and include the different aspects of consummation (or lack of it) in terms of the definition (or not) of adultery.

Celebrants

The Celebrants of marriage (whether these people are from a religious or secular background) would then register as a celebrant for one or both of these types of marriage.

Buildings

Buildings would be separately registered by the people in charge of them, for one or both types of marriage.

4 BENEFITS

These arrangements would have the following benefits...

- It would provide the legal basis for homosexual couples to get married.
- It would recognise in law that the two types of marriage are inevitably and structurally different from each other.
- It would allow the issue of the inevitable different aspects of adultery to be resolved.
- It would provide a legitimate structure for people to hold different opinions, which is what they do at the moment, without marginalising people on one side of the debate.
- It would create a situation where the legitimate choice being offered to Celebrants would also be available to everyone else, allowing people to hold different opinions without legal or social or economic penalties.
- It would allow people to be not a supporter of Gay Marriage, without being seen as anti-gay.
- It would allow different church leaders to make their personal choice on which type(s) of marriage they will perform.
- It would need to allow an individual church minister to register honourably for Traditional Marriage only, without being seen as anti-gay, but still to be welcomed for example as a chaplain in a hospital.
- It would provide Celebrants with a logical and legal framework (and therefore legal protection) if they decide to only register for taking one sort of marriage.
- It would help to prevent any arguments over which buildings can be used for marriages, as the decisions will be taken locally, and within the context of law, by the people responsible for them.
- By allowing Celebrants to make a choice, it would legitimately allow other people to be against gay marriage (as they might be against anything else in society) without being against gay people (which is discrimination).
- It would remove the presently proposed anomalies in terms of whether churches should be prevented from, or eventually forced to (as is now happening in other countries) hold gay marriage ceremonies.
- It would protect public sector workers, who would be allowed to have an opinion about the two types of marriage, in the same way as they have opinions about many things, without being considered offensive.
- By not using the phrase Religious Marriage, it would reduce (rather than reinforce) the (generally) false impression that the church is anti-gay.
- It would acknowledge that the real differences between marriage are between Heterosexual and Homosexual Marriage, without the confusion of calling them Civil and Religious Marriage, which only sets the church and state in opposition to each other, just by the words being used.

March 2013

Memorandum submitted by the Society for the Protection of Unborn Children (MB 94)

What happens to marriage and families when the law recognises “Same-Sex Marriage”?

Experience of legalising marriage for same-sex couples in Europe and North America

EXECUTIVE SUMMARY

The claim that “same-sex marriage”²⁸³ dilutes or even abolishes the institution of marriage is often countered by the claim that opening up marriage to same-sex couples will actually strengthen the institution. It is claimed that same-sex marriage will thus serve the common good as well as promoting equality. This paper examines the evidence for these claims.

Patricia Morgan is a leading researcher on family policy and author of numerous books and scholarly papers on marriage and the state. She has researched the effect on marriage when same-sex marriage legislation is introduced.

²⁸³ Note: We introduce the term “same-sex marriage” with quotation marks because it is not really marriage—but in the text we ask the reader to take the distinction as read.

She has produced the following paper for SPUC based on research and data from Sweden, Norway, Denmark, the Netherlands, Spain, Canada the US, and concludes that:

- As marriage is redefined to accommodate same-sex couples, this reinforces the idea that marriage is irrelevant to parenthood.
- Same sex marriage leads to the casualisation of heterosexual unions and separation of marriage and parenthood.
- Spain saw a pronounced acceleration in the decline of marriage following the introduction of same-sex marriage (same-sex marriage was introduced at the same time as the ‘express divorce bill’).
- Across all countries analysed no causal link has been established to support the idea that same-sex marriage prevents marital decline.
- In the move to same-sex marriage, opposite-sex relationships have to conform to gay norms rather than vice-versa.
- A publicly professed, legal, partnership does not prevent homosexual couples from breaking up more frequently than married heterosexual couples.
- Experience with same-sex partnerships/marriage legislation tends to suggest that *availability* is all, and participation more or less irrelevant to sexual minorities.
- Same-sex marriage may be the end-game of long-running anti-marriage, anti-family policy typified by Sweden.
- Same-sex marriage may begin the process of severing marriage from family in otherwise family-friendly societies such as Spain and the Netherlands.
- Same-sex marriage triggers dismemberment of family structures in family-friendly societies.

WHAT HAPPENS TO MARRIAGE AND FAMILIES WHEN THE LAW RECOGNISES “SAME-SEX MARRIAGE”?

The case for (and against) the rejuvenation argument.

1. Part of the argument for ‘equal’ marriage—especially from conservatives—is how homosexuals are eager to get married and, as they do so, this will increase and strengthen heterosexual marriage.

“At a time when many heterosexuals are spurning the idea of marriage, here is a section of society positively lobbying for the right to respect and continue the institution. Perhaps gay marriage will encourage more straight people back on to the marital path.” (Douglas Murray, D Gay rites. *The Spectator* 01.10.2011)

Homosexuals will be missionaries to the wider society and make it “stronger” (Home Secretary Teresa May reported: *Daily Telegraph* 25.05.2012).

As homosexuals increase the marriage rate, we are told, this will have a profound effect on social problems, saving us all much tribulation, tears and treasure.

“... the most significant driver of social instability and poverty—[is] family breakdown... Backing marriage... would encourage strong and stable families, and tackle the social breakdown that fuels poverty.” (Skelton, D and Flint, R ed Gibbs, B *What’s In A Name?* 2012 Policy Exchange Quoting the Centre for Social Justice, p.22)

Homosexuals will, we are told, bring back foundational marital virtues in danger of being lost. Same sex marriage promises to be a force for revival which will:

“...strengthen—rather than undermine—the institution of marriage and valuable notions of commitment, fidelity and responsibility...” (Skelton, D and Flint, R ed Gibbs, B *What’s In A Name?* 2012 Policy Exchange. p.60)

Any claim that giving marital rights to gay couples will:

“... undermine heterosexual marriage is based on the consistent misuse and misinterpretation of data”. (Lee Badgett, M. V Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage? *Sexuality Research & Social Policy* 2004 Vol. 1 (3) pgs. 1–10)

2. Following on this optimism, suggestions are that marriage rates have remained stable or even grown in countries that have enacted (either or both) ‘partnerships’ and ‘marriage’. Constant rates are not, of course, the same as rising rates.

What is available?

3. *In the Nordic countries civil unions or ‘registered partnerships’ have been available for the longest time—Denmark from 1989; Norway from 1993 and Sweden from 1995. The UK introduced civil partnerships in 2005.*

Norway moved to ‘gender-neutral’ marriage in 2008. **Sweden** followed in 2009 and imposed its law virtually overnight without consultation. *Since marriage, particularly in Sweden, has long had little or no recognition or status, partnership morphed seamlessly into marriage and the two have been treated de facto and, for all intents and purposes, as virtually identical—both before and after the transition. Initially, the exceptions for partnerships were that these did not bestow a right to marry in a state church, adopt children or access reproductive technologies. Afterwards, while there were ‘faith’ groups no longer “willing and able to continue to act as a state agent in the*

form of religious ceremonies of confirmation” the Church of Sweden grumbled but complied in this highly conformist society and created a ‘gender neutral’ liturgy’ as they lost independent solemnizing powers. The state is supreme and “once the applicable legal framework has been established, this framework is alone decisive”.²⁸⁴ The country’s parliament voted through the new law on same-sex marriage by a large majority, making it mandatory for all churches to conduct gay marriages. Similarly, Churches in Denmark were obliged to carry out same sex weddings in 2012. If individual priests refuse to carry out the ceremony, the local bishop must arrange a replacement for their church.

4. *The Netherlands first introduced same sex marriage in 2001, followed by Belgium in 2003*—both countries created civil partnerships a few years earlier. The Netherlands was unsure that paternity could be ascribed to a non-generative ‘parent’, and made it necessary for the partner of a mother to adopt any child they both regarded as their own. Same-sex marriage in **Spain and Canada followed in 2005; dispensing with civil unions as a prelude to marriage.** **France** introduced PACS or civil contracts in 1999 which gave limited rights to cohabiting couples, regardless of gender. In 2004, a mayor conducted a same sex marriage ceremony and a court nullified the union, but there is movement towards same sex marriage going on at present.

5. Since 1997, when **Hawaii** became the first state in the US to allow reciprocal-beneficiary registration for same-sex couples, 19 states and the District of Columbia have granted some form of legal recognition to same sex relationships. The variants include marriage, civil unions, domestic partnerships, and reciprocal-beneficiary relationships. Most prominently, there have been civil unions in **Vermont** (2000), domestic partnerships in **California** (1999) and marriage in **Massachusetts** (2004).

6. **In the move to same sex marriage, opposite sex relationships have to conform to gay norms**, rather than vice versa, since matters pertaining to complementary sexes cannot apply to those of the same sex. For example: Spanish birth certificates record ‘progenitor A’ and ‘progenitor B’ rather than ‘mother’ and ‘father’. In Canada, the concept of natural parent has been erased from law—for every child and every couple—with court rulings that children could have three parents. Sweden has also moved to eliminate the words ‘boy’ and ‘girl’ in return for one neutral word.

Have gays rushed to make partnerships or marry?

7. Since same-sex marriage has only recently been legalized in a handful of countries, data on how the laws have affected marriage rates—for heterosexuals or homosexuals—is limited.

In discussions of same sex marriage, one of the questions rarely asked is ‘How interested are ‘gay’ couples in actually getting married?’

8. In the **Netherlands**, which has had same-sex marriage as a legal option for the longest period (since 2001), 2%–6% of homosexuals entered marriages in the first five years; much the same as **Belgium**.²⁸⁵ One in three Dutch homosexual couples living together had their relationships officially registered by 2010 -with nearly 11,000 married and more than 6,000 in registered partnerships. Survey data suggest that 2.8% and 1.4% of Dutch men and women are gay or lesbian. The population of the Netherlands is just over sixteen and a half million; indicating that the homosexual population is approximately two thirds of a million—a high estimate.

There are claims that same sex marriage in the Netherlands is actually declining in popularity: 2,500 gay couples married in 2001- the year it was legalized—dropping to 1,800 in 2002, 1,384 in 2010 and 1,355 in 2011—with a 52 fold difference with the heterosexual marriage total of 70,217. By 2009, less than 2% of marriages were between same-sex couples. The number registering partnerships varies between 400 and 600 per year.

9. Researchers remark how, their “first observation is that the incidence of same-sex marriage in Norway and Sweden is not particularly impressive.”²⁸⁶ For the 1,293 partnerships contracted in **Norway** in 1993–2001, 196,000 heterosexual marriages were entered; indicating a ratio of around 7 new same-sex unions to every 1,000 marriages. In almost 20% of Norwegian registered partnership over the 1990s, one partner had been previously married and in at least 16% of the cases, one was also a parent, although not very likely to be living with their children.²⁸⁷ In **Sweden**, there were 1,526 partnerships entered during 1995–2002 compared to 280,000 heterosexual marriages—a ratio of 5 to 1,000. It is suggested that one to five% of the homosexual population contract a civil partnership or marry, with trend data indicating that—as elsewhere—numbers tend to decrease after an initial burst (reflecting pent up demand). In the years 1990–1998—a cumulative total of 2168 partnerships were registered in **Denmark**, encompassing 1.7% of the homosexual population.²⁸⁸

²⁸⁴ Jareborg, M. J., Religious Freedom and Equality: Emerging Conflicts in North America and Europe—a Scandinavian Perspective. The Religious Freedom Project. The Berkeley Center for Religion, Peace and World Affairs. Georgetown Uni. April 11-12 2012

²⁸⁵ Gallagher, M & Baker, J.K Demand for Same-Sex Marriage: Evidence from the United States, Canada and Europe iMAPP, 2006 Vol.3 (1)

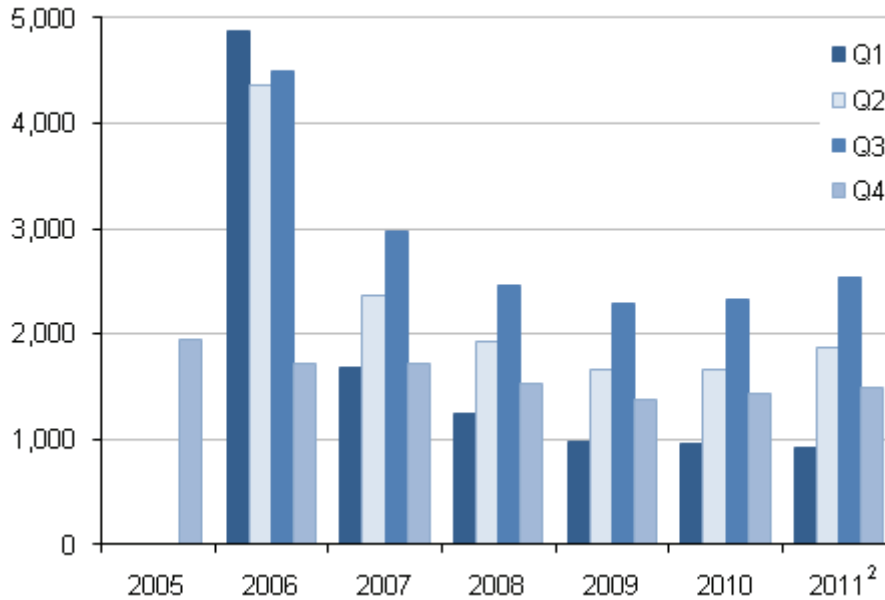
²⁸⁶ Andersson, G., et al The demographics of same-sex marriages in Norway and Sweden. *Demography*, 2006 43(1), 79–98.

²⁸⁷ Noack, T., Fekjær, H., Seierstad, A. (2002): Skilsmisser blant lesbiske og homofile partnere—hvem er mest stabile. Samfunnsspeilet nr. 3, 2002—cited in Christer Hyggen, C with Skevik, A *Demography of the family in Norway. First report for the project “Welfare Policy and Employment in the Context of Family Change”*, drafted for the meeting 12–13 December 2002 in York, UK NOVA Norwegian Social Research Oslo NORWAY

²⁸⁸ Lund-Anderson, I The Danish Registered Partnership Act 1989 in Wintemute, R & Andenaes, M Legal Recognition of Same-Sex Partnerships, Hart 2001, p.419

10. In the **UK**, approximately 53,417 civil partnerships have been formed since December 2005. Numbers fell from 16,106 in 2006 to 8728 in 2007 to 6281 in 2009, with a rise to 6795 in 2011—when less than one person per 1,000 unmarried adults aged 16 and over entered into a civil partnership in England and Wales.

NO. OF CIVIL PARTNERSHIPS IN UK BY QUARTER OF OCCURRENCE 2005–2011



Source: Office for National Statistics

11. The most recent **U.S.** Census data reveal that, in the last 15 years, 150,000 same-sex couples have taken advantage of official unions—equivalent to around one in five of the self-identified same-sex couples in the United States. This number is not just low because only a few states have allowed full ‘marriage’. In the first four years when same sex marriage has been an option in **Massachusetts**, there was an average of only about 3,000 per year—including many who came from out of state. Overall, same sex households have increased in the US—from 358,000 same-sex (married or unmarried) partner households in 2000 to 646,000 plus in the 2010 census (roughly 131,729 married couple and 514,735 same-sex unmarried partner households). They accounted for 0.6% or less than one% of **all households in the US**.²⁸⁹

12. The period in which same-sex marriage has been available in **Canada** varies from province to province—all maintain their own statistics—with national legislation taking effect in July 2005. Depending on the province, it seems that between 0.15% and 14% of Canadian homosexuals have entered marriages. As elsewhere, the rate trails off over time.

13. **Experience with same sex partnerships/marriage tends to bear out claims that availability or the ‘right’ is all and participation more or less irrelevant** to sexual minorities. There is little or no difference in take-up between ‘marriage’ and registered partnerships. In places that have one or both **and** significant numbers of homosexuals, there has been no groundswell.

From the beginning, the debate over marriage has not necessarily hinged on its popularity among the eligible, with advocates of same sex unions insisting that “equality” was not a numerical proposition. It is the mere existence of a right to marry which is important, irrespective of whether anyone partakes of it or not. This has tended to be ignored by naïve heterosexual supporters, who believe they are speaking for reticent homosexuals desperate to share in a heterosexual privilege.

Splitting Up

14. When same sex couples do get married, they are more likely than their heterosexual equivalents to change their minds later. A publicly professed, legal partnership does not prevent homosexual couples from breaking up more frequently than married heterosexual couples.²⁹⁰

We might have predicted **low separation** rates with the advent of same sex unions, as only the most eager and committed would be the first to move in together—but this is not so.²⁹¹

²⁸⁹ Lofquist, D et al Households and Families: 2010 Census Briefs. SEPT. 27, 2011. U.S census Bureau.

²⁹⁰ Andersson, G., et al The demographics of same-sex marriages in Norway and Sweden. *Demography*, 2006 43(1), 79–98. see also Andersson, G et al Divorce-Risk Patterns in Same-Sex Marriages in Norway and Sweden, 2004 at http://www.uni-koeln.de/wiso-fak/fisoz/conference/papers/p_andersson.pdf

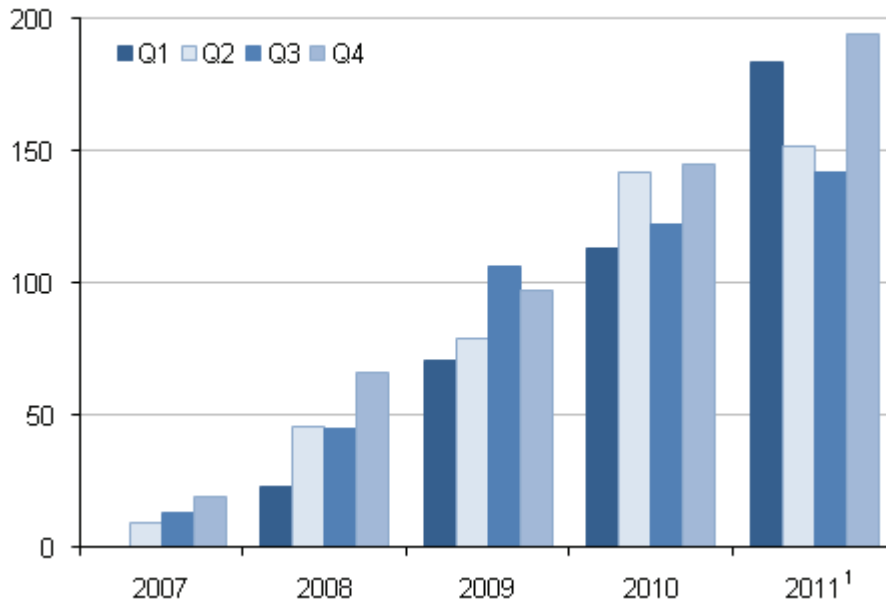
²⁹¹ Lau, Charles, Q The Stability of Same-Sex Cohabitation, Different-Sex Cohabitation, and Marriage. *Journal of Marriage and Family* 2012 74 pgs. 973-988

15. Longitudinal **Swedish and Norwegian** data on 2,819 homosexual and 222,000 opposite-sex marriages included information on characteristics such as age, geographic background, as well as experience of previous opposite-sex marriage, parenthood and education. Breakdown rates in **Norway** revealed that same-sex male couples were 1.5 times more likely (and same sex female couples were 2.67 more likely) to break up compared to heterosexual unions: within five years 20% of male and 30% of female same sex unions were terminated, compared to 13% for heterosexuals. Similarly in **Sweden**, male unions are 50% more likely to end in divorce than heterosexual marriages and the risk for female partnerships is nearly double that for men. Comparison with childless unions leaves this unchanged as do controls for various demographic and socioeconomic differences.²⁹² The instability of same sex unions has been labelled ‘dynamism’ to indicate superiority to the ‘inertia’ of marital stability—a dynamism attributed to the lack of ‘clear power structures’ which supposedly oppress opposite sex relationships.

16. In the **Netherlands**, there have been 1,078 same sex ‘divorces’ up to 2010—two thirds were by females and a similar pattern is present elsewhere, as in **Massachusetts** and **Sweden**.²⁹³ This follows the heterosexual pattern, where more females than males instigate divorce. Previously, a study compared same-sex cohabiters, different sex cohabiters and different sex married couples in the **Netherlands** between 1989 and 1999 (after which same sex partners could move into same sex marriages). The dissolution rate for same-sex cohabitation was 12 times higher than the rate for different-sex marriage and three times higher than the rate for opposite sex cohabitation.²⁹⁴ The breakdown rates here were higher for male unions.

Dissolutions appear to be increasing for **UK** civil partnerships, with a 28.7% rise between 2010 and 2011. Again, female dissolutions are double those of male.

NO. OF CIVIL PARTNERSHIP DISSOLUTIONS IN THE UK, BY QUARTER OF OCCURRENCE, 2007–2011



Source: Office for National Statistics

17. A **Vermont** study compared same sex partners in civil unions, those outside unions and heterosexually married siblings. It was hypothesized that lesbian and gay male couples in civil unions would be more similar in monogamy to married heterosexual couples than to same-sex couples not in civil unions.²⁹⁵ Non-monogamy was reported by over one-half of homosexual men in both types of couples (compared with 15.2% of married heterosexual men). A half of the homosexual men in civil unions and one-third of those not in civil unions had an agreement that sex outside their relationship was permissible, compared with 5% or fewer lesbian and heterosexual couples. This did not prevent homosexual men having extra-relational sex regardless. With or without such an agreement there is no sign that considerable conflict has been avoided by such arrangements.

18. There are a couple of features of Scandinavian unions that warrant mention:

²⁹² Andersson, G., et al The demographics of same-sex marriages in Norway and Sweden. and Andersson,G et al Divorce-Risk Patterns in Same-Sex Marriages in Norway and Sweden ... *Op cit*

²⁹³ Statistics Netherlands, “Number of Registered Partnerships Grew Further in 2010” March 15, 2011 at <http://www.cbs.nl/en/-/menu/themas/bevolking/publicaties/artikelen/archief/2011/2011-3331-wm.htm>

²⁹⁴ Kalmijn, M., Loeve, A & Manting, D. Income dynamics in couples and the dissolution of marriage and cohabitation. *Demography* 2007 44 pgs 159-179

²⁹⁵ Solomon, S.E et al Money, Housework, Sex, and Conflict: Same-Sex Couples in Civil Unions, Those Not in Civil Unions, and Heterosexual Married Siblings *Sex Roles*, 2005 Vol. 52, (9/10). 561-575

- i. **High death rates**—seen in the early years of same sex unions in Denmark,²⁹⁶ plus the way that partners have also been, on average, considerably older than corresponding opposite-sex spouses in Norwegian and Swedish data.²⁹⁷ This suggests that **matters of inheritance** as much or more than home building may be uppermost.
- ii. **High rates of non-national partners**, suggesting that many same sex unions serve **immigration purposes**—particularly for male partnerships. Sweden is considered one of the most globalised countries. In the last few decades, the potential marriage market has increased dramatically, with increasing numbers of migrants living in Sweden, along with Swedes who travel, work or study abroad, and the rise of internet usage.²⁹⁸

19. In Norway, 43% of male partnerships included a non-Norwegian citizen and 45% in Sweden. It is part of a wider process, where about three out of 10 Norwegian marriages involve one or two persons with immigrant backgrounds. A total of 13.5% of Norwegian marriages in mid-decade were between a man without and a woman with an immigrant background, and 7% between a woman without and a man with an immigrant background.²⁹⁹ The probability of marrying spouses from outside the European Union has doubled for native Swedish women and quadrupled for men in less than 20 years and many will not have met in Sweden.

Even these figures fall far short of figures for same sex unions and it is significant that those with one foreign partner are particularly likely to dissolve—with nearly a half rapidly folding up. This suggests unions of convenience made (or bought and sold?) for resident rights and citizenship.

This does not appear to be considered in the UK, but it is a possibility—particularly given the low number of homosexuals at all interested in unions for themselves.

WHAT HAS HAPPENED TO HETEROSEXUAL MARRIAGE RATES WHERE GAYS MARRY?

Some background considerations:

20. Declining marriage rates, paralleled by increasing rates of unmarried cohabitation and births are generally seen as parts of a second demographic transition in the Western world, where marriage and family have been weakened as the primary child rearing environment.

21. The Nordic countries are leaders here. Moral and cultural controls have largely disappeared and religious influence has faded. Not far behind are France, Belgium, Great Britain, and Germany, along with the U.S and Canada. With tighter family patterns and lower rates of cohabitation, family dissolution, and out-of-wedlock births are the southern European countries of Spain, Portugal, Italy, and Greece. There is a general drift towards the Nordic pattern, promoted not only by secularisation, increasing sexualisation and easy marital dissolution but also, significantly, by welfare states. Privileges once reserved for marriage are given to individuals regardless of relationships or family arrangements. Male provision for families is frowned upon and mothers are expected to be employed and self-sufficient, with wage subsidies and children in day care. Spousal benefits or exemptions do not exist, income tax is individual and state support is targeted to lone parents with the stand alone mother the locus of family ‘diversity’.

22. The disintegrative process is somewhat held in check by tendencies for parents to marry after a couple of births; pointing to the persistence of residual norms and family pressures connecting child rearing to spousal commitment. As out-of-wedlock childbearing pushes beyond 50% a stalling process is evident as it enters the toughest area of cultural resistance. Once that marker disappears and the tendency to marry at the second birth dissipates, the path opens to the terminus of marriage which, if it survives at all, rests only upon residual sentiment. While mass cohabitation is not initially a long-term form of living together, but rather a prelude to marriage or separation, it then becomes extended and a substitute for marriage. People conform to suggestion and example and, as married parenthood becomes a minority phenomenon, it loses the critical mass needed to be a socially normative force.

23. When same sex partnerships—readily absorbed to marriage—made their appearance in **Scandinavian** countries, marriage had been more or less dismantled in all but name. **Sweden’s** anti-marriage policy has been implemented earlier than those in Norway and Denmark as well as being more explicit and coordinated than in the UK, where there has been considerable prevarication and subterfuge.³⁰⁰ Sweden’s politicians’ and planners’ ‘ideology of neutrality’ (sic) amounted to about the most concerted attempt in history to engineer a liberated sexuality free from moral and social norms, freedom of women from child care responsibilities and the demise of interdependence through economic manipulation, social pressures and massive public re-education. With radical feminist and socialist ideology dominant from an early period, powerful social scientists have seen marriage as a barrier to full equality between the sexes. Re-defined as “a form of voluntary cohabitation between

²⁹⁶ Frisch M, Bronnum-Hansen H Mortality among men and women in same-sex marriage: a national cohort study of 8333 Danes. *Am J Pub Health* 2009 99:133–137

²⁹⁷ Andersson, G., et al The demographics of same-sex marriages in Norway and Sweden. *Demography*, 2006 43(1), 79–98.

²⁹⁸ Haandrikman, K *Bi-national Marriages in Sweden: Is There an EU effect?* Research Reports in Demography 2012:2 Stockholm Univ

²⁹⁹ Daugstad, G and Sandnes, T Gender and Migration. Similarities and disparities among women and men in the immigrant population. 2008/10 Statistisk sentralbyrå • Statistics Norway Oslo–Kongsvinger

³⁰⁰ Jareborg, M. J., Religious Freedom and Equality: Emerging Conflicts in North America and Europe—a Scandinavian Perspective. The Religious Freedom Project. The Berkeley Center for Religion, Peace and World Affairs. Geartown Uni. April 11-12 2012

independent persons”³⁰¹ anything which might benefit it over cohabitation was stripped away as couples living together acquired much the same rights as married people. Divorce was made available on request without giving reason(s). There could not be a ‘right to choose’, since people were deemed ‘culturally conditioned’ into an impoverishing mould. The withdrawal of support for two parent families, imposition of penalties on non-working ‘partners’ and very high taxation made it impossible to live on one wage. The word ‘custodian’ has designated the person closest to a child, who serves the state as the supervisor and agency on whose behalf parents act. Norway and Denmark experienced similar moves away from the largely self-financing two parent family towards employed mothers and public child care supported by social security.

24. Removing any incentives to get and stay married have had direct and unsurprising effects on marriage. Sweden’s rates were falling dramatically by the end of the 1960s (it registered the lowest rate in recorded history in 1997), accompanied by rising cohabitation, unwed births and high levels of single person households.³⁰² By the 1980s, boast was that Sweden was “moving faster than most other advanced industrialised counties toward a society of cohabiting individuals, temporary families, and single individuals with and without children.”³⁰³ Unwed births were at 48.2% in 1991 and hit the 55% mark in the next decade. With marriage neither legally nor normatively a precondition for a family this has become simply a matter of the fact of parenthood.

25. If **Sweden and Norway are the kind of places where we are expected to find that same sex unions have rescued marriage** after heterosexuals have trashed it, then marriage has hardly been welcome in recent Scandinavian history—or not by governments. Hardly promising, is it?

Notwithstanding, oscillations in Scandinavian marriage rates post 1990 have led to claims that same sex partnership/marriage has helped to revitalise the institution. And, the argument goes, if societies with such low marriage rates can see a boost from same sex marriage, why not elsewhere?

26. **For example:** this has been forcefully put—mainly in reference to Norway—by US ‘gay’ advocates William N. Eskridge and Darren R. Spedale.³⁰⁴ They accept the data showing a close correlation between legal and economic changes and lower marriage rates, high divorce rates and unwed births. Throughout the 1980s, Norwegian marital households with children plummeted; falling 18% from 1989 to 1993 as cohabiting with children rose 70%. So, would we not expect same sex partnerships and marriage to cause an acceleration—whether temporarily or long term—in changes that have been going on since the 1970s? But they argue that we do not see a further plunge. Instead, while there is still a continuous rise in cohabitation with children and a decline in marriage both absolutely and comparatively in the 1990s, same sex unions were “no stake through the heart of marriage.” Instead, they were responsible for how “the trend slowed down a little bit after 1993.”³⁰⁵

Norwegian tabloids and media suggest that marriage was made ‘fashionable’ among young people due to royal rather than ‘gay’ weddings.

27. Both perspectives are described by demographers as ‘misguided’.³⁰⁶ **Marriage statistics in societies with very low rates present problems for analysis.** Marriage rates are fairly volatile anyway; affected by economic conditions and predictions as well as one off events.

Small rises in the number of Norwegian marriages over recent years appear to result from increasing numbers of people of marriageable age (including immigrants), along with catching-up by people who marry later in life (often with children born out of wedlock), and increasing numbers of divorcees available for remarriage (not a rise in their frequency of marriage). People marry late and divorce frequently, and they increasingly cohabit for long periods instead of marrying. Among those in their 20s, marriage rates have not changed much—in fact, these are still falling heavily up to the mid-30s. Even after that age, recent years have seen a further tip downwards for older age groups.

³⁰¹ Quoted Glendon, M.A *The Transformation of Family Law* 1989 Chicago: Univ of Chicago Press p. 274

³⁰² Carlson, A *The Swedish Experiment in Family Politics* 1990 New Brunswick, New Jersey: Transaction & Lewis, H *Sweden’s Right to be Human* 1982 Allen and Busby, Ltd

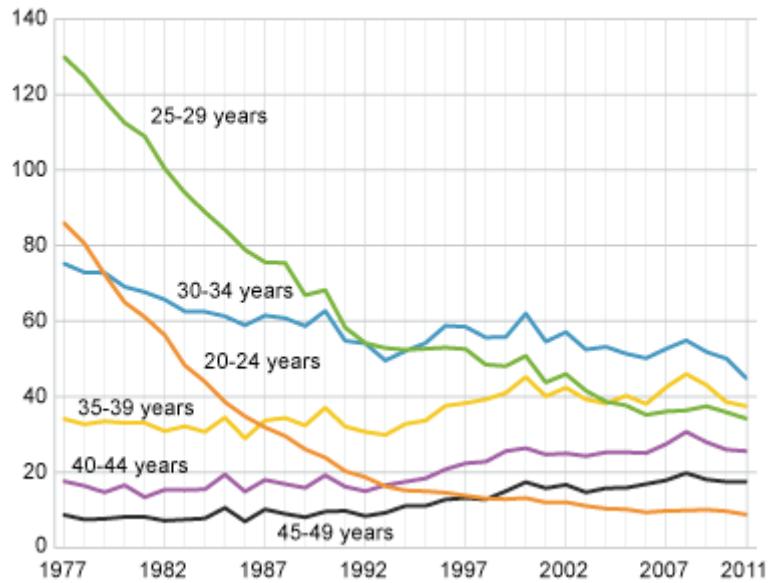
³⁰³ Lewis, H *Sweden’s Right to be Human* 1982 Allison & Busby p.70

³⁰⁴ Eskridge, W.N & Spedale, D.R *Gay Marriage: for Better or for Worse?: What We’ve Learned from the Evidence ...* 2006 Oxford Uni Press.

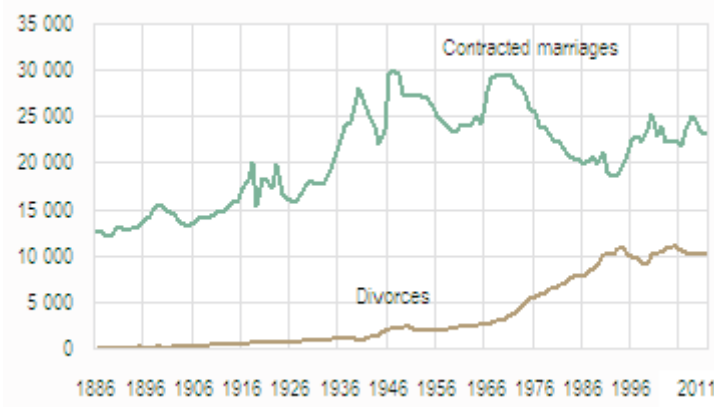
³⁰⁵ *Ibid* p.176

³⁰⁶ Christer Hyggen, C with Skevik, A *Demography of the family in Norway First report for the project “Welfare Policy and Employment in the Context of Family Change”*, drafted for the meeting 12–13 December 2002 in York, UK NOVA Norwegian Social Research Oslo NORWAY

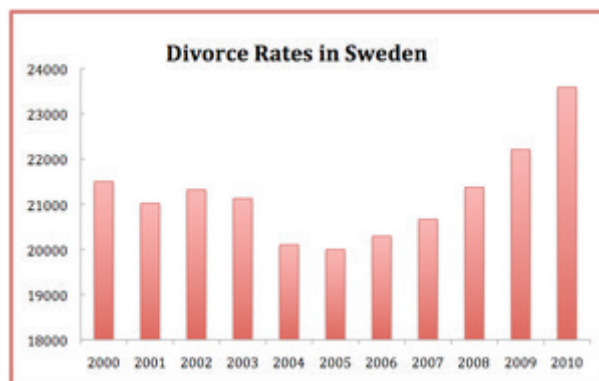
MARRIAGE RATES FOR FIRST TIME MARRIED MALES IN SELECTED AGE GROUPS, MARRIAGES BETWEEN DIFFERENT SEX, 1961–2011



At the same time, divorce has generally remained high. While the period 1995 to 1999 saw divorce rates stabilise in Norway, by 2000–2001 the projections were back at 1994-levels.



Slightly more marriages and lulls in rising divorce levels in countries with generally low marriage rates do not mean that two parent married families have undergone a revival. All has more to with the institution’s overall decline than any renaissance. Why not look at Sweden’s divorce rates? There has been no pause there—so not saved by same sex unions.



28. Between 1990 and 2000, Norway’s out-of-wedlock birthrate rose from 39% to 50% as, tail gunning Swedish rates, the tendency to marry with the second child weakened in both. **Denmark** saw a levelling off during the 1990s at around 45%—which seems to relate to a slight increase in fertility among older couples, who marry after multiple births as, at the same time, there was a 25% increase in cohabitation and unmarried parenthood among mainly younger couples. About 60% of first born children in Denmark now have unmarried parents.

29. Family dissolution rates differ from divorce rates when so many people rear children outside of marriage. We need to know the rate at which parents (married or not) split up and suggestions are that throughout Scandinavia and Europe cohabiting couples with children break up at three times the rate of married parents. Rising rates of cohabitation and out-of-wedlock births are true proxies for rising rates of family dissolution.

30. **Finally:** a case has also been made for **Belgium** having a slightly upward marriage trend. Like Scandinavian experience, this is difficult to reconcile with the marriage rate per thousand population dropping from 6.5 in 1990 to 4.4 in 2000 and 4.0 in 2009.³⁰⁷ Again, the waters are muddied somewhat by immigration, where entrants from the Muslim world will have a higher marriage rate than the resident population.

Belgium's divorce rate is amongst the highest in the European Union. The crude divorce rate per 1,000 inhabitants stood at 47.0 in 2010, the same as Denmark's. Higher levels are recorded for Sweden at 54.1 and Norway at 54.8. (Otherwise, there is Bulgaria at 54.1: Estonia at 59.1 and Slovenia at 55). Belgium's unwed birth rate rivals the UK's at 45.7% in 2009. This is a swifter rise than in the UK or from 4.1% in 1980 and 11.6% in 1990, compared with the UK's 11.5% in 1980, 27.9% in 1990 and 46.3% in 2009.³⁰⁸ Children living with two parents at 14 are 65% in Belgium compared with the UK at 68.9%—a Western world low (apart from Latvia).

31. **In Sum:** from what we know about demographic trends, it is preposterous to argue that people suddenly somehow embrace marriage and slow or reverse its decline because homosexuals can have it. Exponents cherry pick their statistics. They also fail to suggest how this could possibly be so and how it is supposed to operate. Why grasp same sex marriage as the reason for the slowing of disintegrative trends, if that is what is even going on in the first place, rather than a plethora of other explanations? As already mentioned; explanations in societies with low formal union rates are bound to be more complex than simplistic mono-causal hunches. It has also been mentioned how the third phase of marital decline tends to stall around the 50% unwed birthrate level due to residual attachment to traditional forms in sections of society more resistant to the de-institutionalisation of cohabitation and procreation.

32. **As we move to more traditionally family centred societies** the picture is bleak.

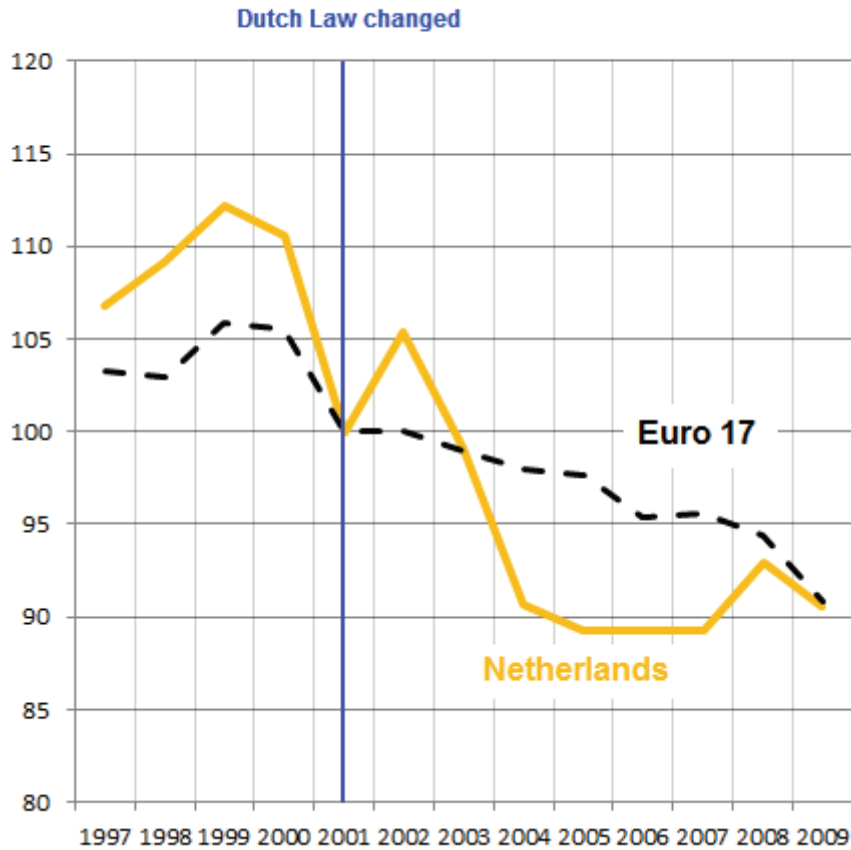
In the **Netherlands**, marriage even had a bit of a mini-renaissance in the late 80's and early 90's then, between 1993–4 and 2009, the trend is downhill. A slight upward move in 2002 may be partly accounted for by same sex unions—partnerships and marriages. Otherwise, marriage is declining among heterosexuals, with higher rates of divorce and out of wedlock childbearing. Dropping quite steeply from 88,000 plus in 2000, marriage is at its lowest since WWII (with 70,000 plus in 2010). There is an increase in registered partnerships—which offer a lighter relationship for heterosexuals. Nearly one in three women who enter into a registered partnership are over 40 years old, compared to more than one in five women who get married. If this suggests a remaining connection between marriage and family building, so might the way in which nine in ten couples plan to live together before marrying and two-thirds of cohabiting couples aspire to marry some time.³⁰⁹

³⁰⁷ O'Leary J *ibid*

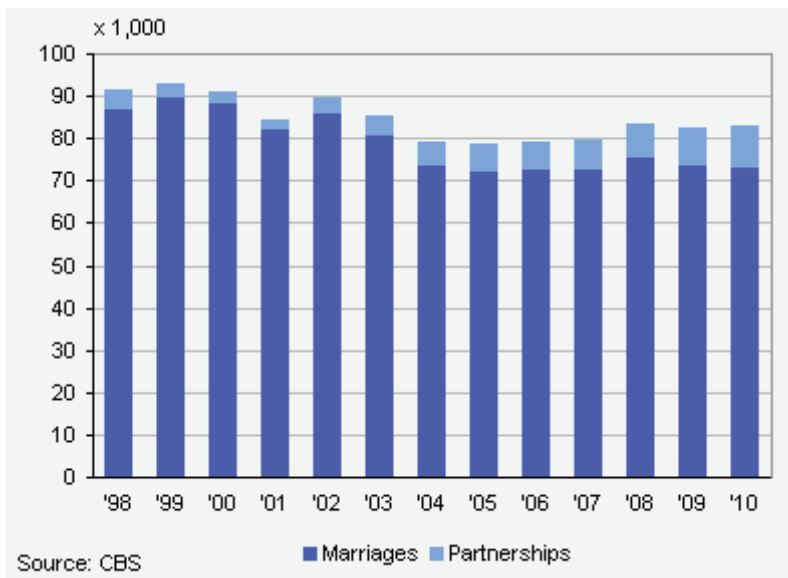
³⁰⁸ Eurostat Demography Report 2010 Commission Staff Working Document. EU 2011.

³⁰⁹ O'Leary J Will fewer straight people marry if gay people can? Fullfact.org 12.12.2012.

MARRIAGES INDEX: NETHERLANDS AND EURO AREA: 1997–2009



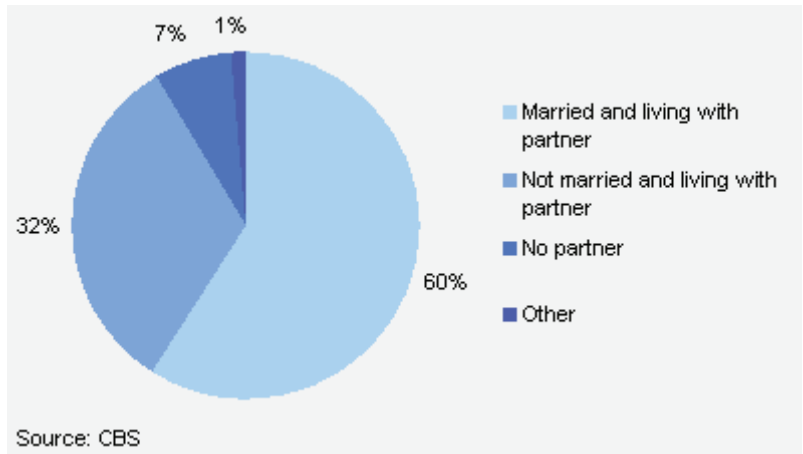
MARRIAGES AND REGISTERED PARTNERSHIPS: NETHERLANDS



33. From 2001, the formal divorce rate in the Netherlands dropped. However, from 2001—the same year as same sex marriage—couples could convert their marriages to registered partnerships, which could be annulled without a court order. Using this process of ‘flash divorce’, some 30,000 couples separated in this way up to 2009; almost completely compensating for the decrease in formal divorces. At the same time, rights of married couples and registered partners were extended to unregistered cohabiters. Four in ten babies are now born to unwed mothers—although if the mother has a subsequent child she is likely to marry. The rise has been particularly rapid, from 24.9% in 2000 to 43.3 % in 2009, compared with 11.4 in 1990 and only 4.1 in 1980. (UK comparisons: 46.3% in 2009, up from 27.9% in 1990 and 11.5% in 1980.) In the decade ending in 2009, the share of unmarried parents among people in their thirties went from eight to 28%. However, provinces (containing cities like Amsterdam and Rotterdam) with the highest proportion of babies born to single mothers

contain large immigrant groups among whom casual partnerships are more common. The level of single lone mothers seen for the UK and US is still not matched in the Netherlands.

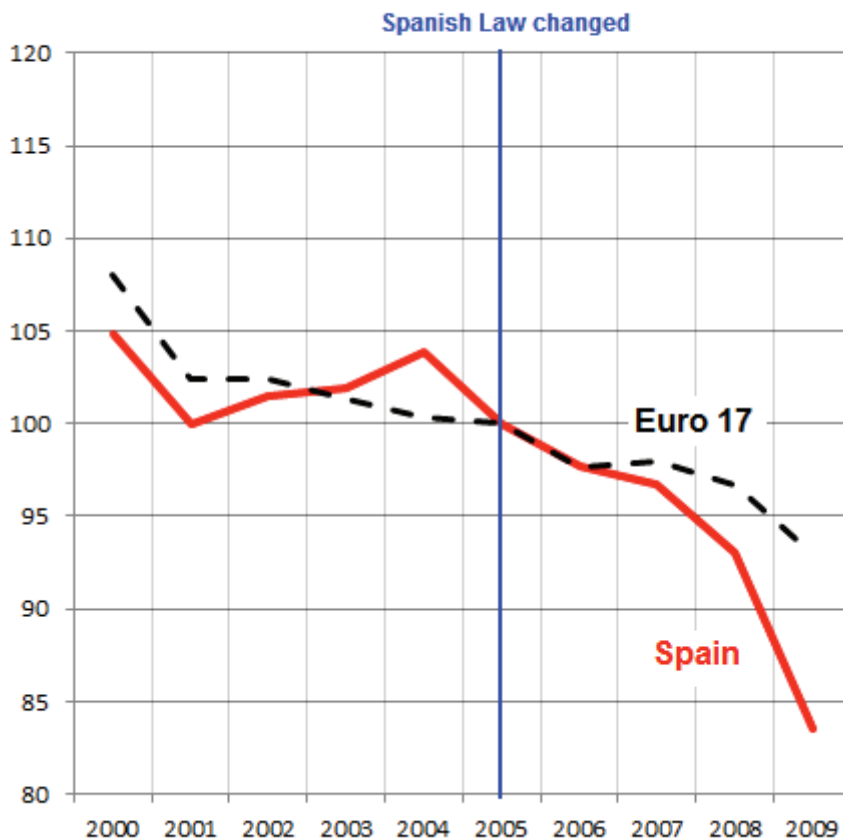
PROPORTION OF LIVE-BORN BABIES BY MARITAL STATUS OF THE MOTHER, 2009



34. This is happening in what has been a generally family centred country which otherwise more resembles Italy's than Scandinavian or Anglophone nations- and whether we look at low proportions of children aged three and under attending day care or nursery school, youngsters eating meals with their family, the influence of local citizens on education and tax relief for families. Making registered partnerships available to heterosexuals and distributing the privileges of marriage to uncommitted relationships appears to be associated with the casualization and trivialization of unions.

35. **Spain** saw a pronounced downwards acceleration in its marriage decline following the introduction of same-sex marriage. This started to abate a little by 2009—perhaps due to more same sex unions being formalized in the event of a centre right government terminating the arrangement (it has not). The annual number of marriages fell by over 14,600 over the first three years (2005–2007) in which same sex couples were able to marry. For the next three years (2008–10), the annual fall was 34,000. The descent is quite precipitous, since Spanish marriage rates (per thousand population) have been reasonably steady compared to some other countries—at 5.9 in 1980: 5.7 in 1990 and 5.4 in 2000 before the plunge to 3.8 in 2009. This includes the more than 18,000 same-sex couples who got married in Spain between 2005 and the end of 2010 (when 2.1% of marriages were between people of the same sex, with 2,216 female). The State Federation of Lesbians, Gays, Transsexuals and bisexuals (ELGBT) believes that the actual number is 23,000, since not all have been recorded.

MARRIAGES INDEX: SPAIN AND EURO AREA: 2000–2009



36. At the same time as Spain’s socialist government introduced same sex marriage it also brought in legislation known as the ‘express divorce’ bill, to make the process easier and faster.

Again, we have the association between the drive for same sex marriage in the context of a general libertarianism which trivialises and is fundamentally hostile to marriage. The legal change eliminated the need for couples to be physically separated for a period before legal proceedings could begin. In the following year (2006), 126,952 divorces were registered in 2006, a 74.3% increase on the previous year. The sharpest rise was seen in divorces between those who had been married for less than a year: up 330.6%.

37. **Verdict:** Optimistic accounts of a re-vitalisation of marriage or even ‘no damage done’ are, at very least, premature. This is not saying that same sex marriage is *the reason* for marital decline anywhere—simply how it does nothing to prevent it.

We can be certain that same sex marriage will do no such thing as encourage stable marriage whether for heterosexuals and/or homosexuals. Marriage in Scandinavia, Spain, Netherlands and elsewhere is in deep decline.

What does same sex marriage do to marriage?

38. Same sex marriage is both an effect and a cause of the evisceration of marriage—especially the separation between this and parenthood. As rising out-of-wedlock births and cohabitation rates—as well as legal changes—disassociate marriage from parenthood, same sex marriage becomes conceivable. If marriage is only about couple relationships, and is not intrinsically connected to parenthood, why not give the leavings to homosexuals? As marriage is redefined to accommodate same-sex couples, this reinforces the irrelevance of marriage to parenthood. Elsewhere, same sex marriage is an instigator for the casualisation of heterosexual unions and separation of marriage and parenthood.

39. In the feedback loop, either:

‘Gay’ marriage is the end game of long running anti-marriage and family policy—typified by Sweden. Cohabitation and out-of-wedlock birth rates were rising and marriage rates were falling in Scandinavia long before the enactment of homosexual partnership/marriage laws. These trends are explicable in terms of the removal or reduction of incentives to marry by forces hostile to traditional conjugality. Same sex partnership/marriage then locks in and reinforces existing trends toward the separation of marriage and parenthood.

Or:

Gay marriage initiates the severance and dismemberment of marriage and family in more family friendly societies, such as Spain and the Netherlands. There is free-fall towards the Scandinavian model—driving “home the message that marriage itself is outdated, and that virtually any ‘family form’, is acceptable.”³¹⁰

Either which way, same sex marriage is more a terminus for marriage or ultimate act of dissolution, rather than a force for revival.

By products

40. **Education.** Everywhere, the remaking of the sexes has been inseparable from an aggressive policy to equalize ‘sexualities’ within the context of its overriding ethos that expert elites possess a superior knowledge of how best people should live. In Sweden, the National Academy for Education conducted an extensive review of school material and schools were ordered to ‘integrate gender equality and sexual orientation issues into their operations and everyday tasks. Research is meant to focus upon how ‘norms and attitudes make homophobia possible’ even where there are ‘no statistics or consistent studies which can pinpoint discrimination due to sexual orientation’, and making what might be considered offensive statements about homosexuality merit a prison term.³¹¹

41. **Spreading the practice.** There is the suggestion of a big, recent rise in sex ever or recently with a same sex partner and LGB-identities in the Netherlands.³¹² Same for Massachusetts. This is, of course, seen elsewhere where there are homosexual endorsing and promoting curricula in schools, but it is likely to increase with same-sex marriage. This has massive health implications.

42. **Other institutions.** Churches in the UK might be better protected from hostile litigation if the established church’s legal obligation to marry any eligible persons in England and Wales was ended, or the rights of any religious bodies to conduct marriages were taken away—as in Sweden. Some clearly hope that compulsion to perform same sex weddings will sever church and state and further push Christianity out of the public arena and, therefore, consciousness.³¹³ Undermined and stigmatized for their unreasonableness and prejudice, the moral authority of religious institutions will further retreat in favour of a narrow secular ideology, particularly as sexual behaviour at odds with traditional norms is further encouraged and advanced.

43. The prospect of disciplinary procedures faces chaplains for the NHS, universities, armed forces or anywhere else, even if they were acting in their own church outside work time. Charities may be forced to close if they cannot affirm equal marriage. Bodies which pay to use premises provided by local authorities, like a school hall for a charity sale, face bans—and so the civic and social implications go on.

March 2013

Memorandum submitted by Daniel Hill (MB 95)

Author: Dr Daniel J. Hill, Secretary, Philosophy-of-Religion Study Group, Tyndale Fellowship

Summary: In the light of the leading case of *Thompson v. Dibdin*, the Bill has the consequence that a parish minister of the Church of England could not lawfully refuse a same-sex couple admission to Holy Communion. If this consequence is unintended it could easily be remedied by amendment.

SUBMISSION:

1. In the case of *Thompson v. Dibdin* [1912] A.C. 533 (H.L.) the Reverend Canon Henry Thompson, vicar of Eaton in the diocese of Norwich, refused to admit Mr Alan Banister and the woman that was his wife at law, Mrs Emily Banister, to Holy Communion. Canon Thompson’s ground for his refusal was that Mr and Mrs Banister were, in his view, not married at all, but living together out of wedlock. The reason why he did not recognize the law’s view of their marital status was that Mr Banister had previously been married to Mrs Banister’s sister, and Canon Thompson considered that a union with one’s deceased wife’s sister could not be a marriage. The law of England and Wales also held this view until 1906, when it was changed in the *Colonial Marriages (Deceased Wife’s Sister) Act*, 1906, which was followed by the *Deceased Wife’s Sister’s Marriage Act*, 1907. Canon Thompson thus considered himself to have a lawful cause to refuse admission to Holy Communion. A lawful cause was necessary for a clergyman legally to refuse admission to Holy Communion by the *Sacrament Act 1547*, s. 8 (<http://www.legislation.gov.uk/aep/Edw6/1/1/section/VIII>). The House of Lords held, against Canon Thompson, that:

³¹⁰ Kurtz, S The End of Marriage in Scandinavia *The Weekly Standard* 02.02.2004

³¹¹ Hom Ombudsmannen mot Diskriminering Pa Grund av Sexuell Lagging Rapport 2004 Stockholm see Morgan, P *Family Policy: Family Changes* 2006 Institute for the Study of Civil Society,

³¹² Kuyper Ine Vanwesenbeeck, L High Levels of Same-Sex Experiences in the Netherlands: Prevalences of Same-Sex Experiences in Historical and International Perspective *Jnl of Homosexuality* 2009 56. Issue 8 993-1010

³¹³ Murray, D Gay rites. *The Spectator* 01.10.2011

It is inconceivable that any Court of law should allow as a lawful cause the cohabitation of two persons whose union is directly sanctioned by Act of Parliament and is as valid as any other marriage within the realm (per Earl Loreburn at p. 540).

2. The *Sacrament Act 1547*, s. 8 is still in force today, so a minister in a parish of the Church of England still cannot legally refuse admission to Holy Communion to anyone without lawful cause.

3. *Thompson v. Dibdin* is still binding today, so ‘the cohabitation of two persons’ cannot be a lawful cause for the refusal of admission to Holy Communion if their ‘union is directly sanctioned by Act of Parliament and is as valid as any other marriage within the realm’.

4. Although the Marriage (Same-Sex Couples) Bill makes considerable provision for freedom of conscience for religious ministers in general, and ministers of the Church of England in particular, it makes no provision concerning the refusal of admission to Holy Communion.

5. In consequence, if the Bill is passed in its current form it seems certain that a parish minister of the Church of England could not lawfully refuse a same-sex couple admission to Holy Communion.

6. If a parish minister of the Church of England unlawfully refused a same-sex couple admission to Holy Communion that minister could be prosecuted (as was Canon Thompson) under a Clergy-Discipline Measure or Act in the Court of Arches (Province of Canterbury) or Chancery Court (Province of York).

7. Although parish ministers are to some extent under the authority of the Ordinary (Bishop) of the Diocese, the Ordinary would not be able to offer any protection at law if he supported any parish minister’s decision in refusing a same-sex couple admission to Holy Communion.

8. If Parliament wishes to protect the religious freedom of a parish minister of the Church of England lawfully to refuse a same-sex couple admission to Holy Communion then it would be easy to do so by inserting an amendment to that effect in the Bill.

March 2013

Memorandum submitted by the Gay and Lesbian Humanist Association (Galha LGBT Humanists) (MB 96)

1. ABOUT GALHA LGBT HUMANISTS

2. Founded in 1979, Galha LGBT Humanists is a democratic, membership organisation based in the UK with members worldwide, promoting Humanism and LGBT equality. Galha LGBT Humanists promotes Humanism and LGBT equality, working to combat prejudice and discrimination against humanists and lesbians, gay men, bisexuals and trans people. Since 2012 Galha LGBT Humanists has formed the LGBT Humanist division of the British Humanist Association.

3. The GALHA website is at www.galha.org

4. THE HUMANIST PHILOSOPHY AND MARRIAGE

5. Humanism is a broadly based belief system grounded in the notion that our values and our actions should be guided by human experience, human empathy and human reason. It attaches particular value to promoting human happiness and human freedom. Equality is also a key underlying humanist principle, in that by default all humans should enjoy equal rights and responsibilities except where there is some very strong clear and justifiable reason to treat them differently.

6. Humanists consider institutions like marriage primarily in terms of how far they contribute to the welfare of the couple marrying, to their family and to wider society. Given the central position of marriage as a social institution, and its influence on our lives, it is not surprising that different humanists have taken different views as to its significance and merits.

7. Many humanists value marriage for the love it can foster and the happiness and stability that it can bring, especially but not only where a married couple are raising children. Others see marriage as carrying a cultural and historical legacy, including pronounced religious overtones, and a tradition where wives were long considered subordinate to their husbands, making it less attractive in an increasingly secular and egalitarian society. Other humanists are more sceptical about how far the state ought to get actively involved in promoting particular types of relationships in preference to others, and place particular value on adults’ freedom to decide the shape and terms of our own relationships.

8. THE CENTRAL ROLE OF EQUALITY

9. All of the above strands of humanism are united in believing that, given that marriage does carry particular status and legal rights and responsibilities, then all sections of society should have access to marriage on equal terms, unless there is some clear and overriding reason for excluding them. For gay, lesbian, bisexual and transgender people to enjoy the full protection and benefits of marriage, and to be able to take on its responsibilities, this entails making marriage available to same sex couples, as far as possible on the same terms as for opposite sex couples.

10. Galha LGBT Humanists therefore greatly welcomes the introduction of the Marriage (Same Sex Couples Bill) and the overwhelming vote in favour of a Second Reading by the House of Commons. We strongly support the main principles of the bill, but believe that there are a number of areas where it needs to be improved. We recognise that there is a general desire from those promoting the bill not to alter the status or rights of opposite sex married couples, and our comments reflect this, and therefore do not address any areas in which opposite sex marriage might be improved or altered.

11. THE STATUS OF CIVIL PARTNERSHIPS

12. Galha LGBT Humanists welcomed the advent of Civil Partnerships as a huge step forward in securing more equal rights and more equal recognition for same sex couples. It was also welcomed specifically by those people, both humanist and non-humanists, who wanted protection under the law but who did not identify with marriage and its cultural legacy. Given that many people, both gay and straight, came to see Civil Partnerships as “not quite equal” to marriage, the introduction of marriage for same sex couples is a further important step forward, but raises the question as to what if any should be the role of Civil Partnerships in future.

13. The proposal to retain civil partnerships for same sex couples only, while continuing to deny them to straight couples will perversely replace a situation where gay people suffer discrimination with one which arguably discriminates unfairly against straight couples.

14. There is a case for making both marriage and civil partnerships available to both gay and straight couples alike, as has been done in, for example, The Netherlands. This provides full equality of choices, and also means that straight couples who do not identify with marriage could still gain the legal protections of a civil partnership. It would also enable an opposite sex couple to be protected in a non-sexual relationship. There might be fewer marriages in future, and yet more couples overall in legally committed relationships.

15. The other option would be to replace same sex civil partnerships with marriage, while allowing existing civil partnerships to remain in place if the couple so chose, as has been done in, for example Sweden and Denmark. That would ensure full equality, and would probably be the most attractive option for those who believe that the state should be proactively promoting marriage, but would mean that neither gay or straight couples who did not wish to marry could gain legal protection for their relationships.

16. We believe that the government’s proposed option is intellectually and morally indefensible and likely ironically to lead to resentment from some straight couples, and potential legal challenges on the basis of discrimination which would be hard to refute.

17. RELIGIOUS AND HUMANIST CEREMONIES

18. Galha LGBT Humanists welcomes the Bill’s broad provision that religious bodies will be entitled, but not compelled to carry out same sex weddings as being the best way to balance equality for LGBT people with religious freedom. We believe that the provisions making it illegal for the Church of England or the Church of Wales to carry out such weddings is clumsy and raises further questions about the Church of England’s status as the established church in England. One option would be to have a provision in the law which would automatically lift the ban as and when the Church of England or the Church of Wales voted in favour of performing weddings for same sex couples.

19. We also believe that the law in England should enable Humanist marriage ceremonies to be legally recognised, both for same sex and opposite sex couples, as already happens in Scotland.

20. OTHER AREAS OF EQUALITY

21. Given the central importance of the principle of equality in making marriage available to same sex couples, we believe that every effort should be made to iron out inequalities where practically possible.

22. The principle of consummation, while hardly ever referenced in modern society—except oddly enough when talking about same sex marriage—does reflect the principle that a marriage has been presumed to be centred on a sexual relationship. One by-product of civil partnerships is that while two people of the same sex can enjoy legal protection in a purely platonic relationship, an opposite sex couple, at least in theory, cannot.

23. However given that there is no single act, or even range of acts that could count as necessary and sufficient to “consummate” a sexual relationship between two men or two women, and given the impossibility of verifying this—and indeed given the fact that it is not actually verified in practice in many opposite sex marriages, we believe that it makes pragmatic sense to omit this for same sex marriages.

24. The principle of adultery is more problematic in that as currently defined it is limited to a form of intercourse that is physically impossible for a same sex couple. Nonetheless it does seem somewhat perverse that the only situation in which a same-sex husband or wife could sue on grounds of adultery would be where their husband or wife had intercourse with someone of the opposite sex. The absence of a provision for adultery does create a lingering impression that a same sex marriage is in some sense less ‘serious’ and committed than an opposite sex one and this goes against one of the key aspirations of the bill.

25. A more egalitarian approach would be for a husband or wife to be able to sue for adultery where any act of a sexual nature was committed by someone other than the spouse. While there are of course, and always have

been “open” marriages, in a situation where both spouses accepted this then the principle of adultery would never be invoked. (Indeed even in Victorian times a husband who knowingly went along with his wife’s adultery could not then use it as grounds for divorce).

26. CONVERTING A CIVIL PARTNERSHIP TO A MARRIAGE

27. Galha LGBT Humanists sees it as entirely logical and reasonable that civil partners should be able to convert their civil partnership to a marriage, either with or without a marriage ceremony. However, given that many of the existing 100,000 or so people in civil partnerships would presumably have chosen marriage in preference to a civil partnership had the option been available, we believe that the conversion should either be free of charge or for a purely nominal fee, rather than the sum proposed. Again this is natural justice.

28. SUMMARY

29. In sum Galha LGBT Humanists sees the bill as a further extremely important step forward towards creating a fairer and happier society. We believe that the changes suggested will make the bill even better: to allow Humanist celebrants to carry out legally-valid marriage ceremonies; to eliminate the unequal availability of civil partnership by opening it up to heterosexuals; and to leave the decision on conducting same-sex marriages directly up to the Church of England rather than legislating on their behalf. We are also very keen that there is no exception available to those employed by the state to conduct marriage ceremonies that might allow them to refuse that service to same-sex couples.

March 2013

Memorandum submitted by Samuel Webster (MB 97)

1. I am a solicitor of the Senior Courts of England and Wales and in-house solicitor at The Christian Institute, a charity committed to advancing the Christian faith in the UK and elsewhere.
2. My job includes giving advice and assistance to Christians who have suffered discrimination or harassment because of their faith.
3. I wish the Committee to know about the cases of two teachers who I have assisted. Both faced disciplinary situations at work because of the conflict between their orthodox Christian view of marriage and professional obligations placed on them to teach about same sex relationships.
4. Both teachers whose cases I refer to in this statement have consented to my mentioning their cases. As both are still teaching, they have asked me not to disclose any details which could identify them.

THE PRIMARY SCHOOL TEACHER

5. In 2009 I advised a primary school teacher who teaches at a school in a London borough. She is a committed Christian. I shall refer to her as “Mrs A”.
6. During an afternoon in January 2009, Mrs A was covering a year 5/6 class. At the end of the day, she picked out a book called “Tango Makes Three” from the book collection in the classroom. On the cover, it had a picture of penguins at the zoo. Mrs A thought it was a book about the zoo and decided to read it to the children. However, after reading the first couple of pages, she realised that it was a story book depicting a same sex relationship between two penguins. She was shocked because the book was clearly written to promote to children the idea that homosexual relationships are equivalent to traditional marriage.
7. Some of the children immediately realised what the book was about due to the part that their teacher had innocently read to them, although none of them seemed to mind her not finishing the book. Mrs A asked the children if they wanted her to explain why and they said they would. She replied that some people think that such relationships are okay. That’s their decision. However, others do not. The children appeared to have no problem with this. She then picked up another book, first scanning through it carefully, and the children didn’t mention anything else after that.
8. Mrs A had felt that she had dealt with the incident in class in a measured and responsible manner while maintaining the integrity of her faith. She also believed that her response was consistent with the teachers’ code of conduct.
9. Mrs A felt particularly aggrieved because she did not believe that she should have been put in a position of reading such a book in the first place—a situation which would not have arisen had she been made aware that the school had acquired such books. Had it not been for this incident, the children would never have had any inkling of her views on the subject of same sex relationships. She would not have looked for an occasion to express them.
10. A few days after the incident, Mrs A was spoken to by her head teacher. The head said that the children in the class had asked why their teacher had not read the book. Mrs A explained what had happened, but the head told her that this was against the law, a very serious situation, and that the management would meet to discuss the

matter. They would then meet with Mrs A. Mrs A said that as a Christian she could not read such books because she would then be promoting homosexual relationships as morally acceptable.

11. Soon after this incident, Mrs A was restricted from having her own class in the new school year. In the meeting when this was explained to Mrs A, her head told her: "The school policy will soon be to promote homosexuality which will include the reading of books in class".

12. Mrs A became a support teacher in the new school year.

13. I assisted Mrs A in raising a grievance, but she did not have the appetite to pursue a claim against the school, with the publicity that might attract.

THE SECONDARY SCHOOL TEACHER

14. In autumn 2012 I advised a teacher who teaches philosophy in a state secondary school in Scotland. He is a committed Christian and was required by his school to teach about same sex marriage in a way which he could not in good conscience do. I shall refer to this teacher as "Mr X".

15. The background to this matter is that the Scottish Government had introduced its Curriculum for Excellence, a programme for building a more flexible curriculum in Scottish schools. I understand that up until that point, Religious and Moral Education (RME) had been taught to years 1—4 in the school where Mr X works. However, the school inspectors said that they thought the school ought to teach it in year 5 as well. Mr X's school chose to teach RME within philosophy, which Mr X teaches to year 5 students.

16. Mr X's school proceeded to write its own course materials covering the new topics to be included in the philosophy section of the curriculum. The materials included the topics of marriage, relationships, sexuality, and homosexuality, amongst other matters. Mr X had no problem teaching about these topics in a balanced and objective way but he couldn't in good conscience state that opposite and same sex relationships are the same.

17. However, the head of department told Mr X that "all need to be singing from the same hymn sheet". He said that male/female marriage is just an Old Testament concept. Mr X replied that this was not correct but the head of department got angry when Mr X said that he had a problem with saying same sex marriage is the same as heterosexual marriage. During a departmental meeting, the head of department produced an article from the Times Education Supplement about same sex marriage and said "if you have a problem go and see the boss". When Mr X spoke to the head teacher, he said that he had a problem because as a Christian he goes by what the Bible says and teaching about same sex marriage would mean having to say something which goes against his beliefs. The head teacher said he would get back to Mr X.

18. The head teacher subsequently asked Mr X to come to a meeting, where the head teacher told Mr X that he would have to teach the relationships course "without exemptions or safeguards" and not state his own views.

19. This incident contributed to Mr X having a breakdown and being signed off work for several months with stress. Happily, he is shortly returning to school where matters now appear to be resolved, although not without personal cost to Mr X. I understand that his union has been supportive.

March 2013

Memorandum submitted by Rev John Hibberd (MB 98)

CREDENTIALS FOR SUBMITTING COMMENTS

I write as a minister in the Church of England, engaged therefore in marriages and weddings. I also speak and write on moral issues and on the relationship between science and faith

SUMMARY

My main arguments against this legislation are as follows:

1. It seeks to redefine marriage in a way that is contrary to the understanding of all cultures across all time; thus it tries to make 'marriage' mean something that it simply does not mean.

2. It has been introduced undemocratically, not announced in any party manifesto or the Queen's Speech and is therefore being foisted on the nation.

3. It is claimed that it is being done to 'give equality'. This is based on an erroneous redefinition of marriage and is also unnecessary, given the civil partnership legislation.

4. It is claimed that it will 'strengthen marriage' when in fact statistics from countries with similar legislation flatly contradict this claim.

5. Redefining marriage will open a Pandora's Box of legislative issues.

MY ARGUMENTS

1. The redefinition of marriage

Marriage simply means the union of a man and a woman. This is a universal understanding, not unique to Christianity or even to religious groups. It is a given that men and women marry and that this is integral to the

furtherance of our species. In other words, there is an argument from Darwinian evolution here. Homosexual union cannot be given the same status for, if nothing else, it is an evolutionary dead-end. Whatever may be claimed about its origins, same-sex attraction must be viewed as a lifestyle choice. It is true that heterosexual people are free to choose to marry or not to marry but if they marry, then this can be rightly said (from a biological perspective) to be called ‘the norm’ in a way that same-sex union cannot.

This understanding of heterosexual union as the norm and as the meaning of marriage is not lightly to be ignored. I do not believe that any single government has the right to re-define it, as this current legislation proposed to do. This is nothing short of Orwellian Newspeak and it cuts across the rights of the majority of people in this country who believe that marriage should continue to be defined by its commonly held cultural values.

There is another factor to be borne in mind. If you allow homosexual relationships to be defined as marriage, then what is to stop people lobbying for other combinations? For example, Muslims are free to marry up to four wives elsewhere in the world. Will they not lobby for that here, especially given their abhorrence for the proposed legislation? And what about two men with one woman, or vice versa? How could this be defined as any more ‘unnatural’ than what is being proposed? You will leave yourselves at the mercy of very arbitrary moral reasoning.

2. AN UNDEMOCRATIC INNOVATION

I am not sure that I need to make much more of an argument here than I have given in my extract. The main thing to stress is that this has been sprung on us without warning and it is not a small thing. People feel deeply about this issue. It attacks a core unit/institution of our society which we believe will be a desperately sad loss.

3. THE EQUALITY ARGUMENT

I simply do not believe that same-sex relationships need the title ‘marriage’ to make them equal to other relationships. The legislation on civil unions extended a number of key protections to same-sex couples, analogous to the laws that protect parties in heterosexual marriages. To call same-sex relationships ‘marriages’—which they are not (see above)—is unnecessary; it simply causes offence to those who do have a high regard for marriage.

4. STRENGTHENING MARRIAGE

This claim, bandied about by David Cameron and also alluded to in a letter to me by my MP, Andrew Lansley, is shown to be false by statistics from countries that have introduced similar legislation. I will not repeat the statistics here, as they are readily available.

5. THE EFFECT ON UK LEGISLATION

It is widely recognised that redefining marriage to include same-sex relationships will require the overhaul of something like 2000–3000 laws on our statute books. For example, there is the problem of defining adultery or consummation, due to the difficulty of saying exactly what these mean in same-sex relationships. Due to equality legislation, this will mean rethinking how to apply these things to heterosexual relationships so as not to be discriminatory against them. In schools, sex education will have to be amended if marriage is redefined and this will have knock-on effects for teachers who do not agree with teaching this. The government has been keen to talk about protecting the conscience of Church of England ministers by agreeing that same-sex marriages will not be able to be performed in Anglican churches but this leaves out a lot of other people who will be affected, such as the afore-mentioned teachers. I have a friend who leads a Baptist church that is independent, not part of the Baptist Union. His comment is that they may have to stop performing weddings altogether because they could be in breach of discrimination laws if they refused a same-sex wedding since they do not fall under the umbrella of a denomination that is protected from this. Thus the change of one law will generate a legal minefield as well as massive costs and bureaucracy in changing hundreds, if not thousands, of others. It will also represent yet another movement away from a moral framework that has stood us well towards a society full of relativized values.

This legislation is folly. It is unnecessary, unwelcome and undemocratic; above all it seeks to extend the term ‘marriage’ to something that plainly is not a marriage. I urge this Parliamentary Committee to advise Her Majesty’s Government that it is unworkable and wrong.

March 2013

Supplementary evidence submitted by the Equality and Human Rights Commission (MB 99)

EVIDENCE SESSION ON THE MARRIAGE (SAME SEX COUPLES) BILL

Dear Jim Shannon MP

I am writing following the oral evidence session on the Marriage (Same Sex Couples) Bill on 14 February 2013. In this session, you asked some specific questions about the Equality and Human Rights Commission of our General Counsel, John Wadham. I am writing now as requested to respond to these questions.

First, you asked how many times the Commission has supported a claim brought by a traditional Christian, and how many cases the Commission has pursued against traditional Christians.

We are not clear how we would define ‘traditional Christians’ to respond fully to your question. Such distinctions are quite difficult to draw, and we do not classify our legal work on this basis. Hence it is not possible to give you a precise answer.

However, since 2007, using our powers under section 28 of the Equality Act 2006, the Commission has supported eleven cases that involve religion or belief as a protected characteristic.

These cases are:

- Farooq v Commissioner of Police for the Metropolis
- Jimale and others v Royal Mail
- Vanttinen-Newton v DEO Group Ltd
- Guled and Omar v Royal Mail
- Iqbal v The Ministry of Justice
- Moncada v Stansted Airport
- Coleman v Embassy Court Residential Management Company Ltd
- Panesar v Kohli Properties
- Kiani v The Home Office
- Chatwal v Wandsworth Borough Council
- Cherfi v G4S

In addition, the Commission may apply to become a party to legal proceedings involving equality or human rights issues, typically to advise the court on matters within its expertise. To date, the Commission has intervened in 119 legal proceedings. Some of these have involved more than one equality strand, including religion or belief, and human rights.

Cases specifically on the grounds of religion or belief have included:

- In 2011, the Commission submitted an intervention to the European Court of Human Rights (ECtHR) on four cases relating to alleged religious discrimination in the workplace. In two cases—Eweida and Chaplin—the Commission submitted that the Courts may not have given sufficient weight to Article 9(2) (freedom of religion). In two other cases—Ladele and Mcfarlane—we submitted that the domestic courts came to the correct conclusions. In January 2013 the ECtHR ruling agreed with our conclusions.
- In 2010, the Commission intervened in the case of a couple being charged an additional fee for marrying in a Roman Catholic church, due to their immigration status. The Commission submitted to the ECtHR that the scheme, as a blanket ban on marrying anywhere other than a Church of England, unfairly discriminated on the grounds of religion. The ECtHR agreed the scheme was discriminatory.
- The case of Christian minister who had his voluntary position as a radio presenter on Asian station taken away. We argued that volunteers should be protected from discrimination, including discrimination on grounds of religion and belief.

Second, you asked for details of organisations the Commission has funded through its grants programme. Following a government decision, the Commission no longer operates a grants programme. Details of grant recipients and amounts from 2007 to 2013 are set out on the attached documentation. In summary:

- In 2007 to 2008 we funded 118 organisations;
- In 2008 to 2009 we funded 308 organisations;
- In 2010 to 2013 we funded 61 organisations.

I hope this is helpful. If it would be useful to you I would of course be glad to meet up at any stage to talk further about the Commission’s work.

FUNDED ORGANISATIONS 2007-08

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Aik Saath	£33,500	To give young people across the county of Berkshire anti-racism skills, and the ability to recognise and deal with conflict effectively (in their homes, social circles and communities) through a scheme of peer education. (In the longer-term it is hoped this will reduce young people’s involvement in racially motivated crime.)	South East
Avon and Bristol Law Centre	£36,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting the the South West of England, ie. Bristol, BANES, South Gloucestershire, North Somerset, Somerset, Wiltshire, Cornwall, Devon and Dorset.	South West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
b:RAP	£28,500	Dissemination of conflict resolution model developed using 06/07 Getting Results funding. Model will be rolled out to develop the skills of BME Vol Org's including RCOs. This will increase the capacity of voluntary organisations to understand how to respond to/diffuse potential inter-ethnic tensions and promote better relationships between communities.	East Midlands
Bath&NES REC	£17,000	To maintain, upgrade and commence elaborating delivery of non-litigious race specific support for victims in B&NES, and promote: participation in local democratic processes, rural equality of access to services and interaction among ethnic/religious groups.	South West
BECON	£35,000	To work in 3 local authority regions with organisations that work with/for young people (i.e. statutory youth services, Connexions, schools and youth clubs) in order that they can engage more effectively with and meet the needs of BME young people.	North East
Bedford Race Equality Council	£33,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting the County of Bedfordshire	East of England
Bexley REC	£25,000	To provide an effective support service for victims of racial discrimination under the Race Relations Act or harassment, and reduce the potential for racial harassment by encouraging the Bexley Police and the Bexley Community Safety Partnership to expend resources in Belvedere, Erith, Thamesmead and Sidcup where there is an increase of racially motivated crime.	London
Black Community Development Project	£25,000	Develop a special 'You and Me' project which brings together people from different cultural background and helps participants to develop better understanding and encourage community harmonisation.	Scotland
Black Development Agency	£30,000	Bristol and South Gloucestershire lay down the foundations for racism being unacceptable. Social capital is built to enable people from every race, ethnicity, culture, nationality and faith—across communities—embracing each others difference and humanity to achieve good race relations and community cohesion.	South West
BMEYPP	£29,000	To develop the confidence and self esteem of Black and Minority Young People through accredited learning programmes and work with local schools and colleges.	London
Bolton REC	£45,000	To bring communities together in Moses Gate area of Bolton and to celebrate the contribution that individuals from a range of different backgrounds make to the life of their area and resolve and prevent community tension in the Haulgh area of Bolton.	North West
Bradford Law Centre	£34,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in or working in Bradford Metropolitan District area.	Yorkshire & Humber
Bromley REC	£38,500	1. To support and advise ethnically diverse small and medium businesses (smb's) in Bromley to develop their awareness and understanding of equal opportunities and racial equality in employment. 2. Remove barriers and raise levels of participation of ethnic minority young people (aged 13-19 years) in civic and public life of London Borough of Bromley through an action plan as a result of organizing a conference with representatives from private, statutory and voluntary sector.	London
Bury Metro REC	£20,000	To create and develop relationships between different ethnic groups within the borough, creating a forum for cross-community work which will involve dialogue, interaction, involvement and participation of all ethnic groups in the community.	North West
Caia Park Partnership Ltd	£22,500	Create an environment where people living in and around Caia Park have a greater understanding and knowledge about migrant workers and less fear and resentment of them by: i) Raising awareness and tackling negative stereotypes ii) Creating natural opportunities for local residents and migrant workers to meet, socialise and share views ii) Increasing the number of migrant workers that are volunteering with local organisations	Wales
Carmarthenshire AVS	£29,000	Establish a Multi-Ethnic Network in the Llanelli area to provide pathways for black and minority ethnic people out of discrimination, isolation and disadvantage.	Wales
CEMVO (Scotland)	£30,000	To increase community cohesion through the development of an Ethnic Minority Civic Congress (EMCC) that engages in civic, democratic and decision making processes, and develops dialogue and understanding between communities.	Scotland

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Central London Law Centre	£28,500	To provide an effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in or visiting our central London catchment area, or other parts of inner/outer London where there is no alternative source of suitable advice and assistance, and (except in exceptional circumstances) served by the London tribunals of Watford, Stratford, London Central or London South.	London
Central Scotland REC	£73,500	1. Reduction of racial discrimination and support of victims of racial harassment through multi-agency partnership and cross regional work with public bodies and advice centres. 2. Promotion of understanding between people of different ethnic backgrounds including settled and new migrant people to prevent conflict arising from current climate of fear and controversy about multi culturalism and migration. 3. Specialist advice and support will continue to be available across Central Scotland free of charge at the point of delivery for all victims of discrimination and harassment. Our practice in this area will be systematically enhanced, enabling individuals to be more confident in asserting their rights and in resolving problems themselves. Further develop the specialized support and advice service in Perthshire and Kinross(P & K) with an active base and up-skilling of local CAB staff to recognize and support people facing discrimination.	Scotland
Centre for Equality & Diversity	£30,000	Increased understanding between young people living in divided communities and local partnerships sustained to tackle community tensions created by far right groups and local media bias.	West Midlands
Charnwood REC	£33,000	Continue support for victims of racial discrimination and harassment, with non-legal casework and referrals to agencies for support. Reduce potential for racial discrimination by encouraging multi agency work.	East Midlands
Cheshire, Halton & Warrington REC	£51,500	1. Effective participation of BME communities in civic life. 2. To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting Cheshire, Halton, Warrington, Wirral (and, where there is no other suitable RRA advice available, the immediate neighbouring areas of North Wales.)	North West
Citizens Advice & Rights Fife	£16,000	An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Fife.	Scotland
Citizens Advice Scotland	£33,000	Build capacity at a local level and with local partners (in first instance CAB's and Unions) throughout Highland to feed into a specialist advice and support which will continue to be available across Highland free of charge at the point of delivery for all victims of discrimination and harassment. Our practice in this area will be systematically enhanced, enabling individuals to be more confident in asserting their rights and in resolving problems themselves.	Scotland
Communities Empowerment Network	£33,500	An effective legal advice and representation service for young people (children, young people and their parents/carers) that seeks to sharply reduce (and sustain the reduction of) the number of students excluded from school in the Greater London region where there are discernible patterns of racial discrimination*. Specifically, the project will secure their educational entitlements through the provision of advice in relation to school admissions, school exclusions and special educational needs.	London
Conflict and Change	£33,500	Conflict and Change will develop a team of community mediators, capable in the long-term of reducing the incidence/impact of community conflict.	London
Coventry Law Centre	£33,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Coventry.	West Midlands
Croydon BME Forum	£30,000	Croydon BME Forum members can engage positively, effectively and independently within the decision making forums of Croydon Local Strategic Partnership and be in a position to achieve positive policy outcomes on behalf of the local BME population.	London
Cultural Media Enterprises	£18,000	To raise awareness of racial issues, overcome myths and get young people from various secondary schools within Southampton, from different BME, faith and refugee communities through training in broadcasting, hosting and promoting of programmes, and discussions around youth integration.	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Derby REC	£20,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting Derby & Derbyshire.	East Midlands
Derbyshire Gypsy Liaison Group	£23,000	1. To develop community integration and to promote cooperation between agencies and committees that may have preconceived ideas about a group. 2. To build an environment of tolerance and equality across the East Midlands that will assist and develop the community to insist that they have an equal right and access to homes, regardless of their cultural heritage.	East Midlands
Dorset Community Action	£22,000	To establish a platform to challenge the negative perceptions in Dorset about Roma and Irish Travellers by increasing knowledge and understanding of their traditional travel and work patterns.	South West
Dundee CAB	£20,500	Reduce the potential for racial discrimination or harassment, by providing training and talks to community and voluntary groups in Dundee and Angus.	Scotland
Ealing REC	£33,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the Borough of Ealing.	London
East Midlands Economic Network	£30,000	Community groups and statutory partners have an improved practical understanding of community bridge building and put this knowledge into practise so that different ethnic communities have a better understanding of each other.	East Midlands
East Midlands Equality Consortium	£43,500	A reduction in the influence and impact of the Far Right on communities* in the East Midlands (inc.Peterborough & Cambridge.)	East Midlands
East Staffordshire REC	£66,000	1. To provide effective and efficient response to incidents of race, religious and hate related harassment and discrimination through co-ordination of multi-agency forum by easily accessible reporting and 100% follow up of all reported cases and sharing best practice for continuous improvement. 2. To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in ,or visiting South East Staffordshire in particular and the County of Staffordshire in general.	West Midlands
Edinburgh & Lothians REC	£11,000	An effective advice and assistance service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Edinburgh and Lothians.	Scotland
Enfield Racial Equality Council	£57,000	1. To establish and implement a mechanism for the Strategic Race Forum to feed in the views of Enfield's BME communities to local and regional decision-makers and monitor outcomes. 2. Supporting victims of racial harassment and discrimination through provision of advice, information and outreach services.	London
Essex REC	£15,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting Essex County.	East of England
Ethnic Minorities Law Centre	£90,000	Increase the number of practitioners with the requisite skills and expertise providing legal advice and representation at Employment Tribunals and Sheriff Courts to clients in respect of race discrimination matters. This will widen access to racial equality services that are needed, focused and tested for quality and through the litigation process will encourage mainstream organisations to develop their race equality objectives and implementation of them into their local activities.	Scotland
Friends, Families & Travellers	£33,500	To build awareness and understanding among professionals working within mainstream educational systems to enable them to provide appropriate and culturally sensitive services for the education of Gypsy and Traveller children and young people.	London
Furness Multi-Cultural Agency	£19,500	To develop a rigorous, consistent system across Criminal Justice and other agencies for recording, monitoring and reviewing practices and policies in respect of Racially Motivated Offending, and racial incidents more broadly, in Cumbria. The work will also increase routes by which victims of RMO, and BME population more widely, can become aware of and access relevant support and services.	North West

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Gateshead Interfaith Forum	£37,000	Young people in Gateshead from both the BMER and white/host community (& the wider adult community generally) will benefit as racism and racial intolerance/misconceptions are challenged & reduced through the delivery of an anti-racist education strategy which will promote mutual understanding & tolerance between different ethnic/racial groups so that tensions can be defused and conflicts resolved.	North East
Gloucestershire REC	£33,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the County of Gloucestershire.	South West
Grampian REC	£33,500	To enhance support to victims of racial discrimination/harassment, increase monitoring of racist incidents and a greater level of partnership working in responding to such incidents.	Scotland
Greenwich CRE	£32,500	To enable people of different ethnic groups to come together to influence the planning design and delivery of local services through a multi-ethnic forum in Plumstead, whilst providing a mechanism for consultation by different statutory and voluntary service providers, and ensure that BME communities are integrated into mainstream society.	London
H&F BME	£23,000	To ensure BME communities gain access to services and facilities provided by local council, police, statutory bodies and other agencies, and the BME wider community participate in themed social-cultural discussion sessions designed to promote interaction and understanding.	London
Hammersmith and Fulham Refugee Forum	£32,000	To combat negative stereotypes and promote positive and accurate reporting and thus achieve greater integration by reducing community tensions through a better understanding of refugees and asylum seekers, and by preventing isolation and segregation of communities that feel harassed by media images as RCOs and young refugees are empowered to engage with the mainstream media and develop confidence and skills to participate more fully in public life in London.	London
Haringey Racial Equality Council	£57,000	1. Development of a multi-agency Haringey Strategic Integration Forum (HSIF), which facilitates interaction and participation of new communities and brings their needs to the attention of local stakeholders and tackles prejudices about these communities. 2. To further develop Haringey Muslim Network & Safety Forum and its Youth Sub-Committee through which young Muslims have a route in engaging and influencing local policies and partnerships. 3. To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Haringey Borough.	London
Harrow REC	£25,000	To bring together different groups of people (including young people) to identify and diffuse emerging tensions through role models, breakdown stereotypes within Harrow in view of the recent terrorist activities.	London
Hillingdon REC	£30,000	To facilitate a common platform for the segregated communities in London Borough of Hillingdon the opportunity to interact and breakdown the barriers to integration and community cohesion caused by the fear of unknown.	London
Hope	£15,000	To increase representation from new BME community groups on existing and developing community bodies, forums and groups.	West Midlands
Hounslow REC	£65,500	1. Provide support to victims of racial harassment and reduce the potential for racial harassment by encouraging the local multi agency partnership to initiate joint initiatives in Hounslow. 2. An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Hounslow.	London
Hoxton Bibliotech trading as The Innovatory	£20,000	To promote compliance of start-up businesses led by people from the Turkish-Kurdish and African/Caribbean ethnic groups with the Olympic objectives of quality, diversity and sustainability.	London
InfoBuzz	£15,000	Groups of young people in Gloucestershire schools will question their own pre-conceived myths and misconceptions around race and culture, with particular emphasis on asylum seekers, gain an understanding of cultural and religious beliefs and life styles and gain an understanding of racial and ethnic origins.	London
Ipswich and Suffolk REC	£53,000	To develop practical support and advice for employers across Suffolk to implement effective employment policies and practices to prevent racial harassment and discrimination at work.	East of England

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Kajans Women's Enterprise Ltd	£34,500	Aston is culturally diverse and has recently experienced inter-ethnic conflict. Therefore the outcome that this project will produce will be to prevent inter-community conflict amongst young people in the Aston area by: a) Bringing young people together from various cultural groups so that some of the barriers that may exist can be addressed. b) Providing an opportunity for them to work together on a high profile project where the theme is 'Freedom of Expression'.	West Midlands
Kingston REC	£36,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the Royal Borough of Kingston upon Thames.	London
Kirklees REC	£34,000	To provide anti-racist work with young people in Kirklees, with the aim of challenging and changing behaviours amongst young people that arise out of racially motivated tensions.	Yorkshire & Humber
Leeds Gypsy and Traveller Exchange	£43,500	We will enable much increased civic participation by Gypsy and Traveller people in Leeds and a greater understanding by settled communities of the issues affecting Gypsy and Traveller people	North
Lincolnshire REC	£22,250	1. Develop a set of clear guiding community principles for the LREC to undertake community support and development work that will promote positive community relations and tackle intercommunity conflict between people from different race and faith backgrounds. 2. Promote positive identities which will aid a sense of togetherness and belonging amongst people from all social, cultural, faith and community backgrounds.	East Midlands
Liverpool Network For Change	£20,000	The establishment of a Forum of Support for those communities experiencing racial harassment, particularly migrant workers, refugees and asylum seekers and people of faith, so that through mutual sharing of experience they can guide and deepen the work of agencies monitoring racial harassment.	North West
London Discrimination Unit	£120,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting London.	London
London Gypsy and Traveller Unit	£25,000	Travellers are empowered to access learning opportunities and skills development.	London
Luton Equalities Agency	£33,000	To provide inter-community conflict prevention and resolution through support for victims of racial harassment and by a programme of action to tackle race hate crime and Islamophobia.	East of England
Medway REC	£30,500	1. Improve and sustain BME voice and representation on local decision making bodies by advertising, selecting, training and supporting BME Delegates. 2. Build confident and cohesive communities of BME young people by auditing established faith centres and community groups, developing a knowledge base for cross cultural networks of BME young people.	South East
Merton REP	£20,000	To continue to develop an effective corporate approach to race equality culminating in the production of added themes for the Race Equality Toolkit, achieved in partnership with stakeholders subscribing to the aims of the local strategic partnership.	London
Milton Keynes REC	£42,000	1. To facilitate and coordinate a sustainable multi ethnic, multi agency partnership of those who live and work in the Wolverton and Central areas. Offer support and advise to these partnerships on ways to build better community relations and encourage debate and discussion so as to promote community self help rather than outside agencies placing models on the community. 2. An effective second tier consultancy and assisted casework service for RECs and other local advice to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the Milton Keynes.	South East
MOSAIC	£20,000	Black, Asian & Mixed Parentage (BAMP) families in Brighton and Hove will become empowered to challenge racism and bullying through the delivery of training to both school pupils and those that work in education.	London
NCBI Lancashire	£33,500	To further develop the resilience of communities in the Lancaster District to deal with conflict and intergroup tension by training teams of community listeners with the skills to celebrate diversity; build coalitions; to intervene in conflict and increase the capacity for dialogue and understanding between different social groups in the District.	North West

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Newcastle Law Centre	£47,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the North East and, in particular Tyne & Wear & Northumberland.	North East
Newham Monitoring Project	£32,500	1. To provide and expand the Newham Monitoring Project [NMP] 24-hour Emergency Service (ES) helpline to people from BME/Refugee/Asylum seeker backgrounds, in cases of racial harassment and/or related statutory and police response/misconduct issues, where race is a factor, by offering immediate and specialist assistance, to be staffed out of office hours by trained volunteers. 2. To provide casework support to people of BME/Refugee/Asylum Seeker backgrounds suffering racial harassment and/or related statutory and police response/misconduct issues (including anti-terror policing), where race is a factor, in the form of advice, information, legal assistance and advocacy.	London
North Wales REN	£32,500	To provide support work for victims of race discrimination and/or racial harassment which does not involve pre-litigation or litigation activity in North Wales, and improve the understanding and sensitivity of other agencies in North Wales to support racial harassment cases.	Wales
North Kensington Law Centre	£39,000	To intervene, prevent and reduce levels of school exclusions in primary and secondary schools among children from BME communities by supporting parents and carers through early resolution of disputes, and providing advocacy and representation.	London
North Staffordshire REC	£33,500	1. Advice and assistance provided to victims of racial harassment and discrimination and strategies developed to prevent and address racial discrimination. 2. Conflict resolution strategies developed to address and prevent tensions between different ethnic minorities in Stoke-on-Trent and neighbouring areas with particular focus on Czech Roma and Polish communities.	West Midlands
North West Kent REC	£21,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting North West Kent.	South East
Northamptonshire REC	£33,500	An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Northamptonshire.	East Midlands
Norwich & Norfolk REC	£45,000	1. To increase the employability of young BME people in developing skills required in IT and media industries. 2. Development of a "Civic Leader Shadowing Scheme" to give BME people an insight into civic life as a means of promoting active involvement of these groups in areas of civic life where they are currently heavily under-represented	East of England
Nottingham REC	£32,500	An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Nottinghamshire.	East Midlands
Oldham Race Equality Partnership	£30,500	1. Community Dialogue Project: – To improve relationships between different communities through the encouragement of honest reflection, dialogue and interaction between Oldham's segregated communities. 2. Community Newsletters: 2 community magazines produced & distributed in areas of conflict & far right activity to strengthen communities ability to resist racist politics.	North West
Oxfordshire REC	£67,000	1. To consolidate and expand an existing framework in which small, medium and large enterprises can come together to produce, publicise and put into practice equal opportunities and diversity policies on employment in Oxfordshire. 2. Provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in or working in Oxfordshire, and to ensure that people in Oxfordshire are aware of their rights and can be helped to pursue their complaints through a Tribunal or the County Court (through provision of advice & advertising.)	South East
Peterborough REC	£55,000	1. Provision for advice and support for people who have experienced: racial discrimination or harassment in employment or when accessing goods, facilities and services; criminal offence or harassment where race of the client is a factor; the need for immigration of asylum casework where the race of the client is a factor. 2. Greater community cohesion through identifying and diffusing inter community youth conflict/tensions.	East of England

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
Plymouth & District REC	£23,000	To ensure that everyone has a right to a fair outcome and that no-one is disadvantaged by continuing and developing the current support and advocacy service to BME individuals who have experienced racial harassment and/or racial discrimination, including one to one support and group work.	South West
Powys Association of Vol. Org	£29,000	To develop a diverse ethnic support network in North Powys that provides a focus for equality issues, the dissemination of information and a means of linking into local decision making and planning processes.	Wales
Preston & W. Lancs REC	£123,500	1. To provide an effective Legal advice and representation service to victims of race discrimination or harassment whilst living in, working in, or visiting Lancashire. 2. Individuals experiencing racial harassment across Preston and Western Lancashire will be supported through casework services along with improved working relationships with police and multi-agency panels will be assisted in targeting resources to areas of concern. 3. Effective and constructive communication between Traveller communities, settled communities and public bodies in East Lancashire.	North West
Race Equality Action for Lewisham	£30,000	Inter-Community Conflict Prevention and Resolution (Youth Work) A. Social Responsibility Programme B. Popular Education Youth Programme C. Youth Diversion & Development Programme	London
Race Equality First	£19,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the Vale of Glamorgan.	Wales
Race Equality Sandwell	£30,000	Young people and key stakeholders in the community will work together to develop strategies to address the rising influence of extreme and radical groups, encourage integration of different groups and improve community cohesion and contribute toward policy development in youth and community work in Sandwell.	West Midlands
Ravensthorpe Community Centre	£33,500	Improved access to a range of services among the local community, including South Asian i.e Pakistanis, Middle Eastern i.e Kurds and Iraqis, Eastern Europeans i.e Hungarians, the indigenous community etc. through a more effective signposting & advice service. Increased understanding of various community cultures in Ravensthorpe, by providing opportunity for the community to come together and exchange views.	Yorkshire & Humber
Reading REC	£30,000	To counter extremism, resolve conflicts and engage all sections of the community in Reading through an action plan.	South West
Redbridge REC	£60,000	1. Increased community participation in combatting racist harassment including support for victims of racial harassment. 2. Promoting community cohesion and preventing racist harassment through increasing awareness and countering racist ideas and influences.	London
REWM	£49,000	1. To reduce the potential of inter-community conflict between Muslims and other communities and raise awareness of Muslim communities in Britain 2. To participate and service West Midlands wide community response team to help coordinate a response to incidents impacting on inter-ethnic community relations (terrorism or inter-ethnic disturbances.) 3. To evaluate the arrangements made by local authorities and others to identify neighbourhoods and situations at risk from community fragmentation and to promote community cohesion, and to support the improvement of race and ethnic relations with provisions in Local Area agreements. 4. To explore the inter-ethnic bridge-building and integrative 'social capital' of people of mixed-race origin by creating a forum of mixed-race people from different employment backgrounds to explore issues of inter-ethnic cohesion. 5. To extend activities aimed at marginalising racist far-right extremists by analysing and disseminating electoral results of far right extremists 2007 servicing the Midlands-wide network for monitoring racial extremism and persuading and supporting local race equality councils to become more involved and effective in countering the threat from the far-right.	West Midlands

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
ROTA	£40,000	1. To reduce the potential for racial discrimination or harassment in London boroughs by encouraging the local Safer Neighbourhood Teams (SNTs), criminal justice agencies, Victim Support, voluntary & community sector (VCS) bodies and faith-based organisations to concentrate resources on (a) types of racist violence (b) types of victims and perpetrators and (c) geographical areas that the study will identify as being on the increase in hate crime statistics. 2. To produce models for short-term conflict resolution and long-term prevention of racist violence.	London
Sheffield Racial Equality Council	£30,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting South Yorkshire.	Yorkshire & Humber
Slough REC	£33,500	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Slough & surrounding areas such as Windsor & Maidenhead.	South East
Soft Touch Arts Limited	£20,000	Positive interaction between young Gypsies and Travellers and 'settled' young people in Leicestershire and input by Gypsies and Travellers into services and activities for young people in the area. (This is Year 2 of the project and the project work towards producing a new booklet which documents dialogue between Gypsies and Travellers and Settled Youth.)	East Midlands
Southall Community Alliance	£20,500	To increase the levels of positive contact for people from different racial groups in a way that will challenge racial stereotypes and overcome barriers of mistrust and cultural ignorance.	London
Specialist Mediation in Lancashire East	£32,000	To engage with young people from different groups and provide opportunities for LEAP (a conflict resolution agency) to work in partnership with SMILE on tackling Anti-Social Behaviour.	North West
Stop Hate UK	£10,000	To promote cohesion between different ethnic groups in Beeston and Batley through increased understanding of different groups and interfaith work.	Yorkshire & Humber
Sunderland Bangladeshi Community Centre	£27,000	Increased participation of BME communities in voluntary organisations, local strategic partnerships and board members of key bodies in Sunderland including, among other, schools, prisons and local councils.	North East
Support Against Racist Incidents (SARI)	£33,500	To resolve and prevent racially motivated crime and/or inter-community conflict and to promote inclusive neighbourhoods by providing community safety advice, assessment and installations to all cases of racial harassment referred to S.A.R.I. from Bristol, Bath and North East Somerset, South Gloucestershire and North Somerset.	South West
Swansea REC	£33,000	An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Swansea and Neath Talbot.	Wales
Swindon REC	£20,000	To provide support and advocacy for individuals who experience racial discrimination and harassment/violence in Swindon.	South West
Tameside REC	£120,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in or visiting the 10 Greater Manchester districts of Manchester, Trafford, Salford, Stockport, Tameside, Rochdale, Wigan, Oldham, Bolton, Bury.	North West
Telford REDP	£30,000	Provide a coordinated approach to identifying and supporting people who have experienced racial harassment and discrimination in Telford and Wrekin.	West Midlands
The Avenues Youth Project	£15,500	To develop a programme of activities on a Tuesday evening designed to bring young people from different ethnic communities together and breakdown local barriers between groups of young people leading to a more diverse range of young people attending the youth club.	London
The Greenhouse Play and Arts Project	£33,500	To bring young people from Liverpool's diverse communities together, to develop and participate in weekly programmes of work that transcend geographical and cultural boundaries and lead to greater understanding between communities.	North West
The Haven, Wolverhampton	£30,000	Asian and African Caribbean women affected by domestic abuse are supported to make independent choices about whether and how to proceed with charges and cases against violations of their human rights and service is developed as part of a multi-agency approach to delivering a coordinated response to BME DV survivors.	West Midlands

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Region</i>
The Race Equality Centre	£33,500	To increase access to advice, assistance and support among people who have suffered racial harassment or discrimination within Leicester.	East Midlands
The Scottish Refugee Council	£48,000	To continue to drive the delivery of a shared Scottish community development strategy agreed with and implemented by a range of partners and local communities. This strategy will improve integration and facilitate: <ul style="list-style-type: none"> — Sustainable, independent and democratic refugee community organisations — Improved community cohesion through the development of social bridges — Individual refugee activists playing a visible role in local communities — Progress on gender specific work that promotes the rights and well-being of refugee women. 	Scotland
UNITE Ltd	£24,500	Individuals in Middlesbrough and Sunderland will feel more confident in tackling inter-racial conflict and tension through a schools programme of conflict resolution training to students and also honing mediators skills through a professional development programme of mentoring and casework.	North East
Valleys REC	£71,000	1. To develop a new forum of statutory and voluntary service providers to serve the needs of migrant workers in Rhondda Cynon Taff County Borough; to produce a “Welcome Pack” and develop a programme of induction; to further develop the template of giving information and support in accessing public services, and to undertake preliminary work in respect of such a forum in the County Boroughs of Bridgend and Caerphilly. 2. To develop, in the County Boroughs of Caerphilly and Rhondda Cynon Taff, a programme of activities in order to encourage the engagement of young BME people in wider civic society; to establish a forum for young BME in each Borough focussing on their needs and interests; to support them in dealing with harassment and bullying; to support the development of other networks of mutual benefit for young BME people; to promote events in order to raise the profile and esteem of BME young people. 3. An effective legal advice and representation service for people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the country Boroughs of Tydfil and Rhondda Cynon Taff.	Wales
Waltham Forest REC	£25,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting Waltham Forest	London
Warwickshire REP	£32,500	1. To develop a strategy for meeting the needs of New and Emerging communities and for integrating them within the overall BME consultation arrangements within Warwickshire. 2. Develop and establish a Countywide structure to ensure that BME youth in Warwickshire are an integral part of the decision-making processes within the Warwickshire Race Equality Partnership and local government.	West Midlands
WMDAS	£100,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the West Midlands.	West Midlands
York Race Equality Network	£33,500	1. To increase access to support and advice (including assistance to access legal advice if deemed appropriate) for people who have experienced discrimination and harassment, either at work or when accessing goods, facilities or services. 2. To reduce the potential for racial discrimination or harassment by promoting greater race awareness among agencies, such as the police and other local employers.	Yorkshire & Humber
Youth Voice Ltd	£29,000	To create interaction between young people from different areas in Leicester who do not interact at present by enabling groups to participate in a joint project designed to create mutual understanding, respect and equality between each other, which will result in a DVD that celebrates diversity and encourages greater cross cultural contact to prevent Leicester young people from ‘sleep walking into segregation’.	East Midlands

FUNDED ORGANISATIONS 2008–09

In the 2008-09 funding round, we assessed projects under the following 3 Priority Areas: Priority Area 1—Promoting Good Relations

Priority Area 2—Promoting Equality and Human Rights

Priority Area 3—Casework

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Action for Advocacy	£31,000	To provide training opportunities that enable paid and volunteer advocates across England and Wales to adopt human rights based approaches to their work in supporting and empowering vulnerable individuals and groups, thus ensuring that people have full access to their rights and entitlements as citizens.	2	London
Active Faith Communities Programme (AFC)	£38,803	Developing and running three pilot programmes to improve relationships and address conflict and tension between different groups in a number of settings to have a local, regional and national impact.	1	Yorkshire & Humber
Advice for Life (AFL) – operating as Cambridgeshire Law Centres	£54,500	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment, primarily in the context of employment under all the Equality Enactments living in, working in, or visiting in the Cambridge and Norfolk areas.	3	East of England
	£35,000	Increased awareness of equality and human rights issues and good practice by means of an integrated cross-mandate training programme for the voluntary and community sector in Cambridgeshire, and strengthened capacity of BME communities in Cambridgeshire and Norfolk to identify and respond to discrimination issues across the discrimination mandates.	2	East of England
Africa Policy Research Network (APORENet)	£7,994	Create awareness about children’s rights by facilitating young people from different backgrounds to creatively engage in art activities, as well as learn about each other and gain knowledge and skills to create paintings, sculptures, posters and ceramics that promote human rights to be displayed in public places and exhibitions.	1	London
Age Concern East Midlands	£39,941	BME Elders are actively involved in public life to ensure quality services for their communities by their engagement in community cohesion, community activities and community leadership; Increased membership in public life of BME Elders to ensure their needs are reflective in their communities’ development; The unheard voice of BME Elders promoted; and BME Elders consultation promoted.	1	East Midlands
Age Concern North Tyneside	£40,000	To improve understanding and respect between younger and older people and create greater awareness of wider equality and diversity issues in the community.	1	North East
Age Concern Preston and South Ribble	£35,000	To support groups of older people from different communities in the Preston area to collect and create presentational material about their cultural heritage and beliefs to share with and display to groups of older people from other communities and to service providers.	1	North West
Age Concern Regional Support Services	£35,000	To develop and build positive community relations with BME elders in the West Midlands region, as a means to creating greater community cohesion.	1	West Midlands
Age Concern Support Services Yorkshire & Humber	£35,000	To provide networking and collaboration opportunities for equalities bodies in Yorkshire & Humber that increase awareness, understanding and good practice, to enable the effective promotion of the full range of human rights and equalities issues for older people in the Region.	2	Yorkshire & Humber
Aik Saath	£35,000	To bring young people together and promote community cohesion amongst young people in their schools and communities by giving young people anti-racism skills, and the ability to recognise and deal with conflict effectively (in their homes, social circles and communities) through a scheme of peer education, and thus reduce young people’s involvement in racially motivated crime and promote greater understanding between different groups and communities in Slough.	1	South East
All Wales Ethnic Minority Association (AWEMA)	£35,000	Services and opportunities experienced by all sections of the BME community are fair, meeting their needs, respecting their cultural identity and providing choice.	2	Wales

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Art Beyond Belief	£28,553	To develop a series of forums, events and a conference that will enable ordinary members of the various faith communities in Slough to share and discuss areas of concern including other equality mandate areas, and feedback the results of their deliberations to the appropriate people and organisations.	1	South East
Aston Sports Club	£18,486	To engage the Madressas within Aston to take part in Aston Sports Club and affiliated mainstream activities; to pilot a Working Forum for Madressas with a view to integrating the Madressas and the children/members into services and activities that are being provided by mainstream bodies and to liaise with local structures.	1	West Midlands
Attic Theatre Company (London) Ltd	£30,124	To promote equality, social cohesion and inclusion for refugee and asylum seeker children, young people and adults, and increase educational and employment opportunities alongside developing their personal 'soft outcome' progression. Delivered through drama workshops, performances and related arts activities.	2	London
Barking and Dagenham Citizens Advice Bureau	£38,950	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the Barking and Dagenham.	3	London
Bath & North East Somerset Racial Equality Council	£35,000	Reduce the potential for discrimination and harassment by increasing the volume and standard of advice and representation available to victims, and by developing partnerships across the various equality strands to develop an integrated equalities service to support the needs of victims of hate crime and discrimination in Bath and North East Somerset.	1	South West
BAWSO	£39,432	To create opportunities for migrant population and host communities in North Wales to come together with the shared aim of enhancing understanding and trust between the communities.	1	Wales
BD3 HUB- Lead Body The Thornbury Centre	£30,000	To provide support and assistance to New Migrant Workers to access advice and services in the BD3 area of Bradford.	1	Yorkshire & Humber
Bedford REC	£31,491	To deliver a unique programme that aims to develop the skills and capacity of individuals in Bedford and Central Bedfordshire to effectively engage in active citizenship and participate in decision making panels and public / civic life, giving them a platform to influence change and thus creating Community Ambassadors for under-represented Communities and the Third Sector.	1	East of England
	£38,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in or visiting the following areas: County of Bedfordshire.	3	East of England
Berern Arts Ltd	£28,402	To promote active involvement between people with physical disabilities and the local Chinese and Filipino community and other BME communities, and to broaden mutual respect and understanding through the production of short films about their lives that are used in an education programme, to develop and deliver workshop on disability and ethnicity in South Cambridgeshire and Cambridge City.	1	East of England
Bexley Council for Racial Equality	£38,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments (specifically race and religion) whilst living in, working in, or visiting the following areas: Bexley.	3	London

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Birmingham Law Centre	£39,900	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Employment under any of the Equality Enactments whilst living in, working in, or visiting Birmingham.	3	West Midlands
Black & Minority Ethnic Carers Support Service (Lead Body)	£35,000	To develop and deliver effective training programmes through which to promote equality and / or human rights to wider audiences who require the training, organise seminars and other activities for a greater awareness of equality and human rights.	2	London
Black Training and Enterprise Group (BTEG)	£35,000	To increase the representation of women and black, Asian and other ethnic minorities on Local Strategic Partnerships in three regions (London, East Midlands and North East of England.)	1	London
Bolton Racial Equality Council	£40,000	To provide support to migrant and refugee workers to gain employment by raising awareness and increasing engagement among employers and service providers.	1	North West
Bradford Citizens Advice Bureau	£39,500	To ensure that individuals, advice agencies, equality organisations and others are aware of the equality laws, so that they can identify people suffering discrimination and know where people can get help when they suffer discrimination.	1	Yorkshire & Humber
Bradford Community and Voluntary Service (BCVS)	£35,000	To enable Romany Gypsies and Irish Travellers to have equal access to services, and to represent their own needs and concerns in order to participate in civic life in the District.	1	Yorkshire & Humber
Bradford Law Centre	£39,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in or visiting the following areas: Bradford Metropolitan District.	3	Yorkshire & Humber
Brap	£35,000	A more cohesive and inclusive city that: values and promotes diversity; encourages meaningful interaction; challenges discrimination and social stereotypes; and identifies common human experiences – through engagement with a quarterly Birmingham wide magazine.	1	West Midlands
Breakthrough UK Ltd	£40,000	To develop and share greater understanding of disability hate crime and how this compares with other equality groups' experiences.	1	North West
Bristol Lesbian Gay Bisexual Forum	£35,000	To increase understanding of the problems / issues, on all sides, facing LGB people of BME heritage and their Faith communities (as organisations and individuals) with regard to sexual orientation, and to increase reciprocal engagement of BME LGB people / organisations and Bristol LGB Forum, in order to begin to break down barriers and increase understanding of all parties in Bristol.	1	South West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Bristol Resource Centre operating as Avon and Bristol Law Centre	£87,000	To provide an effective legal advice and representation service for people who have suffered discrimination or harassment in the work place due to their age, disability, race, religion, gender or sexual orientation whilst working in the South West of England (ie. Bath and North East Somerset, Bristol, Cornwall, Devon, Dorset, North Somerset, Somerset, South Gloucestershire or Wiltshire.)	3	South West
		To provide an effective legal advice and representation service for people who have suffered discrimination or harassment due to their age, disability, race, religion, sex or sexual orientation in the provision of Goods and Services (where covered by legislation) and to include access to housing and over-16 education where applicable and possible in the South West of England - (ie. Bath and North East Somerset, Bristol, Cornwall, Dorset, North Somerset, Somerset, South Gloucestershire or Wiltshire.)	3	South West
		To provide an effective specialist legal consultancy and public legal education service to those providing first tier legal advice to people who have experienced discrimination or harassment in the work place or in the provision of goods and services due to their age, disability, race, religion, sex or sexual orientation whilst working in the South West of England. This service enables us to cover as wide a geographical area as possible. To include tailored training, when appropriate, particularly to user led groups. We aim to increase people's awareness of their rights under the legislation, to empower individuals from communities who suffer discrimination, to enhance the skills of advice workers in other agencies and to improve equality practices across the statutory, private and vol sectors.	3	South West
British Humanist Association	£35,000	Increased understanding of issues of 'religion or belief' in the context of equality and human rights within the voluntary sector, media and general public; via research, conferences, guidance documents and media work.	2	London
British Institute of Human Rights	£55,585	Equality, community relations and social inclusion Voluntary and Community Organisations VCOs - in particular capacity building organisations and co-ordinating VCOs and networks who support frontline groups (target VCOs) will have increased their awareness and understanding of human rights and the relevance of human rights to their work.	2	London
		Equality, community relations and social inclusion VCOs – in particular those funded by EHRC and capacity building and coordinating VCOs who support frontline groups - will have increased capacity to apply and contribute to the further development of Human Rights Based Approaches (HRBA) in relevant aspects of their work.	2	London
BTCV (British Trust for Conservation Volunteers)	£35,000	To promote contact, understanding, friendship & community cohesion between the some of the most disadvantaged communities in Leeds, inner East Leeds with a focus on asylum seekers and other recent arrivals.	1	Yorkshire & Humber
Bury Metro Racial Equality Council	£37,500	To create and develop improving relationships between different communities, widen the integration and interaction, and therefore create a better dialogue with different faiths within the borough, providing a forum for cross-community work creating dialogue, interaction, involvement and participation of all faiths. Increase participation / integration of faith communities to participate fully in developing future strategies for engagement / interaction.	1	North West

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Camden & Westminster Refugee Training Partnership (C&WRTP)	£35,000	To develop and build relations across BME groups and local communities in Camden and Westminster through interaction to ease tension, suspicion and to promote peaceful co-existence. To furnish a platform where the groups engage, learn more about each other; promote networks, strengthen existing communities and form common bonds.	1	London
Cardiff and Vale Coalition of Disabled People (CVCDP)	£32,500	To enhance the current CVCDP advocacy information and support service to include specific focus on and addressing the advocacy information and support issues and needs identified for BME disabled individuals in Wales.	1	Wales
Cardiff People First	£35,000	To develop and deliver a multimedia project, 'Hidden Lives,' aimed at representing the barriers and social exclusion faced by Black and Minority Ethnic people with a learning disability in Cardiff & Newport, thereby raising awareness, respect and recognition for the equality and human rights of this group.	1	Wales
Carers UK	£39,580	Promote national, regional and local awareness of equalities and human rights issues for carers through a roll-out programme for the revised National Strategy for Carers.	2	London
Carmarthenshire Association of Voluntary Services (CAVS)	£35,000	To expand and maintain a Multi-Ethnic Network in the Llanelli area, which provides a pathway for black and minority ethnic people out of discrimination, isolation and disadvantage.	1	Wales
CCPR (Central Council of Physical Recreation)	£35,000	To assist National Governing Bodies of Sport and Recreation (NGBs) to achieve the Foundation Level of the Equality Standard for Sport . In doing so, enable them to develop Equality Policies, projects within local communities to address inequality, and train staff to be aware of equality issues when they work within local communities.	2	London
CEMVO	£35,000	To undertake a range of sporting activities with Somali young people to reduce alienation and promote and increase good community relations between Somali youth and other BME youth in Bristol through their active participation in sport via the Interplay project, in collaboration with the Bristol Somali Forum, Bangladesh Association and Bristol Muslim Cultural Society.	1	South West
Central London Community Law Centre	£20,000	To promote equality by developing and delivering an effective training programme through which to promote equality. To build capacity and expertise in the voluntary sector and increase the number of members of the public who receive adequate referral, legal advice and ultimately, representation: A.) To improve the ability of voluntary sector advisers to diagnose potential employment discrimination cases; B.) To improve the ability of voluntary sector advisers to interview clients sensitively and effectively, and build confidence of the community to approach them; and C.) To improve the ability of voluntary sector advisers to take (or not take) initial steps in a way which does not damage, but does enhance, the ultimate chances of success.	2	London
	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: mainly Central London i.e Westminster and south Camden; Waltham Forest and Newham; and generally in London where demand is unmet.	3	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Central Scotland REC	£35,000	Good relations and understanding between diverse peoples will be fostered by a programme of opportunities for people to interact and learn about each other. Focus on school children will reduce discrimination in the future by changing attitudes at an early age.	1	Scotland
	£39,850	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in relation to race whilst living in, working in, or visiting Central Scotland.	3	Scotland
Centre for Equality and Diversity	£35,000	To promote peaceful co-existence and understanding of different groups, of disadvantaged young people (aged 13-21) and new communities of refugees from especially from the African sub continent, by using human contact and interaction to breakdown stereotypes, tensions, conflicts and suspicions.	1	West Midlands
Cheshire, Halton and Warrington REC	£39,100	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Race Relations Act (and amendments) or the Employment Equality (Religion or Belief) Regulations whilst living in, working in or visiting the following areas: Cheshire, Halton and Warrington, Wirral and North Wales.	3	North West
Chesterfield Law Centre	£35,000	To provide free tailored training courses that promote Equality and Human Rights to those who are prevented from attending courses due to economic, attitudinal and institutional barriers across East Midlands.	2	East Midlands
	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments in the provision of goods, facilities, services, premises and public functions whilst living in, working in, or visiting the following areas: East Midlands (including Lincolnshire.)	3	East Midlands
Children in Scotland	£35,000	Increased awareness and understanding of the UK's equalities mandates amongst decision-makers, senior managers and key practitioners across sectors whose remit involves working with children or children's services.	2	Scotland
Children's Rights Alliance For England	£17,254	To ensure positive messages about children's human rights are included in the mainstream media, with particular emphasis upon children telling their own stories.	2	London
	£39,900	To provide an effective legal information, advice and signposting service to children and young people (under 18s) living in or visiting England, in relation to their human rights and (equality enactment) rights not to be discriminated against or harassed on grounds of age, disability, sex, race and nationality, religion or belief, sexual orientation or transgender status.	3	London
Churches Regional Commission for Yorkshire & the Humber	£40,000	Improve the workplace practice & service delivery of public, private & voluntary organisations in engaging with Faith Communities & people of faith by delivering 'Understanding Faiths' (introductory 'religious literacy' for civic organisations) workshops in Yorkshire & the Humber in order to raise awareness & encourage best practice.	1	Yorkshire & Humber
Citizens Advice and Rights Fife Limited	£39,969	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in or visiting Fife.	3	Scotland
City of London Citizens Advice Bureau	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: City of London.	3	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Communities Empowerment Network	£35,000	To encourage & empower members from the black communities across London to become governors and have an active involvement on school governing boards. To promote best practice and address the barriers that prevent black people from joining and becoming active board members. To encourage and empower, and build a sense of commonality around real life issues in education.	1	London
Conflict and Change	£29,975	To improve understanding between communities in Newham through a range of bridge building activities undertaken by a team of diverse local volunteers.	1	London
Consortium of Lesbian, Gay, Bisexual and Transgender voluntary and Community Organisations	£35,000	To create an environment whereby LGBT organisations are aware and able to address issues of cross strand identity within their work; and have better relationships with other third sector organisations (in particular other equality strand organisations); to create links between LGBT organisations and other equality strand bodies to ensure that there is joint learning and awareness of LGBT issues within other organizations; and to develop a resource base and network relating to LGBT good practice and engagement strategies.	1	London
Corby Community Partnership	£34,239	Increased community participation and access to public services through a sign posting and support service to enable people to become engaged in a range of activities and services which can bring people together.	1	East Midlands
Coventry Law Centre	£35,000	Increased understanding of and action taken by local agencies to remove the barriers faced by community groups in Coventry accessing independent advice about their Human Rights and barriers to equal access to other services. Use the results of the research to influence service redesign and to inform other agencies; and reduce the potential for discrimination by providing information, training and practical advice for employers to help prevent discrimination and harassment in the workplace.	1	West Midlands
	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Employment & Non-employment cases under any of the Equality Enactments whilst living in, working in, or visiting Coventry and Warwickshire.	3	West Midlands
Cultural Co-Operation	£35,000	To develop opportunities for people from London's BAMER and faith communities to participate more fully in public life together, and jointly to generate sustainable models of intercultural dialogue, understanding and co-operation.	1	London
Cultural Media Enterprise Limited	£19,800	To overcome myths, explain cultural differences, challenge negative media coverage and understand human rights by training 48 young people from Cantell Math's & Computing College and other young people from the wider communities in Southampton in producing, broadcasting and hosting a discussion programme entitled "Knowing you, Knowing me".	1	South East
Denbighshire CAB	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination while living or working in North Wales – namely: for cases involving discrimination in employment: Denbighshire, Gwynedd and Ynys Mon. (Cases involving discrimination in the provision of Goods, Facilities and Services: Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire, and Wrexham will be referred to Flintshire CAB.)	3	Wales
Devon Law Centre	£39,900	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in employment and non employment under all of the Equality Enactments whilst living, working in, or visiting the following areas: Plymouth, Devon and all of Cornwall.	3	South West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
DHIVERSE	£28,056	To increase the employment skills of 30 people with HIV, and increasing the knowledge, skills and awareness of HIV, the DDA and disability policy of 80 employers.	1	East of England
Disability Direct	£34,300	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Disability Discrimination Act 1995 (as amended) whilst living in, working in, or visiting Derby, Derbyshire and Nottingham.	3	East Midlands
Disability Law Service	£54,000	To provide an effective legal advice, casework and representation service for disabled people who have suffered discrimination or harassment due to their age or disability in the context of their employment and in the provision of goods, services, higher and further education while living in, working in, or visiting the counties of: Kent, East and West Sussex, Surrey, Hampshire, Oxfordshire, Buckinghamshire, and Berkshire.	3	London
Documentary Filmmakers Limited, trading as 'Documentary Filmmakers Group'	£35,000	A.) A practical training programme which is designed to promote equal opportunities in the documentary filmmaking industry, with a view to producing new documentaries and fresh voices that promote awareness of human rights and equal opportunities amongst audiences in the UK. The project will impart industry-focussed skills to talented women who are aspiring filmmakers, a target of 60% of whom will be from ethnic minorities. This training programme will prepare participants to deliver our second outcome. B.) A film production initiative, whereby participants in the aforementioned training programme will produce three short documentaries that explore human rights issues. The purpose of this initiative is to promote better awareness of human rights by exploring these issues in a relevant, engaging way and the films will be available for use by the EHRC and other human rights or related organizations, and for broader dissemination throughout communities in the UK and at film festivals, etc. The longer-term objective of these films is that they will help to advance the careers of the 16 participants in the initiative as documentary filmmakers specializing in the area of human rights, thereby facilitating the production of more films on human rights and raising awareness of these issues.	2	London
Doncaster CVS	£21,745	To provide an outreach support service that is responsive to the needs of community groups within the equality mandates, and that promotes a greater understanding and cooperation between these groups to enable social cohesion and stronger links with local agencies.	1	Yorkshire & Humber
Dumfries & Galloway Citizens Advice Service (DAGCAS)	£29,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting Dumfries & Galloway.	3	Scotland
Dundee International Women's Centre	£36,802	To increase the confidence, sense of pride and belonging of 200 women who are from diverse BME, cultural and / or religious communities living within Scotland.	1	Scotland
Ealing Racial Equality Council	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following area: EALING.	3	London
East Lancashire Community Action Project Ltd	£35,000	ELCAP will work with children and young people to create an understanding and awareness of the commonality between different religions and cultures in East Lancashire by using Pendle Radio.	1	North West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
East Staffordshire Racial Equality Council	£35,000	Reduce the potential for discrimination or harassment and the impact of hate crime by providing effective and efficient mechanism to support the needs of victims, raise awareness of racial, religious, homophobic, gender, age and disability related crimes through independent co-ordination of multi-agency support, pick trends, hotspots for targeting resources to maximum influence and support .	1	West Midlands
	£35,000	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment under the Race Relations Act 1976 (as amended) whilst living in, working in, or visiting South East Staffordshire & County of Staffordshire.	3	West Midlands
Educational Centres Association	£7,450	To strengthen the relationship between the broad community, equality groups, the media and training and educational organisations in Leicester and district.	2	East of England
Encompass - The Daniel Braden Reconciliation Trust	£19,449	Diversity in the UK; A Journey of Understanding for 24 young people aged between 16-24 years: To develop a group of young people who have a greater understanding of, and respect for, other cultures, faiths and social groups; Young people have improved awareness and understanding of their own feelings and those of others; and improved relationships between young people of different faiths, race, religion and culture, through the spreading of the Encompass network events to the regional homes of our participants.	1	London
Encompass Network	£27,500	To facilitate a diverse range of people from the wider community of East of England and the LGBTI (lesbian, gay, bisexual, transgendered, intersex) sub communities to come together to stage a festival of celebration thereby promoting understanding and tolerance and breaking down barriers to inclusion, recognising the complexities that comprise individual and community identity, drawing on race, ethnicity, faith, disability, age and gender affiliations and citizenship status.	1	East of England
Enfield Racial Equality Council	£40,000	To work in partnership with the Citizens Advice Bureau to empower and build good relations between diverse communities, through training workshops for community advisors on the equalities and human rights legislation (age, disability, sexual orientation, religion or belief, faith, gender and human rights.)	1	London
Engender	£39,080	To promote thinking and understanding about the wider equalities agenda among women and others through the expansion of Engender's Thinking Women group to establish a diverse women's think tank from across the equality sectors – 'Women Thinking Equality' – that will meet regularly to reflect and take action on issues of multiple discrimination from gendered perspective and on policy and current affairs from a diverse gendered perspective.	1	Scotland
Equality Network	£35,000	1. To develop a knowledge and theoretical base for future work in Scotland to promote the equality and rights of Black and Minority Ethnic people who are Lesbian, Gay, Bisexual or Transgender. 2. To map the level of recognition and understanding of the needs of BME LGBT people within national Scottish equality and rights organisations and their approach to promoting cross-strand working.	2	Scotland
Equality North East	£35,313	To develop Equality North East's current equality training portfolio to include the promotion of human rights to audiences from voluntary and community, public and private sectors within the North East.	2	North East
Essex Racial Equality Council	£31,200	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting in the following areas: County of Essex.	3	East of England

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Ethnic Minorities Law Centre	£78,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Edinburgh and the Lothians, and Glasgow.	3	Scotland
Exeter Citizens Advice Bureau	£26,640	To develop a situation within the Exeter area where services supporting people facing discrimination on the basis of ethnicity or disability are designed to meet the needs of these groups.	2	South West
Exeter CVS	£35,000	To develop local capacity in Human Rights and Equalities so that local people and their advocates in the Voluntary and Community Sector organisations, within the Exeter area, can become confident in their understanding and use of the HRA for their benefit in their everyday lives, enhance public, voluntary and private services (particularly in health and social care), and learn how to use the Equalities and HRA to challenge human rights violations and extend the equalities agenda to groups and situations currently not or poorly covered by the equality legislation.	2	South West
Fairbridge	£30,000	For Fairbridge programmes in North Manchester, Liverpool and Greater Manchester to engage with a proportionate number of BME clients in the local area and improve tolerance and understanding of different cultures and backgrounds within Fairbridge's existing clientele.	1	London
Families Need Fathers	£34,800	To bring awareness and find solutions of how gender discrimination and / or a breach of human rights creates barriers to shared parenting.	2	London
Flintshire Citizens Advice Bureaux	£35,000	To increase organisations and community groups awareness and understanding of Equality, Diversity and Human Rights to help ensure people are treated in a good and fair way across North Wales.	2	Wales
	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination while living or working in North Wales – namely: for cases involving discrimination in the provision of Goods, Facilities and Services: Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire, and Wrexham; and for cases involving discrimination in employment: Flintshire, Wrexham and Conwy.	3	Wales
Foundation for Women's Health Research and Development (FORWARD)	£35,000	To strengthen engagement with immigrant communities that practice female genital mutilation (FGM) and key statutory bodies to safeguard and protect rights of girls and women affected and at risk.	2	London
FRAE Fife Race Equality Partnership	£35,000	Increased awareness of (and best practice in the application of) the six strands of Equality Diversity and Human Rights among Community Groups, Voluntary Sector Organisations, Statutory Bodies, and the Private Sector in Fife.	2	Scotland
Freshwinds	£38,890	To increase the availability and access of quality advice and support for primarily, but not exclusively, the lesbian, gay, bisexual and transgender community with a focus for the members of this community that are BME, and / or older and / or have a disability.	1	West Midlands
Friends, Families and Travellers	£39,817	To develop an environment where Gypsies and Travellers in West Sussex and east Hampshire have the confidence to participate actively in the life of the community.	1	South East
Furness Multicultural Community Forum	£35,000	To work with BME groups in the Furness area to enable their access to mainstream services; building and developing sustainable self support groups and creating opportunities for people to learn about the cultures in the wider Furness community, including a focus on BME elderly and young people's needs.	1	North West

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Galop	£30,000	To increase understanding and service responses for LGBT BME Londoners, and to develop a strategy for Galop to further support LGBT BME individuals who experience hate crime.	1	London
GenderShift Limited	£37,467	To raise awareness within the public, private and third sectors and the community within the Hull and Humber Region of atypical gender issues including atypical gender based discrimination, harassment and bullying and the responsibilities of all organisations under the Gender Equality Duty, particularly in respect of transgender people.	1	Yorkshire & Humber
George House Trust	£35,000	To raise awareness and increase knowledge of the facts about living with HIV today, breakdown stereotypes and effect a change in attitude through a series of talks by HIV positive speakers delivered to schools, refugee, African community and voluntary organisations and targeted groups of professionals.	1	North West
Glasgow Anti Racist Alliance	£35,000	To undertake a project to guide the targeting, design and message content of a media campaign which fully utilises the most up to date social psychology research on what works in reducing prejudice and stimulating attitude change.	1	Scotland
Glasgow Association for Mental Health	£35,000	To bring together a diverse, multi-cultural group of older people from different backgrounds (such as people from Muslim, Sikh, Hindu, Chinese and white Scottish communities, LGBT communities, and people who are affected by mental health issues) to promote mental well-being and to create opportunities to break down existing barriers, address discriminatory attitudes and promote cohesion by involving them in workshops based around the creative arts (e.g. drama, music, dance, drawing, painting, photography and story telling.)	1	Scotland
Glasgow Centre for Inclusive Living (GCIL)	£39,722	To raise awareness of disability equality issues within Glasgow's BME communities and to improve BME disabled people's access to Independent Living opportunities e.g. addressing barriers to self-directed support. accessible housing, employment etc.	2	Scotland
Glasgow Council for the Voluntary Sector	£12,242	1. To develop a mainstreaming equalities and human rights training and support programme with associated toolkit. 2. To pilot the mainstreaming equalities and human rights training and support programme to 12 voluntary sector organisations within the Glasgow area.	2	Scotland
Gloucester Association for Voluntary and Community Action (GAVCA)	£10,535	To ensure that the Gloucestershire VCS Assembly is effectively representing Equalities and Human Rights issues through increased engagement with under-represented VCS groups, as agreed as a priority by the VCS Assembly Board in its Business Plan.	2	South West
Gloucester Law Centre	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments in the context of their employment whilst living in, working in, or visiting the County of Gloucestershire.	3	South West
Govan Law Centre	£39,900	To provide an effective legal advice and representation service to school pupils who have suffered discrimination or harassment whilst living in, working in, or visiting Scotland.	3	Scotland
Grampian REC	£33,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment connected to race or religion and belief whilst living in, working in, or visiting the following areas: Aberdeen City, Aberdeenshire and Moray.	3	Scotland

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Greater Manchester Centre for Voluntary Organisation (GMCVO)	£32,113	A.) To enable voluntary organisations set up to promote equality for specific groups to forge relationships with each other and develop a more joined up approach to tackling their concerns, through an “Equalities and Human Rights Forum.” B.) To enable the Forum to engage with public sector policy-makers, third sector funders and third sector infrastructure to advocate the views and needs of disadvantaged groups and communities and make recommendations for the reduction or elimination of barriers to equality. C.) To disseminate awareness and understanding of best practice in equality and human rights across the third sector of Greater Manchester, using the expertise of Equalities Forum members.	1	North West
Greenwich Action Committee Against Racist Attacks	£33,488	To create in schools the opportunity to enable students and teachers to debate and better understand multi-cultural understanding, cultural differences and improve racial harmony.	1	London
Greenwich Community Law Centre	£39,800	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: London Boroughs of Greenwich & Bromley, Lewisham and Bexley.	3	London
Greenwich Council for Racial Equality	£35,000	To promote better understanding between ethnic groups in Woolwich by influencing policy and practice by statutory agencies through community involvement and the planning, design and delivery of local services. To reduce conflict, improve cooperation and develop partnership working.	1	London
Gypsy/Travel Education & Information Project North East (GTEIP)	£21,000	To support Gypsy / Traveller women and Gypsies / Travellers with disabilities to address barriers which prevent them accessing services and their capacity to live free and equal lives. (This will take the form of Action Research; both recording issues and experiences while supporting action on the issues.)	2	Scotland
Hammersmith & Fulham Black & Minority Ethnic Network (H&F BMEN)	£26,245	To ensure BME communities: A.) Gain access to services and facilities provided by local council, police, statutory bodies and other agencies; and B.) Ensure that the BME wider community participate in themed social cultural discussion sessions designed to promote interaction and understanding.	1	London
Hammersmith & Fulham Citizens Advice Bureau Service	£22,583	To increase the awareness and understanding of Equality, Diversity and Human Rights of organisations and community groups in Hammersmith and Fulham, and to help ensure that people are treated in a good and fair way across the Borough.	2	London
Hammersmith & Fulham Community Law Centre	£38,700	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Hammersmith & Fulham area.	3	London
Hammersmith and Fulham Refugee Forum	£32,166	To achieve regular, accurate and positive coverage in local (West London) and national media of issues involving refugees and asylum seekers.	1	London
Haringey Racial Equality Council	£27,835	To utilise the HMNSF and HMYF as conduits to create meaningful relationships with all sections of the community, thus delivering local solutions and strategic approaches to promote good relations and community cohesion.	1	London
	£18,285	To provide an effective legal advice and representation service to people who have suffered racial discrimination or harassment whilst living in, working in, or visiting the London Borough of Haringey.	3	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Harrow Council For Racial Equality ("HCRE")	£29,300	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: London Borough of Harrow.	3	London
Henna Foundation (formally Saheli)	£35,000	Develop a 'change orientated' interactive on-line resource (toolkit) designed to increase awareness and knowledge in public service organisations, professionals and grass roots communities. Content will take account of race, faith, disability, age, gender and sexual orientation, and be accessible to cross-sector service providers, affected victims, communities and human rights (social) activists.	2	Wales
Hillingdon Race Equality Council LTD	£35,000	To facilitate a common platform for the segregated communities in London Borough of Hillingdon the opportunity to interact and breakdown the barriers which hinders good relations between people of different races.	1	London
Hounslow Racial Equality Council	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: London Borough of Hounslow.	3	London
Hoxton Bibliotech trading as The Innovatory	£34,100	To promote the active participation of Turkish-Kurdish and African / Caribbean led SMEs based in the five Olympic boroughs in preparation for the business opportunities offered by the Olympics by providing Olympic investment readiness training, along with networking and pitching opportunities. The project will network and link members to mainstream business support services and business partners through partnership events and by referrals.	1	London
Hull CAB	£39,700	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Hull, and surrounding districts of East Riding.	3	Yorkshire & Humber
Humber All Nations Alliance	£35,000	To create a project (the Open Up Project) which will reduce the impact of hate crime by providing effective mechanisms to support the needs of victims, raise awareness of the impact of certain crimes committed against particular groups, and pool existing resources to maximise the reach and influence of support services.	1	Yorkshire & Humber
IMECE Turkish Speaking Women's Group	£27,500	Raising awareness of domestic violence by organizing a photograph and short film script (in Turkish and Kurdish language) contest on domestic violence in Turkish, Kurdish and Turkish Cypriot communities, and by organizing an exhibition event and gala of the short film for a wider community in London. The film will be available in DVD and will be screened in domestic violence awareness raising trainings.	2	London
Improvement Forum Ltd	£40,000	To raise awareness, knowledge and business activity around all equality mandates in SMEs and third sector organisations in the Scottish Western Isles during 2008-9 through: a) a programme of in-company equalities auditing, equality improvement planning and equality plan implementation; and b) a programme of awareness-raising, public speaking, advertising and advice surgeries targeted specifically at the sector.	2	Scotland
Independant Panel for Special Education Advice	£50,000	A.) To provide an effective legal advice and representation service for the parents / carers of children across the whole of England and Wales who have suffered disability discrimination in school education. B.) To develop IPSEA's existing referral system and network to ensure optimal referral in of DDA casework and referral out of other equality and HR strands in schools.	3	East of England

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Interlink Foundation	£39,065	To provide culturally appropriate provision for Charedi / Orthodox Jewish disabled children and young people and their families (these are the two equality groups that will benefit from this project) leading to better quality of life for them as well as identifying and working to address the barriers that are preventing them from being able to access the services they require in order to live quality and equal lives.	1	London
Inverclyde Council on Disability Ltd	£37,777	To provide, increase and promote access for disabled people from all equalities strands to learning and other community activities, reducing isolation and increasing independence, confidence and skills. Building on the existing ABC (Access to Beginners to Computing) Project, a group of disabled learners will be formed to work with providers to encourage and improve access. This will contribute to a wider Access group of disabled people, engaging with community partners to promote access to other community activities.	1	Scotland
Inverness CAB	£26,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Highland Council area.	3	Scotland
Inverness Women's Aid	£37,500	To identify and work to address the barriers that prevent women from other equalities groups from being able to access the services they require for their experiences of Violence Against Women in order to live free and equal lives through engagement with community groups.	1	Scotland
Ipswich and Suffolk Council For Racial Equality	£32,100	Promote understanding and reduce stereotyping between different 'groups' in colleges across Suffolk through the delivery of a series of practical workshops.	1	East of England
	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting Suffolk.	3	East of England
Isle of Wight Rural Community Council	£30,000	To create an inclusive environment for local volunteering where individuals from all equality mandate groups are supported and empowered to undertake volunteering and governance opportunities within local established organisations throughout the Isle of Wight.	1	South East
Kajans Women's Enterprises Ltd	£50,000	To build understanding across cultural communities by increasing interaction, friendships and confidence (through arts-based activities) amongst young people from different cultural backgrounds in the Aston and Lozells area.	1	West Midlands
Kingston Racial Equality Council	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: The Royal Borough of Kingston, Surrey and Surrounding areas.	3	London
Kirklees Law Centre	£71,400	To provide an effective legal advice and representation service to people who have suffered discrimination under the Equality Enactments whilst living in, working in, or visiting the following areas: Kirklees, Wakefield and Calderdale.	3	Yorkshire & Humber
Kirklees REC	£35,000	To develop a network and forum for the local communities to demonstrate the benefits of living in a cohesive society, enabling communities to be culturally aware and to provide a focal point for conflict resolution, common themes and a central link to statutory agencies	1	Yorkshire & Humber
Lancaster & Morecambe College 'Changing Lives'	£12,643	To build the capacity of the local disability / mental health groups to establish an Employment and Disability project and represent the interests of disabled people pertaining to employment.	2	North West

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<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Law Centres Federation	£35,219	To raise public awareness of equalities and Human rights through public legal education (PLE) provided at national level by Law Centres Federation and by supporting PLE at local level by Law Centres.	2	London
Leap Confronting Conflict (though this project is run in partnership with Peace Direct)	£37,030	Improved relations between diverse young people in Newham through training a group of 20 young 'agents of change' who will act as ambassadors and deliver projects that foster links amongst young diverse communities in Newham youth clubs and schools.	1	London
Leeds Racial Equality Council	£35,000	To support the Black and Minority Ethnic (BME) communities and voluntary and community sector groups in Leeds to advocate their economic and social needs more effectively, by building strategic relationships and collaborative projects between these groups and the key decision-makers of local services	2	Yorkshire & Humber
	£39,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: City of Leeds, and Wakefield (in collaboration with Kirklees Law Centre).	3	Yorkshire & Humber
Leicester Money Advice (Leicester Law Centre)	£35,000	To improve knowledge and awareness of Human Rights and Equality legislation, particularly in relation to employment and access to goods and services, in order to improve levels of compliance with the legislation and to improve access to justice and legal redress for people experiencing discrimination in these areas in Leicester, Leicestershire and Rutland.	2	East Midlands
	£73,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Leicester City, Leicestershire and Rutland.	3	East Midlands
LGBT Excellence Centre (Wales) Ltd	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under SDA and sexual orientation legislation whilst living in, working in or, visiting Wales. This will also extend where relevant to human rights issues.	3	Wales
LGBT Youth North West	£50,000	a.) Developing LGBT Youth College to equip young LGBT people to negotiate formal educational and employment opportunities, and assertively address discrimination in these sectors. b.) Developing in-house participatory training in schools and youth clubs regionally to ensure mainstream organisations and young people develop more positive attitudes to LGBT people and actively combat Homophobia, Transphobia, and Sexism. c.) Developing a set of quality standards for organisations to address and improve LGBT inequalities in institutions and organisations.	1	North West
LGBT Youth Scotland	£34,991	To raise the awareness of youth work staff in a range of youth organisations of equality and human rights issues across equality mandates, build their confidence and embed equality and human rights into their working practice.	2	Scotland
Liberty	£19,600	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments (including Human Rights) whilst living in, working in, or visiting England and Wales.	3	London
Limehouse Project	£28,982	Improved community relations between Somali, Bangladeshi, indigenous white and other communities through recreational, social, education and discussion platforms.	1	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
LINKnet Mentoring Ltd	£35,000	Increased active involvement of under represented people from minority ethnic, gender, disabled, transgender / lesbian & gay groups in the public and civic life of the nation, thus promoting better understand of minority issues and better relations between diverse groups and cultures.	1	Scotland
London Discrimination Unit—Lambeth Law Centre	£60,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Croydon and Lambeth.	3	London
London Gypsy and Traveller Unit	£39,927	Improved and informed policy development and public profile of Gypsies and Travellers; to include their views and be based on fair and accurate information.	2	London
Luton Law Centre	£76,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Hertfordshire and Bedfordshire (Luton). (Cover Employment cases in Luton; and non-employment cases, goods and services, in all strands, in Hertfordshire and Bedfordshire and Luton.)	3	East of England
Manchester Council for Community Relations (MCCR)	£35,000	Improve the understanding of voluntary and public sectors in the area of equality opportunities in service delivery and employment, so they are more effective in their duty to eliminate discriminatory practices.	1	North West
Manchester Refugee Support Network (MRSN)	£35,000	To increase the influence of refugee community leaders on policy, service provision and public attitudes, and promote community cohesion by bringing together people of different races and religions / beliefs to develop advocacy work relating to one of the themes of the Refugee Charter for Manchester in partnership with other local groups and communities of interest.	1	North West
Media Trust	£35,000	To develop a local media environment where issues of inequality and discrimination are reported fairly and that stories that might damage good relations between groups are publicly and fairly rebutted. We will do this through: A) targeting community leaders, news editors and key journalists across England, Scotland and Wales to discuss the challenges and best practice examples of how to report Equality and Human Rights fairly. B) providing the media with “Reporting Human Rights” – a best practice guide to help journalists respond to reporting on the complex issue of Equality and Human Rights.	2	London
Medway Racial Equality Council	£35,000	1.To build capacity through community empowerment for increasing community cohesion by meaningful and positive interaction between different ethnic, faith and inter-ethnic groups; 2. To encourage and enable clear and visible leadership for ethnic & faith groups to increase civic participation and to address the under-representation of BME leaders, including women; 3. To facilitate young people from different groups form a common bond to raise awareness and the importance of participation and contribute to common vision, better understanding, shared citizenship and sense of belonging in Medway.	1	South East
Merseyside Employment Law	£39,500	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: the Greater Merseyside area.	3	North West

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<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Merseyside Network For Change (MNFC)	£35,000	To establish a better understanding of the specific needs and possible barriers client groups / communities have in relation to their economic development, and develop resource materials and model projects as guides for groups and communities confronted with equality barriers, and to assist / support organisation ensuring economic benefits for both client groups and the wider community.	1	North West
Merseyside Society for Deaf People	£35,000	To establish positive working relationships between the Merseyside Deaf Community and organisations that represent minority groups from the BRM and Disabled Communities by increasing awareness through training and development reducing barriers and isolation, promoting cohesive relationships between BRM and other minority groups.	1	North West
Merton Racial Equality Partnership	£27,770	To finalise the production of the Merton Race Equality Toolkit website for use by private, voluntary and community sectors who provide services to the public. (www.mertonrep.org.uk)	1	London
Mewn Cymru	£37,819	Improved access to mainstream health services including primary and secondary care by women from Black and Minority groups. These groups include South Asian women, economic migrants and asylum seekers experiencing language difficulties.	2	Wales
Middlesbrough Citizens Advice Bureau	£39,950	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: the Tees Valley area (Middleborough, Stockton-on-Tees, Darlington, Hartlepool and Redcar & Cleveland.)	3	North East
Mind in Harrow	£35,000	To improve understanding of mental health issues amongst local employers and employees, thereby improving equality to employment opportunities for people with mental health problems and reducing stigma, discrimination and exclusion in Harrow.	1	London
Mirpuri Community Development Trust	£35,000	Enhancing a balanced, healthy lifestyle and environment among Mirpuri & Pakistani Muslim Women, raising awareness of key issues around health, employment & education. Building a network of an ethnically diverse mix of women, encouraging community cohesion and interaction, promoting good practices of human rights and equality.	1	West Midlands
MOSAIC Black & Mixed Parentage Family Group	£28,126	To promote good relations by delivering MOSAIC Community Cohesion Programme, and thus increase community participation of BAMP families and individuals, and of the wider community in Brighton and Hove.	1	South East
Multi ethnic Aberdeen Limited (MeAL)	£40,000	To develop, encourage and promote good relations, understanding, social inclusion and community cohesion to 70,000 beneficiaries between diverse groups across the equalities mandate through a community radio station and outreach workshops.	1	Scotland
NASHAYMAN— Part of Home Group	£17,013	To understand the factors that contribute to the development of successful 'mixed' communities in non inner-city areas.	1	Yorkshire & Humber
National Association of Citizens Advice Bureaux (Operational name = Citizens Advice)	£40,000	Improved Citizens Advice Bureaux worker understanding of Equality and Human Rights to use in local campaigns.	2	London
National Coalition Building Institute (NCBI) Lancashire	£35,000	To welcome newcomers to the District by developing a community listening service which will befriend and support newcomers; enable their fuller participation in the community and dispel myths and misinformation within the wider community.	1	North West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
National Council for One Parent Families Gingerbread	£35,000	To work directly with lone-parents in the City of Manchester who face social exclusion and disadvantage – focus being on lone-parents from BME communities. To build on the Confident Citizen training we are delivering to the Chinese and Somali communities and extend this to communities across Greater Manchester. The project will offer lone-parents opportunities for social interaction and access to OPF GB's telephone Helpline/Advice Service to meet their wider advice needs. An essential part of the project is that OPF GB will work with our partner organisations Wai Yin Chinese Women's Society and African Caribbean Mental Health Services on engaging employers in our work and the work of our partner organisations, with the view to engaging lone parents from BME communities, particularly the communities represented by our partners, in volunteering, work experience and employment opportunities.	1	London
NEAD (Norfolk Education & Action for Development)	£30,000	To promote peaceful coexistence, respect & understanding between new & established communities in Norfolk through a series of public events offering information, activities, arts workshops & performances suitable for all ages.	1	East of England
Newcastle Law Centre	£30,786	To provide an effective Legal Education Service for Advisors, Community Activists and Members of the Public, in all aspects of Discrimination Law, Human Rights and legal solutions. This Education will cover age, gender, disability, race, religion and belief, sexual orientation and gender reassignment and be available for those living or working in the North East of England.	1	North East
	£74,500	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following area: Tyne & Wear (extending the geographical area of coverage to Gateshead, South Tyneside and Sunderland.)	3	North East
Newport CAB	£35,000	To deliver training and raise awareness of rights in equalities and human rights for individuals from community organisations, advice organisations, schools and colleges, SMEs, religious organisations and discriminated against groups in South Wales.	2	Wales
	£76,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Newport and South Wales. (Note: casework that relate to LGBT issues may largely be handled in liaison with LGBT Excellence (Wales) Ltd who are funded for LGBT casework provision across Wales. Similarly, issues of race equality in Cardiff and Vale of Glamorgan will fall within the funded casework remit of Race Equality First.)	3	Wales
Norfolk and Norwich REC	£40,000	To coincide with the 60th anniversary of the UN Declaration of Human Rights - develop community resources to deliver an innovative equality and human rights youth programme, to increase awareness and promote community cohesion through an human rights based approach to multiple inequality and discrimination.	2	East of England
North East Lincolnshire LGBT Forum / Lead Body : The Grimsby Institute of Further & Higher Education (Trading)	£35,000	To sustain and develop the North East Lincolnshire LGBT Forum, enabling it to take a lead role in promoting the celebration of diversity, and influencing policy makers and service providers to take into account the needs of LGBT communities.	1	Yorkshire & Humber

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<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
North Kensington Law Centre	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Greater London including Brent, Ealing, Hammersmith and Fulham, Kensington and Chelsea and Westminster.	3	London
North of England Refugee Service	£37,500	To build stronger communities by bringing together local and refugee populations through community-based activities and events delivered in partnership with local organisations in areas with high levels of inter-community tension.	1	North East
North West Kent Racial Equality Council	£38,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: County of Kent – Dartford, Gravesend, Maidstone, Dover, Folkstone, Tunbridge wells, Ashford, Canterbury etc.	3	South East
North Yorkshire Black and Minority Ethnic Strategy Board	£17,800	To establish the North Yorkshire Black and Minority Strategy Board (NYBSB) as a fully- functioning independent organisation with its own legal status, associated / affiliated formally with key Third Sector organisations in North Yorkshire and to promote good race relations by redressing the current gap through establishing the NYBSB as the county-wide ‘voice’ for BME communities in North Yorkshire - by promoting the engagement of BME and migrant communities as equitable partners in this county-wide multi-agency panel set up to work in partnership with key organisations delivering on the government’s ‘race’ and cohesion agenda.	1	Yorkshire & Humber
Northamptonshire Racial Equality Council	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting Northamptonshire.	3	East Midlands
Northumberland Community Development Company	£35,000	Collaboration between diversity groups, and outreach development work to support new and emerging groups; developing a single equality focussed Network for Northumberland, trained and supported to strengthen its voice in new strategic infrastructure for equality, and to promote positive relations within communities.	1	North East
Nottingham and Nottinghamshire Racial Equality Council	£35,000	Develop a young person’s community cohesion strategy encompassing all six strands of equality (age, gender, disability, sexual orientation, faith and race) to compliment both Nottingham City Council and Nottinghamshire County Council existing community cohesion strategies.	1	East Midlands
Nottingham Law Centre	£37,500	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Employment under any of the Equality Enactments whilst living in, working in, or visiting Nottinghamshire and Derbyshire.	3	East Midlands
Oldham Race Equality Partnership	£45,000	To support two neighbourhoods in transition towards greater diversity, so that people from both the recipient and the expanding communities are engaged, re-assured and help each other to build a cohesive, diverse and participatory community.	1	North West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Open Clasp Theatre Company	£15,912	To engage a range of community groups as well as the general public in the North East of England to address prejudice, challenge stereotypes and raise awareness of inequality and discrimination (infringement of basic human rights) affecting: A.) women who identify as lesbians and are subject to discrimination due to homophobic and heterosexist views and / or due to other factors such as their appearance, disability, age or race; B.) victims of domestic violence; C.) people suffering from mental distress; and D.) people who are subject to bullying at school or in the workplace (includes homophobic bullying.)	2	North East
Out for Our Children	£39,878	To ensure that early years centres, nurseries, primary schools and parents have access to play and learning resources which reflect the lives of all children including those living in same sex or LGBT-parented households. Thereby creating an environment in schools where differences relating to sexuality are treated in the same way as racial and social difference, building attitudes among all pupils and teachers of understanding, tolerance and celebration.	1	London
Oxfordshire Racial Equality Council	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting Oxfordshire.	3	South East
Pakistan Community Association and Multicultural Advice Centre	£20,060	Provide a study support service which allows young Roma people to achieve their full potential and integrate with other ethnic minorities in the area.	1	Yorkshire & Humber
Peterborough REC	£35,000	Greater community cohesion through identifying and diffusing inter community youth conflict/tensions.	1	East Midlands
	£31,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Peterborough.	3	East Midlands
Plymouth and District Racial Equality Council	£35,000	To bring together a diverse group of BME and white women examining prejudice and its impact on individuals' lives; offering a range of learning opportunities where understanding of the difference and similarities within cultures and lifestyles can develop, creating common bonds, within the City of Plymouth.	1	South West
Positive Step Associates LTD	£35,000	To promote equality of opportunity and highlight human rights issues in the cultural and heritage sector by using a focus on the contributions of various minority communities to inform future policy in the cultural and heritage sector, through obtaining the involvement of young people to learn from the work of senior practitioners.	2	London
Powys Association of Voluntary Organisations	£40,000	To provide support for voluntary sector organisations in Powys to develop their skills and understanding of equalities and human rights, enabling them to develop and deliver services that effectively meet the needs of clients from all the equality mandates.	2	Wales
Preston & Western Lancashire Racial Equality Council	£27,215	Reduce the impact of Race Hate Crime by supporting the needs of victims. Also reducing the potential for racial harassment by engaging in multi-agency panels in order to concentrate resources in areas with high levels of race hate crime.	1	North West
	£75,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: the Greater Merseyside area.	3	North West

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<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Preston United Youth Development Programme	£37,700	To dispel myths that perpetuate racism and violence amongst young men and from different ethnic backgrounds in the North West, and to foster better relationships between geographical locations.	1	North West
Preston Women's Refuge	£27,702	As a specialist Domestic Violence Organisation, to provide a comprehensive Immigration Advice Service, across the whole of Lancashire, to victims of Domestic Violence, including support for clients at immigration appeal tribunals.	2	North West
PRIAE (Policy Institute on Ageing and Ethnicity)	£35,000	To promote and bring long term awareness of equality and the business benefits of employing an ethnically and age diverse workforce to senior managers of small and medium sized firms (SMEs) in the North area of the UK, resulting in improved employee equality, community cohesion of different ethnic groups, business performance, company diversity practices and limiting unlawful discrimination.	1	Yorkshire & Humber
Race Equality Action for Lewisham (REAL)	£40,000	'4 REAL!' Youth Community Engagement Project: To engage under-represented young people in developing equality initiatives designed to tackle obstacles to promoting good relations.	2	London
	£39,600	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: London Borough Lewisham.	3	London
Race Equality First	£34,932	Build links with organisations representing other equality and human rights issues, identify issues of common concern and develop joined up approaches to tackling those concerns of discrimination. The establishment of EHR network will enable all key partners to come together to share expertise, resources, and develop service delivery mechanism to enable victims of discrimination and hate crime to receive high quality one stop service ensuring high take up and success in elimination of discrimination and promoting equality of opportunity for all.	2	Wales
	£36,690	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Race Relation Act (RRA) (1976) whilst living in, working in, or visiting Cardiff & Vale of Glamorgan.	3	Wales
Race Equality Sandwell	£35,000	To allow comprehensive voice for the people of Sandwell to strengthen equality and human rights in Sandwell, which can be then implemented to help shape the development & delivery of mainstream policies and strategies in the areas of youth development, community cohesion, good inter-community relations.	1	West Midlands
Race On the Agenda (ROTA)	£35,000	To reduce the impact of hate crime by encouraging multi-agency partnerships between third sector organisations working to combat hate crime (e.g. mediation programmes, BAME organisations, victim support) and statutory bodies (e.g. Safer Neighbourhood Teams (SNTs), Police, Local Authorities, Probation.)	1	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
RADAR	£45,000	To promote the involvement of disabled people and people with long-term health conditions (especially from BME communities) in public life across Britain, by: i) Increasing the number and diversity of disabled people involved in leadership development programmes; ii) Improving understanding of how disabled people can successfully overcome barriers to reaching senior (public) positions, by collating disabled people's stories / experiences and disseminating learning; and iii) Widening the pool of disabled people interested in and well prepared for public roles, enabling disabled people with leadership aspirations to offer their expertise and experience directly to the people responsible for making public appointments to government departments and other public bodies. The project will be delivered in London and Glasgow.	1	London
RAISE- Regional Action and Involvement South East	£45,000	To utilize their toolkit to provide training sessions to enable different VCS representatives to acquire the skills to embed these principles within their operational practice and become equality champions and then host a South East regional celebration and consultation event bringing different equalities groups together to learn, network and consult on a regional equality, diversity and human rights network model and strategy.	1	South East
Ravensthorpe Community Centre	£35,000	Develop an understanding and promote good relations between young people from different backgrounds – i.e. different localities within Dewsbury and Mirfield; both male and female; from an ethnically diverse background; different faiths; and economically different backgrounds – by allowing them to come together as part of five mixed teams to plan and deliver community fundraising days / events with the help of a mentor.	1	Yorkshire & Humber
REEMAP	£35,000	To develop a BME Youth Voice in the West Yorkshire Sub Region as a vehicle to empower BME young people to influence local, regional, national and world politics.	1	Yorkshire & Humber
Refuge	£30,000	To raise awareness amongst young women of their human rights in relation to violence against women.	2	London
Refugee Action Kingston	£25,000	To develop a Cohesive Community centre in Kingston to provide learning-based interaction and links for over 50 refugees, asylum seekers or vulnerable migrants (defined as having similar needs to refugees, e.g. social isolation, trauma, mental health issues) from a range of backgrounds with a minimum of 15 RAK volunteers at any one time from the wider community, operating twice a week.	1	London
Refugees in Effective and Active Partnership (REAP)	£35,000	To improve awareness and increase positive attitudes and interaction amongst refugees, and other mainstream and voluntary service providers of the reality of multiple equalities issues faced by asylum-seekers and refugees eg. lesbian refugees, older refugees with HIV in West London.	1	London
Refugees Women's Association	£35,000	To provide training to women's organisations to develop and produce Equal Opportunities policy and effect its implementation, monitoring and evaluation & to develop understanding of Human Rights act and Citizenship.	2	London
Rethink (Operating name of the National Schizophrenia Fellowship)	£35,000	To work with local media in Kent to promote a greater awareness of equality and human rights issues, to ensure that issues of inequality and discrimination are reported fairly, and that stories that might damage good relations between local groups are publicly rebutted, by improved confidence of people affected by severe mental illness to challenge negative media coverage of severe mental illness, particularly in relation to violence stories.	2	South East

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Rights and Equality West Midlands	£30,000	To help individuals, groups and institutions to reduce incidents of racist, ethnic, religious, and homophobic conflict and lessen the appeal of extremism from both far-right electoral activity and violent religious fundamentalism.	1	West Midlands
Rights of Women	£39,553	To promote a wider awareness and understanding of the impact of violence against women and promote equality and human rights for disadvantaged women including BMER women in England and Wales.	2	London
Rochdale Law Centre	£78,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Rochdale, Oldham, Bury, Bolton (and to provide assistance along with Trafford Law Centre to Tameside REC in respect of Goods, Facilities and Services cases if requested.)	3	North West
Rotherham Ethnic Minority Alliance (REMA)	£35,000	REMA to improve community cohesion and pride by bringing together communities from different races, faiths, and other communities of interest (e.g. Disability and LGBT) to promote a shared sense of belonging in Rotherham.	1	Yorkshire & Humber
Royal Association for Deaf people (RAD)	£39,937	To address the barriers which prevent Deaf people from integrating successfully into their own community, accessing the services they need in order to live with maximum choice and independence and becoming involved in forums and consultations which influence policy, legislation and service provision in England and Wales.	1	East of England
	£39,980	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all of the Equality Enactments whilst living in, working in, or visiting Great Britain.	3	East of England
S.P.A.R.C	£35,000	To improve Gypsies and Travellers access to health care provision and related services in Tees Valley, and reduce the significant health inequalities experienced by older people, children, women and those with mental health issues within these communities.	1	North East
Salford CAB	£26,660	Developing and implementing an awareness strategy. Conference event to review best practice around equalities and rights – particular focus on building links with hard to reach communities.	1	North West
Saltley and Nechells Law Centre	£39,900	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Non-employment cases under any of the Equality Enactments whilst living in, working in, or visiting the City of Birmingham.	3	West Midlands
Save the Children UK	£39,930	To improve understanding of prejudice and diversity by marginalised young people (especially young Gypsy / Travellers) by holding workshops to promote and develop key skills.	1	Scotland
Scottish Association of Citizens Advice Bureaux (Known as Citizens Advice Scotland)	£30,342	To support Scottish citizens and residents in understanding their human rights, and in redressing discrimination they have experienced relating to employment and goods and services, by developing, publicizing and running a series of training sessions for CAB volunteers and other workers by March 2009. The training sessions will generate both the awareness and the skills necessary for identification and early resolution of discrimination and human rights issues. (Total number of advisers trained: 156 (plus cascaded 'Equitable service delivery' training within bureaux.))	1	Scotland

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Scottish Council for Voluntary Organisations (SCVO)	£35,000	20 BME woman, disabled woman and woman returners from community and voluntary organisations will have received higher level skills training in leadership, equalities and management. Through attendance at a transformational change and positive action programme the woman will have: Increased self-awareness of equalities issues including discrimination and exclusion; Improved self confidence in dealing with equalities issues; Increased potential to manage and lead within a professional capacity; Increased educational attainment by having a.) Gained a recognised certificate in Leadership and Management and b.) Gained direct experience of mentoring.	1	Scotland
Scottish Refugee Council	£35,000	Achieve better social cohesion, more effective refugee integration and better services for refugees in Glasgow and across Scotland by continuing the development of the National Refugee Community Development Strategy (NRCDS) – to be achieved by: A) Support to the Strategy Implementation Group (SIG) to monitor, resource and implement the strategy; B) Support grassroots involvement in the planning and delivery of the strategy at an operational level in Glasgow; C) Supporting partner community development practitioners; D) Developing the strategy beyond Glasgow; E) Making links across equalities strands.	1	Scotland
Scottish Union for Supported Employment (SUSE)	£35,000	To develop and provide equality and diversity training to employers, service providers and practitioners across Scotland. The training will be delivered as part of local / regional business diversity awards. These awards recognise best practice in the recruitment and retention of disabled / disadvantaged people across Scotland.	1	Scotland
SexYOUality	£30,000	To actively promote positive role models of lesbian, gay and bisexual young people to young people living in Cambridgeshire through developing and delivering a positive image campaign, alongside young lesbian, gay and bisexual people. This campaign will be shown in schools outside of the allocated curriculum time and backed up by an interactive workshop for both young people and professionals working in the local community.	2	East of England
Shaping Our Lives National User Network	£35,000	To further develop and actively support a diverse range of long term users of health and social care services to network, share experiences and consolidate a firm knowledge base, in order for service users from diverse backgrounds and understandings to recognise shared barriers to equality and full human rights, and thus move forward together to influence change and promote good relations among and between groups.	1	London
Sheffield Law Centre	£44,000	To provide an effective legal advice and representation service to people who have suffered discrimination under the Equality Enactments whilst living in, working in, or visiting the following areas: Sheffield and South Yorkshire.	3	Yorkshire & Humber
SID - Social Information	£24,708	To enable disabled individuals from ethnic minority backgrounds in Surrey to have full access to information and services that will enable them to live full and equal lives, and to improve and develop the capacity of existing outreach services working with ethnic minority groups in Surrey to provide information and advice on disability issues and services.	1	South East
Sikh Human Rights Group	£30,000	Promote understanding of importance of Sikh diversity issues to establish non-discriminatory working guidelines for Equality & HR officers in public authority and key equalities agencies in London supporting Sikh neighbourhoods. (using toolkit guide and training programme for promoting equality of opportunity for Sikh neighbourhoods in London.)	1	London

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Slough Race Equality Council	£36,700	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Slough, Windsor and Maidenhead.	3	South East
Soft Touch Arts	£18,800	Increased interaction and establishment of positive relations between unaccompanied minors who are refugees and asylum seekers, and local young people who are 'looked after' and / or living in supported housing in Leicester through involvement in arts and music activities.	1	East Midlands
South West London Law Centres	£78,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Wandsworth, Merton, Richmond, Kingston, Croydon, Sutton, Barnet, Haringey, Enfield, Islington and Camden.	3	London
Southall Community Alliance	£35,000	To increase the levels of positive contact for people from different racial groups in order to challenge racial stereotypes and overcome barriers of mistrust and cultural ignorance.	1	London
Southwark Day Centre for Asylum Seekers	£33,168	To increase understanding between asylum seekers, refugees and their neighbours, and to improve access / referral pathways to mainstream specialist services, which in return will lead to greater access & responsiveness to needs of hard to reach groups for mainstream providers.	1	London
Southwark Law Centre	£39,780	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Bromley, Lewisham, Southwark and Greenwich.	3	London
Spinal Injuries Association	£39,945	To become the means by which spinal cord injured (SCI) people have a voice by identifying and working to address the barriers faced by SCI people in accessing services that enable them to live independent, free and equal lives after paralysis in England and Wales.	1	South East
Sporting Equals	£30,000	Increased awareness and understanding of equality and human rights concerns and good practice in the delivery of sport and active recreation by third, public and private sector organisations across England.	2	West Midlands
Stafforce Personnel Limited	£25,000	To provide an effective development programme for employers to help them understand how to create a working environment, in which they can reap the benefits of recruiting and developing a diverse workforce, and in which all staff feel safe and respected irrelevant of their sexual identity, age, disability, religion and belief, gender or race.	2	Yorkshire & Humber
Stevenage CAB	£30,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Hertfordshire.	3	East of England
Stoke Community Culture group	£50,000	Increased employment among people from different groups, particularly BME groups, through the provision of Employment and Training opportunities and the chance to meet and learn about each other and break barriers to form common bonds.	1	West Midlands
Stonewall	£34,000	To provide solutions and examples of best practice on how organisations perceive and respond to conflicts between lesbian and gay people, and people of faith. To disseminate these solutions and examples of best practice to equality and diversity and service delivery practitioners in an easy to read report.	1	London

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Stonewall Cymru	£38,600	A scoping and research exercise to develop connections with people who are both Lesbian, Gay or Bisexual (LGB) and have mental health issues and identify their key issues and concerns.	1	Wales
Stonewall Scotland	£40,000	To produce research into LGBT Migration patterns in Scotland that furthers the understanding of why: A) LGBT people leave Scotland and B) Why LGBT people leave rural Scotland. The research will establish a clear benchmark to measure against in the future and help us identify what aspects of service provision need to be improved for LGBT users.	2	Scotland
Stop Hate UK	£35,000	Improved the quality of life for marginalised communities in Richmond Hill, Burmantofts and Beeston. Raised awareness within the indigenous communities of each area of diversity and hate crime.	1	Yorkshire & Humber
Support Against Racist Incidents	£40,000	To resolve and prevent prejudice-based and hate-motivated crime and / or inter-community conflict, and to promote inclusive neighbourhoods by providing community safety advice, assessment and installations to BME or BME-linked individuals, families, homes, places of worship, community services and businesses referred to S.A.R.I. from Bristol, Bath and North East Somerset, South Gloucestershire and North Somerset.	1	South West
Surrey Law Centre	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Surrey.	3	South East
Survivor's Network	£19,733	To develop and extend current Survivors' Network services to make them relevant and accessible to young women (16 – 25) who have suffered sexual abuse, while building alliances within the Youth support services to provide a holistic and joined-up service for young people experiencing emotional distress in Brighton and Hove.	2	South East
Sutton Borough Citizens Advice Bureau	£30,000	To improve work skills and confidence of 12 – 20 people from groups below and to find work / formal training placements for them within local business community, public sector and voluntary sector in Sutton: black prisoners and ex offenders; women prisoners and ex offenders; young people not in education or employment; people with disabilities.	1	London
Swansea Bay REC	£31,684	Reduce the potential and impact of hate (race and homophobic) crime and discrimination by establishing an effective multi-agency panel to concentrate resources in the areas of Swansea and Neath Port Talbot where the estimated numbers of hate crime is high, and including advice to employers to help prevent discrimination and harassment in workplace.	1	Wales
Tameside Racial Equality Council Ltd. Operating as The Equality and Diversity Centre	£78,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Tameside, Stockport and Manchester. (Should receive support from Trafford Law Centre and Rochdale Law Centre in regards to non-employment discrimination complaints.)	3	North West
Telford Race, Equality and Diversity Partnership	£27,994	Increased awareness of the impact of urban and rural hate crime and harassment across the different equality strands among local communities and partner agencies across Telford and Wrekin.	1	West Midlands

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
The Anne Frank Trust UK	£40,000	Improved awareness and understanding among all communities in Bradford and the surrounding area of the importance of individual human rights as a means of reducing racism, hate crime and community tension through the delivery of a major Anne Frank Festival for Human Rights, a series of educational and arts based projects for children and young people, and the production of a bespoke human rights educational resource pack for use in schools in Bradford.	2	Yorkshire & Humber
The Black and Minority Ethnic Young People's Project (BMEYPP)	£35,000	To continue to provide safe spaces for black and minority ethnic young people in order to reduce their feelings of isolation and increase their participation in community activities in Brighton and Hove.	1	South East
The British Refugee Council	£35,000	To promote better relations between asylum seekers and refugees and the wider community through a Talks programme that facilitates positive, interactive contact, and increases understanding of the asylum system, the experiences and motives of asylum seekers, and the impact of asylum seekers and refugees on local communities.	1	London
The Haven Wolverhampton	£36,419	Asian and African Caribbean women affected by Domestic Abuse in the city of Wolverhampton are supported to make independent choices about whether and how to proceed with charges and cases against violations of their human rights and service is developed as part of a multi-agency approach to delivering a co-ordinated response to BME DV survivors.	1	West Midlands
The Lesbian and Gay Foundation	£39,818	Build up, strengthen and further develop links with and between North West organisations working across the equality mandates; ensuring that the needs of LGB people within these groups are fully acknowledged, included and recognised.	1	North West
The Maximum Life Youth Project	£6,800	To bring together culturally and geographically diverse groups of young people and break down the stereotyping which leads to hostility and suspicion between these and other groups, thus facilitating improved community cohesion.	1	Yorkshire & Humber
The NIA Project	£35,000	To raise awareness of difficulties faced by disabled women who have experienced gender violence accessing the justice system, by delivering training to relevant criminal and civil justice organisations. To provide an advocacy and support service for disabled women pan-London, who are survivors of gender violence and are involved in criminal and civil court proceedings.	1	London
The Prince's Trust	£25,182	Increased tolerance, understanding, and integration among 140 young people (14-25 years old) from refugee / asylum, immigrant and local established communities in Glasgow, by participating in creative and challenging activities and discussions.	1	London
The Race Equality Council for Gloucestershire (known as 'GlosREC')	£35,000	1) To facilitate access to public services for Migrant Workers informing them of services. 2) To improve access to public services including creation of permanent sites for caravans for Travelling Community and better access to education for their children: improved relationship between travelling and settled community. 3) To create opportunities for people of different cultures to meet and learn about each other by experiencing art, culture and music of different traditions: promote an appreciation of the benefits of cultural diversity, especially in Cheltenham area.	1	South West

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
The Runnymede Trust	£25,000	18 young people will have developed a greater understanding of belonging, community (including citizenship), diversity and equality using film and local history, and they will be more confident members of their communities and active citizens within them; 18 young people will have acquired film making skills; and 300 (minimum) teachers and youth workers will be better equipped to enable and foster discussion in formal and informal education settings about community, diversity and equality so that many more young people will be engaged in meaningful debate and discussion on these crucial issues.	1	London
The Rural Media Company	£35,000	To work with local authority Planning and Diversity officers, and Gypsy, Roma and Traveller groups (GRT) (including women, children and the elderly) in the West Midlands, bringing them together to develop a DVD Resource to address the racial discrimination issues in local communities around Traveller homelessness and lack of stopping sites.	1	West Midlands
The Scottish Inter Faith Council	£40,000	To produce a resource of teachings, writings, and attitudes from the 10 major Religions and Belief communities in Scotland that will demonstrate their commonality in promoting good relations between each other, and to use this as a tool to raise awareness in women and young people of how their Religion or Belief can lead to increased community cohesion, integration, and harmony.	1	Scotland
The Young Foundation	£30,000	To build the leadership skills of young people from ethnic and religious minority communities and white working class communities, to help increase their participation and involvement in politics and public decision-making processes in the London Boroughs of Tower Hamlets, Newham and Dagenham.	1	London
The Young Vic Theatre	£30,000	To address the underrepresentation of young people from diverse ethnic and social backgrounds working in the arts, through providing a programme of vocational skills development for young people aged 18 – 25 living in Lambeth and Southwark.	1	London
Thurrock Citizens Advice Bureau	£22,923	To develop and implement a promotional / PR strategy with our local diversity partners to increase the capacity of, knowledge of, and access to support and advice on equality, human rights and discrimination in Thurrock.	2	East of England
Tower Hamlets Law Centre	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: Tower Hamlets, Hackney, Redbridge, Barking & Dagenham and Havering.	3	London
Trafford Law Centre	£78,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Trafford, Salford and Wigan. (To provide assistance, along with Rochdale Law Centre, to Tameside Racial Equality Council on non-employment discrimination complaints. To provide assistance to Cheshire, Halton and Warrington Racial Equality Council on non-employment discrimination complaints that are NOT Race or Religion & Belief complaints.)	3	North West
Trident Housing Association	£30,000	To increase knowledge of people with learning disabilities among people and agencies that we support across rural and urban areas of Shropshire and Birmingham with the aim of breaking down stereotypes and to reducing discrimination and harassment of service users, staff and property.	1	West Midlands

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
UNITE Limited	£35,000	To deliver dispute resolution training to young people and parents (inc guardians and carers) to reduce the number of hate crime and bullying incidents in the school community, thus improving and building good peer and school community relations.	1	North East
United Response	£39,326	To provide learning disability awareness training, delivered by people with a learning disability, to employers and employees of non-public bodies sector organisations in Trafford to promote understanding and raise awareness between people from these different groups, and thus reduce discrimination and harassment often experienced by people with learning disabilities, and improve employment opportunities for people with learning disabilities and equip them with new skills to combat discrimination.	1	London
Urban Voice UK	£40,000	To develop an environment where 16 – 25 year olds disadvantaged by race and associated socio-economic issues (85% BAME) can come together to express their issues and voice their needs, in order to be able to address barriers and be appropriately signposted to suitable services in Wandsworth, Lambeth and Southwark.	1	London
Vale Royal CAB Ltd	£40,000	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under the Equality Enactments whilst living in, working in, or visiting the following areas: Cheshire.	3	North West
Vision Sense	£14,460	To map and reduce hate crime against disabled and Deaf people in the North East through user-led interventions to promote good relations with one hundred and thirty people from diverse communities of identity, and a research report, before March 2009.	1	North East
Voice UK	£30,000	To reduce the impact of hate crime on people with disabilities through: expanding the capacity of the helpline; improved marketing of the help line service; systematic analysis and monitoring of cases dealt with; and utilising data gathered to influence policy, public opinion and guidance. The helpline will develop from supporting victims of hate crime with learning disabilities to supporting all vulnerable victims with disabilities.	1	East Midlands
Voscur	£35,000	To improve dialogue, integration and cohesion within and between Equalities groups (women - refugee women, parents and carers, Somali parents and Lone Parents, LGB communities, disabled people, BME groups, older and young people, faith groups) in Bristol, and increase joint-working, networking, representation on Voluntary and Community Sector (VCS) boards, neighborhood governance structures and Bristol Partnership.	1	South West
Walsall Domestic Violence Forum	£39,921	Improved access to a range of voluntary and statutory services – particularly Housing, Social Care, Health and specialist Domestic Abuse services – among hard to reach groups (including: South Asians, Iraqis, East Europeans and Women.) Ensuring that all victims of Domestic Abuse are able to receive support appropriate to their individual needs, while addressing their human right to live free from fear and abuse.	2	West Midlands
Warwickshire Race Equality Partnership (WREP)	£35,000	A.) To increase the motivation and participation of disabled people, from within excluded and disadvantaged sections of the community in Warwickshire, within local decision making processes. B.) To identify the needs and aspirations of the disabled people from the excluded and disadvantaged communities, and to work with local agencies across Warwickshire in addressing these issues.	1	West Midlands

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
West of Scotland Racial Equality Council Limited	£35,000	To empower individuals from ethnic minority communities to access more direct services, by providing outreach information, advice, guidance, and signposting services that respond to and promote the needs of new groups such as migrant communities. Greater understanding about equalities issues with key partners and stakeholders across the West of Scotland.	1	Scotland
West Wiltshire Wide Citizens Advice Bureau	£14,344	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under any of the Equality Enactments whilst living in, working in, or visiting the following areas: West Wiltshire.	3	South West
Wiltshire Racial Equality Council	£32,000	To develop a cohesive framework to represent the six strands of equalities which will seek to influence policy and strategy and deliver services appropriate to need across the County of Wiltshire.	2	South West
Wolverhampton Citizens Advice Bureau (in partnership)	£39,600	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Employment and Non- employment cases under any of the Equality Enactments whilst living in, working in, or visiting the City of Wolverhampton.	3	West Midlands
Women Acting In Today's Society (WAITS)	£30,000	To ensure that Public Sector service providers are better able to deliver their services to BME women and children; To enable Public Sector service providers and Faith and Community Groups to offer a choice of specialist DA services to BME women and children, and signpost them effectively in Birmingham and surrounding areas; and to ensure that BME DA issues are included in Policy debates and Service Providers agendas, Nationally and in addition to Birmingham and surrounding areas.	1	West Midlands
Women's Design Service	£30,000	To enable women from refugee and asylum seeking communities in London Borough of Islington to gain links with other communities, greater understanding of their neighbourhoods, and reduced fear of crime and harassment.	1	London
Worcester Citizen Advice Bureau	£9,735	Increased awareness of legal rights amongst migrant and BME workers in South Worcestershire. Increased awareness of advice services in the areas of employment and discrimination for the whole community, through positive marketing and encouraging people to get involved with our projects. Increased recognition of the importance of equal opportunities within local businesses to reduce discrimination against migrant of BME workers (i.e those not of White origin.)	1	West Midlands
	£19,670	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment in Employment under the Race Relations Act 1976 (as amended) whilst living in, working in, or visiting the South Worcestershire.	3	West Midlands
Worcestershire Racial Equality Council	£35,000	Young people from different ethnic / religious and other backgrounds will develop ideas to increase integration and promote a feeling of belonging through discussions and workshops to unlearn the prejudices identified in the six factors which serve as barriers to integration and agree a programme of activities to combat these barriers.	1	West Midlands
Workers' Educational Association (WEA), West Midlands Region	£30,000	To address barriers that prevent adults from settled minority ethnic communities and new migrant communities from actively participating in public life within local areas of Coventry, Sandwell and Stoke-on-Trent (West Midlands) through free community based English language skills services designed to promote equality, interaction and participation.	1	West Midlands

Marriage (Same Sex Couples) Bill

<i>Organisation</i>	<i>Award</i>	<i>Outcomes</i>	<i>Priority Area</i>	<i>Region</i>
Working Families	£39,200	To provide an effective legal advice and representation service for people who have suffered gender discrimination or harassment while living in, working in, or visiting Great Britain, specifically in those areas where local representation is low, by adding casework to the existing free legal helpline provided by Working Families.	3	London
Yare Valley & District CAB	£38,300	To provide an effective legal advice and representation service to people who have suffered discrimination or harassment under all the Equality Enactments whilst living in, working in, or visiting the following areas: Great Yarmouth.	3	East of England
Ynys Mon Citizens Advice Bureau	£35,000	Reduced Isolation and provide the opportunity to better access the service available for migrant workers and Black minority ethnic groups and their families of all ages, race, gender, religion or belief and sexual orientation.	1	Wales
YouthNet	£35,000	To promote behaviour change by creating a positive peer culture and engaging young people in a debate about identity and relationships with others in a safe and secure online forum, and to act as an incentive to transform their decision-making in the face of real-life challenges which test their attitudes and relationships with others in the community.	1	London
YWCA England & Wales	£22,186	To enable Polish women migrants to understand, participate in, and integrate with other cultures in Doncaster, and reduce language and cultural barriers.	1	Yorkshire & Humber
Zimbabwe Women's Resource Centre	£35,000	To eliminate negative stereotypes about black youth through educating youth from different cultures about Zimbabwe and Southern Africa using themed poetry and drama workshops, and at the same time assisting integration process and race equality awareness of Zimbabwean youth in Suffolk.	1	East of England

STRATEGIC FUNDING PROGRAMME (LIST OF SUCCESSFUL APPLICANTS)

<i>Name of Delivery Organisation</i>	<i>Priority Area</i>	<i>Region/ Country</i>	<i>Total Maximum Award</i>
Barking and Dagenham Racial Equality Council	Good Relations	London	£210,000
Bonny Downs Community Association	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£116,000
Breakthrough UK Ltd	Providing guidance, advice and advocacy services; infrastructure development and capacity building	North West	£140,000
Brent Mencap	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£210,000
Bristol Next Link Domestic Abuse Services	Providing guidance, advice and advocacy services; infrastructure development and capacity building	South West	£115,422
British Institute of Human Rights	Providing guidance, advice and advocacy services; infrastructure development and capacity building	UK	£258,319
Cambridge Ethnic Community Forum (CECF)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Of England	£187,530
Cardiff Gypsy & Traveller Project	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Wales	£114,000
Cardiff Women's Aid	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Wales	£120,000
CHANGE	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Yorkshire and Humber	£250,000
Children's Rights Alliance for England (CRAE)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	UK	£200,000
Conflict and Change	Good Relations	London	£191,971

<i>Name of Delivery Organisation</i>	<i>Priority Area</i>	<i>Region/ Country</i>	<i>Total Maximum Award</i>
Coventry Rape and Sexual Abuse Centre (CRASAC)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	West Midlands	£150,000
Darlington Association on Disability	Providing guidance, advice and advocacy services; infrastructure development and capacity building	North East	£210,000
'Derbyshire Friend' - Lesbian, Gay, Bisexual & Transgender (LGB&T) Specialist Support and Advocacy Services.	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Midlands	£393,120
DIAL Peterborough	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Of England	£147,881
Disability Action Waltham Forest	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£150,000
Disability Hackney Ltd	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£300,000
EACH (Ethnic Alcohol Counselling in Hounslow)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£120,000
Eclectic Productions UK Ltd.	Good Relations	London	£165,000
Engender	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Scotland	£100,000
Equality Network	Good Relations	Scotland	£100,000
European Dialogue	Providing guidance, advice and advocacy services; infrastructure development and capacity building	UK	£256,000
Families Need Fathers	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Scotland	£120,000
Family Matters	Providing guidance, advice and advocacy services; infrastructure development and capacity building	South East	£100,000
Friends, Families and Travellers	Providing guidance, advice and advocacy services; infrastructure development and capacity building	England	£101,632
Gendered Intelligence	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£50,000
Glasgow Disability Alliance	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Scotland	£225,565
Grapevine (Coventry and Warwickshire) Ltd	Providing guidance, advice and advocacy services; infrastructure development and capacity building	West Midlands	£102,000
Human Rights & Equalities Charnwood (HR&EC)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Midlands	£209,100
Kick It Out	Good Relations	England	£228,111
Kingsway Health & Wellbeing Centre	Good Relations	Scotland	£85,110
Leeds Gypsy and Traveller Exchange (GATE)	Good Relations	Yorkshire and Humber	£150,000
LGBT Centre for Health and Wellbeing (LGBT Healthy Living Centre)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Scotland	£85,000
Lincolnshire YMCA	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Midlands	£222,534
Living Options Devon	Providing guidance, advice and advocacy services; infrastructure development and capacity building	South West	£351,306
Migrant and Refugee Communities Forum (MRCF)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£91,297
National Youth Theatre of Great Britain (NYT)	Good Relations	West Midlands	£125,000
Nottingham & Nottinghamshire Council for Equalities and Human Rights (NNCEHR) formally known as (Nottingham & Nottinghamshire Racial Equality Council - NNREC)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Midlands	£127,371

<i>Name of Delivery Organisation</i>	<i>Priority Area</i>	<i>Region/ Country</i>	<i>Total Maximum Award</i>
Nottingham Playhouse Trust Limited	Good Relations	East Midlands	£45,000
Open Clasp Theatre Company	Good Relations	North East	£47,935
RCT People First	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Wales	£34,450
Sefton Council for Voluntary Services	Providing guidance, advice and advocacy services; infrastructure development and capacity building	North West	£230,000
SeVA (Sexual Violence Alliance)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	East Of England	£144,000
Sheffield Domestic Abuse Forum	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Yorkshire and Humber	£200,000
Sheffield Methodist District	Good Relations	Yorkshire and Humber	£150,000
Show Racism the Red Card	Good Relations	UK	£257,351
Solace Women's Aid	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£138,000
SPAN Study Centre - Single Parent Action Network	Providing guidance, advice and advocacy services; infrastructure development and capacity building	South West	£110,000
Stonewall Equality	Providing guidance, advice and advocacy services; infrastructure development and capacity building	England	£147,812
The Brigstowe Project	Providing guidance, advice and advocacy services; infrastructure development and capacity building	South West	£150,000
The Lesbian & Gay Foundation (LGF)	Good Relations	North West	£264,789
The Rape & Sexual Abuse Counselling Centre	Providing guidance, advice and advocacy services; infrastructure development and capacity building	North East	£139,655
The Runnymede Trust	Good Relations	England	£210,000
The Rural Media Company	Good Relations	West Midlands	£124,000
The School for Social Entrepreneurs	Providing guidance, advice and advocacy services; infrastructure development and capacity building	London	£240,000
Torfaen Women's Aid	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Wales	£185,000
Tyneside Rape Crisis Centre (TRCC)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	North East	£131,973
Victim Support Cymru	Providing guidance, advice and advocacy services; infrastructure development and capacity building	Wales	£80,000
Walsall Domestic Violence Forum Ltd (WDVF)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	West Midlands	£100,000
Women in Prison (WIP)	Providing guidance, advice and advocacy services; infrastructure development and capacity building	England	£280,300
TOTAL			£9,989,534

March 2013

Memorandum submitted by The Lesbian & Gay Foundation's (MB 100)

INTRODUCTION

1. The Lesbian & Gay Foundation (www.lgf.org.uk) is a vibrant charity committed to achieving more positive outcomes for LGB&T people, with a wide portfolio of well-established services and new initiatives. The LGF is also the lead organisation of the Department of Health funded National LGB&T Partnership.

2. The Lesbian and Gay Foundation is based in Manchester, and supports over 40,000 lesbian, gay, bisexual and trans (LGB&T) people each year. In addition to a wide range of health and advocacy services, it also undertakes research, information provision and policy campaigning on a national scale. As a result, the Lesbian & Gay Foundation provides more direct services and resources to more LGB&T people than any other organisation of its kind in the UK. The LGF is reported by service users to be one of the first points of contact for them when

they have been at a crisis point in their lives. We campaign for a fair and equal society where all lesbian, gay and bisexual people can achieve their full potential, and our mission is: 'Ending Homophobia, Empowering People'.

SUPPORT FROM THE LGB&T COMMUNITY

3. The proposed legislation in the Marriage (Same Sex Couples) Bill is of significant legal, social and cultural importance to the LGB&T community. Existing civil partnership legislation allows same sex couples to have a legal union, but denies them the symbolic status of marriage. While not all same sex couples will want to marry, the LGF strongly believes that all people should have equal access to marriage, whatever their sexual orientation.

4. The LGF notes that discussion of the Bill sometimes refers to 'gay marriage' and 'straight marriage'; we would like to emphasise that the correct terms are same sex and opposite marriage, which are fully inclusive of bisexual and trans people who may be in an opposite sex relationship but still identify as members of the LGB&T community.

5. The LGF has gathered comments from same sex couples explaining why the differences between civil partnerships marriage are important to them, demonstrating that it is not just the legal differences that matter, but the social differences too. A selection of comments is below:

6. David & Darren: *"Full marriage is important to us. It's simple, we both believe in equality and our right to have the same choices as anyone else. We feel that it is extremely important for us to be seen as equal in the law."*

7. Kath & Christine: *"It's an awkward thing to say 'civil partnered', I just automatically say I'm married. We're trying to teach our children tolerance and not to discriminate against anybody at a time where there is discrimination against people wanting to marry each other because they love each other."*

8. Rob & Richard: *"Like our parents, we too want to be able to say that we 'are married.'"*

9. Sian & Sarah: *"Being civilly partnered means I immediately have to out myself, and so does my family. It makes you feel 'different' and 'other'. I wanted to get married like my sisters"*

10. Nick & Sarah: *"We want to be married like proper equals to every other married couple. Civil partnerships do not seem to be taken as seriously to the rest of the world as marriage. To the individual having the partnership it can feel like it is a second class service. I think it contributed to homophobia as it's not accepted and not equal. If we could get married, then being lesbian or gay would be seen as more 'normal' and there would be less discrimination over time"*

11. Martin & Daniel: *"My brother will soon be a married man, just as my father was a married man, and my grandfathers before him. If Dan and I had a civil partnership under current legislation, I would not be able to say the same about myself. What would I be? 'Partnered'? What would my marital status be? 'Living as if married'?"*

SUPPORT FROM THE WIDER COMMUNITY

12. The LGF is clear that the legislation proposed in the Marriage (Same Sex Couples) Bill is not about gay rights, or about 'straight' couples vs. 'gay' couples. Across society, people are ready for this change in legislation and see no need to perpetuate the difference in legal unions available to same-sex and opposite sex couples.

13. Successive polls amongst the general public since 2004 have shown that the majority support same sex marriage.³¹⁴ YouGov's latest poll shows 55% of people support the Bill.³¹⁵

14. The LGF has gathered comments from opposite sex couples explaining why the Marriage (Same Sex Couples) Bill is important to them. This demonstrates that equal civil marriage is important not just to those who are in same sex couples, but is part of the wider issue of equal rights for all.

15. Sarah & Chris: *I want my gay friends and family to have the same rights as I do. To me, it's a no brainer.*

16. Claire & Rob: *I see no difference between my relationship with my husband, and my friends' relationships with their same sex partners.*

17. Caroline & Scott: *In light of the fact that same-sex couples still cannot get married I view my ability to do this as a privilege. Denying same-sex couples the ability to have their love and commitment recognised as a 'marriage' reinforces the damaging idea that their relationships are less valid than mine.*

LOVE EQUAL MARRIAGE CAMPAIGN

18. Since the announcement of the Marriage (Same Sex Couples) Bill in early December 2012, the LGF has run a *Love Equal Marriage* campaign to encourage discussion of the bill and raise awareness of how people can show their support for it. In the course of the campaign so far, over 1700 postcards have been distributed to members of the public wishing to write to their MP asking them to support the bill.

³¹⁴ House of Commons Library. *Marriage (Same Sex Couples) Bill (Bill No 126 of 2012–13) Research Paper 13/08*. 2013.

³¹⁵ YouGov. *YouGov/Sunday Times Survey Results Fieldwork: 31st January—1st February 2013*. 2013.

19. During February, the LGF outreach team visited the ten boroughs of Greater Manchester talking to people about equal marriage. Over the 4 day period, the team spoke to over 750 people, around 96% of whom were positive about same sex marriage. People could have their photos taken to pledge their support for the bill; in total, 218 photos were taken of individuals, couples and groups. Photos from the roadshow can be viewed here: <http://www.lgf.org.uk/news-articles/in-pictures-love-equal-marriage-roadshow>.

EQUAL VALUE

20. Successive polls have shown that young people are more likely to support same sex marriage.³¹⁶ However, evidence shows that homophobia is still rife in UK schools³¹⁷, and several high-profile homophobic murders in recent years have involved young people still in or just out of the education system. The LGF believes that the proposed legislation would contribute to social change in terms of positive perceptions of LGB&T people and reduced homophobia.

21. Legislating for marriage equality between same sex and opposite sex couples would send out a strong message about the acceptability of same sex relationships, and the equal value placed on these relationships with opposite sex relationships by society.

March 2013

Memorandum submitted by UNISON (MB 101)

1 ABOUT UNISON

1.1 UNISON is the UK's largest public service union with more than 1.3 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers, working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. Over 70% of our members are women; many are low paid or work part time.

1.2 The issue of marriage equality is important to UNISON, impacting on our members at work and on society as a whole.

1.3 UNISON has a long and proud history of work for sexual orientation and transgender equality. A significant proportion of our members are themselves lesbian, gay, bisexual and transgender and there is a very active group of LGBT members organised within the union. All our members deliver public services to LGBT people.

1.4 UNISON is the trade union for registrars: our members currently conduct civil partnerships and mixed sex marriages.

2 SUMMARY OF SUBMISSION

2.1 UNISON is strongly in favour of full equality in marriage and civil partnership and welcomes the Marriage (Same Sex Couples) Bill as an important step forwards. It matters for the individuals concerned but it has far wider ramifications in the message it sends about LGBT equality.

2.2 However, UNISON has two particular concerns about the Bill as currently framed. First, UNISON strongly regrets the proposal to treat same sex marriages like civil partnerships—rather than like mixed sex marriages—for the purposes of survivor's pensions. Pensions inequality is a long-standing injustice which must not be allowed to continue.

2.3 Secondly, UNISON believes that civil partnership, like marriage, should be open to all couples. Only this represents equality.

2.4 UNISON agrees that there should be no opt-out in the bill for civil registrars.

3 CONTEXT

3.1 UNISON is a trade union committed to equality for all: we aim to combat all forms of prejudice and discrimination. Although we have made progress, lesbian, gay, bisexual and transgender people continue to experience widespread prejudice and discrimination, personal and institutional.

3.2 The current bar on marriage for same sex couples is a cornerstone of institutional discrimination. It perpetuates homophobia, reinforcing the notion that same sex couples are not a real family and are inferior. Separate is definitely not equal. It impacts on the individual partners, on other dependent family members and sends ripples out through society.

3.3 Further, there is an urgent need to right the wrong of transgender people having to end their marriage or civil partnership in order to gain gender recognition.

³¹⁶ House of Commons Library. *Marriage (Same Sex Couples) Bill (Bill No 126 of 2012-13) Research Paper 13/08*. 2013.

³¹⁷ Guasp, April. *The School Report*. Stonewall, 2012.

4. SURVIVOR PENSIONS

4.1 For many years, UNISON has called for the right for workers to leave survivor pension benefits to a same sex partner.

4.2 We expressed our concerns about this issue in the strongest terms at the time of the Employment Equality (Sexual Orientation) Regulations 2003, which included an exemption for benefits related to marital status. Indeed, UNISON was one of the parties in the Judicial Review of the Regulations, *Amicus v Secretary of State for Trade and Industry* [2004].

4.3 Although this was resolved for future couples by the introduction of civil partnership, a significant number of people in civil partnerships get much smaller survivor's pensions than they would if they were in a mixed sex marriage. This is because as a statutory minimum, civil partner survivor's pension benefits only accrue on service since 5 December 2005, the day civil partnership came into force.

4.4 We therefore welcome the recent ET judgment in *Walker v Innospec Ltd* [2012]. On his death, Mr Walker's civil partner would receive an annual survivor's pension of around £500. If Mr Walker was married to a woman, his widow would receive around £41,000. The judge found the exception in the Equality Act 2010 which limits the retrospectivity of the requirement to provide the same benefits to civil partners and married couple to be incompatible with the EU Framework Employment Equality Directive 200/78, as interpreted by the CJEU in *Maruko* [2008] and *Roemer* [2011].

4.5 Rather than this wrong finally being righted, we are extremely concerned that the Marriage (Same Sex Couples) Bill would amend the Equality Act 2010 to extend the exception to married same-sex couples.

4.6 This will have a particularly devastating impact on married couples where one spouse obtains gender recognition, turning their mixed sex marriage into a same sex marriage. The effect of the current Bill would be that one spouse would lose a large part of their survivor's pension overnight.

4.7 We strongly urge that the opportunity to end this injustice is not missed.

4.8 We therefore call for an amendment to the Bill to *repeal* paragraph 18(1) of Schedule 9 to the Equality Act 2010, rather than to amend this paragraph to exclude same sex spouses.

4.9 The actual cost to pension schemes would not be burdensome as this affects a small and diminishing number of people and because two thirds of schemes already pay equal survivor benefits voluntarily. Further, the cost would be too small to move an actuarial assumption. There is not any distinction made between spouses and civil partners in the way valuations are usually constructed. Currently a civil partner's dependant's pension on pre 2005 service is costed even if a scheme does not provide that benefit.

4.10 So there is little or no impact on schemes, but the impact on the individuals concerned is substantial.

5 CIVIL PARTNERSHIP

5.1 UNISON believes that civil partnership should be opened up to opposite sex couples. This would end the stigma of an institution for same sex couples only; remove the fact that declaring a civil partnership is effectively a declaration of sexual orientation; resolve the problem that a transgender person in a civil partnership would still have to end their civil partnership in order to seek full gender recognition if they do not wish to convert their civil partnership into a marriage; and meet the needs of opposite sex couples who want to register their relationship but do not want a marriage.

5.2 UNISON believes this is a simple matter of equality and there is no good reason to fail to take this step in the current Bill.

6 CIVIL REGISTRARS

6.1 UNISON members deliver public services—including the public service of registering civil marriages and civil partnerships.

6.2 We are aware that there have been some calls for an opt-out in the Bill for registrars who do not wish to conduct same sex marriages because of their personal beliefs.

6.3 UNISON strongly believes that there should be no such opt-out in the Bill. Registration of lawful marriages is a public function that must be delivered without discrimination against people with a protected characteristic.

6.5 A personal belief about same sex marriage cannot justify refusing to provide a public service.

6.4 The experience of our civil registrar members is that such a refusal not only impacts on those wishing to register a civil partnership. It impacts on the dignity at work of other civil registrars—including those who are themselves LGBT. It is incompatible with the public service aims of equality and non-discrimination.

6.6 UNISON welcomed the European Court of Human Rights ruling in *Eweida and Others v. United Kingdom* that settled this matter—that preventing sexual orientation discrimination is an important and legitimate purpose that justifies restrictions on expression of religious belief.

7 CONCLUSION

7.1 The introduction of same sex marriage is an important step forwards in equality for LGBT people and in combating the homophobic, biphobic and transphobic prejudice and discrimination which continue to blight the lives of individuals and damage our society.

7.2 UNISON welcomes the Marriage (Same Sex Couples) Bill and looks forward to its passage into law.

7.3 However UNISON wishes to see two main amendments. The first is to provide full equality in survivor's pension benefits so bereaved same sex spouses received exactly the same as they would if married to a different sex partner. This issue is of extreme importance to UNISON and to our members. Secondly, UNISON believes civil partnership should be available to all couples as a simple matter of equality.

7.4 UNISON is concerned by attempts to amend the bill to provide opt-outs in public service provision for those who are opposed to same sex marriage. In particular, UNISON believes it is essential that there is no discrimination in the provision of civil registrar services, but this principle extends to all public service.

March 2013

Memorandum submitted by Dr Peter G. May (MB 102)

MARRIAGE (SAME SEX COUPLES) BILL AND PUBLIC HEALTH

Summary.

The only medical submission to the Government's consultation on Equal Marriage in 2012 came from the Royal College of Psychiatrists. This has not provided a balanced discussion of the Public Health issues at stake. Their contention that mental health problems in the LGB community can be improved by introducing Equal Marriage as a public health strategy is founded on irrelevant and ambiguous research. Furthermore, they ignore the causes of mental ill health problems that stem from lifestyle factors, which General Practitioners are in a much better position to observe.

The author, Dr Peter May MRCGP has 30 yrs of experience in urban General Practice in Southampton. He is now retired.

1. The main academic specialties in the Royal College of Psychiatrists are represented by Faculties and Sections. The College also has some Special Interest Groups (SIGs), for example on Spirituality and Philosophy, which provide opportunities for members to meet together, promote discussion and provide support. All members may apply to join them. They are self-selected groups and are not appointed by the College. The submission to the Home Office Consultation came from the "Lesbian, Gay and Bisexual Mental Health SIG" chaired by Prof. Michael King. It was submitted with the approval of the Central Policy Committee of the College.

2. While some SIGs are large and active, this group is not. The College boasts a membership of 15,000 specialists across the world, but a recent survey from the Group attracted just 58 responses, only eight of whom had attended a meeting of the group in the previous four years. Respondents to that survey chose a subject for a symposium, but the event was cancelled through lack of interest. In other words, not many psychiatrists take an interest in this Group. Their report to the Home Office consultation bears only the name of the chairman, Prof. Michael King.

3. The report states prejudicially that to define secular marriage only in heterosexual terms is a form of institutional discrimination on the basis of sexual orientation³¹⁸. It then gives evidence that public policies can greatly increase perceived discrimination and asserts that the resultant 'minority stress' experienced by LGB people is an important contributor to their health problems.

4. Recently, the mental health problems among homosexuals, well documented in other countries, have been publicly recorded in the UK.³¹⁹ In a random sample from the population of 7,403 adults, rates of depression, anxiety, obsessive-compulsive disorder, phobia, self-harm, suicidal thoughts, and alcohol/drug dependence were all significantly higher in homosexual respondents.

5. Is this the result of homophobic discrimination? Perceived discrimination implies having a sense of being discriminated against. Also referred to as 'minority stress', it leads to generalised feelings of anxiety, oppression, hopelessness, isolation and sadness. Importantly, in the context of this discussion on public health, that UK study recorded that the level of reported 'perceived' discrimination in UK was comparatively low at 4.9%, being only 3.3% greater than that experienced by heterosexuals in the study.

6. Acknowledging the benefits of UK civil partnerships, the RCPsych submission claims that marriage equality, "will further reduce" the discrimination³²⁰ and lead to greater social inclusion and improved health. The front cover summary sheet states the case more modestly, namely that "marriage equality *could* reduce

³¹⁸ RCPsych. *College responds to Equal Civil Marriage consultation*. June 2012. p.5.

³¹⁹ Chakraborty A, King M et al. *Mental health of the non-heterosexual population of England*. Br J Psychiatry 2011;198:143–8.

³²⁰ RCPsych. *College responds to Equal Civil Marriage consultation*. June 2012 p. 5.

the discrimination". That anyway is surely possible. But what evidence does the College put forward for their confidence that it *will* reduce discrimination?

7. They refer to the Australasian Drug and Alcohol Review³²¹ to show that gay and lesbian communities consume more drugs and alcohol than heterosexual groups.^{322,323} For instance, 61% of lesbian women, compared with 24% of heterosexual women, have had a substance disorder at some point in their lives.³²⁴ They then quoted a comprehensive systematic review that shows that the relative risks of gays and lesbians developing substance use disorder was at least twice that of heterosexuals.³²⁵

8. The Review then asks the crucial question of why gay and lesbian people should be more disposed to develop problems with alcohol and other drugs? They concede a number of interrelated factors, mentioning three: meeting places, the difficulties of 'coming out' and discrimination. The Review concludes that "one of the clearest strategies" is to legalise gay marriage *because married people in general have better mental health*.

9. They justify this by saying that health benefits of marriage are not limited to financial advantages. They include access to Government support (which would not actually apply in the UK where it is equally available to Civil Partnerships) and greater social support. No attempt is made to justify the idea that merely calling civil unions "marriages" will lead to improved mental health. In same-sex marriage and heterosexual marriage, we are comparing two very different, self-selected groups. Will both sorts of marriage prove equally health affirming?

10. To support this public health policy, the Review cites the findings Hartzenbuehler et al³²⁶. This study is also cited in the RCP submission to the Government and therefore needs to be examined carefully. This research was carried out in America, again in a very different context to the UK. In 1996, the US Congress passed the Defence of Marriage Act, defining marriage as a legal union solely between a man and a woman. During the 2004 election, a trend got underway whereby a series of 14 states approved "banning amendments", preventing civil unions or same-sex marriages from being legalised in that state. According to the researchers, this happened in the context of public campaigns fostering a negative climate for the same-sex community. LGB people were confronted with increasing "exposure to stressors, including misleading portrayals and negative stereotypes in the media and hostile interactions with neighbours, colleagues and family members." Unlike the situation in the UK, where discrimination is known to be low, in America overt discrimination was greatly aggravated by these banning amendments, particularly in states which did not have anti-discrimination laws in place.

11. To address the impact of institutional discrimination on mental health, the authors set out to see if there were higher rates of psychiatric disorders among LGB individuals living in states with constitutional amendments banning gay marriage than among LGB individuals living in states without such amendments.

12. The RCPsych presented these findings from America as evidence to the UK Government, that in a nation with Civil Partnerships, where there is strict legislation to control discrimination, and where there are currently documented low discrimination rates,³²⁷ that they would nonetheless be evidential grounds to support the introduction of marriage equality.

13. The researchers themselves drew rather tentative conclusions from their study. For instance, in states with banning amendments they did find significantly increased levels of general anxiety and alcohol disorders among the LGB populations. But contrary to expectations, they found statistically significant levels of drug use disorders among those living in states without amendments. They also found statistically significant increases in the prevalence of panic, generalised anxiety and alcohol use disorders among the heterosexual respondents, though the increase was smaller than in LGB populations.

14. They also had other reservations. Only 6 states in the study had some form of protection for same-sex couples. This did not give enough statistical power to test the hypothesis that pro-gay marriage policies would improve the mental health of LGB people in those states. It was possible that in states without non-discriminatory legislation, healthier and wealthier LGB people had moved to states with more liberal policies.

15. They also recognised that sexual identity labels can show fluidity, which could have led to misclassification of some LGB participants over the study period. Neither could they examine whether these symptoms would be short-lived or persistent, once the negative political and media campaigns had subsided. Although this was a relatively large study, the number of respondents meeting diagnostic criteria for psychiatric disorders in states with amendments was relatively small.

³²¹ Ritter A et al, *Why the alcohol and other drug community should support gay marriage*. APSAD Drug and Alcohol Review Vol 31, pp1-3, January 2012.

³²² Corliss HL et al. *Sexual orientation and drug use in a longitudinal cohort study of U.S. adolescents*. Addict Behav 2010; 35:517-21.

³²³ Bolton SL, Sareen J. *Sexual orientation and its relation to mental disorders and suicide attempts: findings from a nationally representative sample*. Can J Psychiatry 2011; 56:35-43.

³²⁴ *ibid*.

³²⁵ King M, Semlyen et al. *A systematic review of mental disorder, suicide and deliberate self harm in lesbian, gay and bisexual people*. BMC Psychiatry 2008;8:1471-224.

³²⁶ Hartzenbuehler ML et al. *The impact of institutional discrimination on psychiatric disorders in lesbian, gay and bisexual populations: a prospective study* Am J Public Health 2010 March;100:452-9.

³²⁷ Chakraborty A, King M et al. *Mental health of the non-heterosexual population of England*. Br J Psychiatry 2011;198:143-8.

16. Therefore, they concluded “the results must be interpreted with caution and they require replication with larger samples of LGB respondents”. Yet it was held by the RCPsych submission that these findings “are consistent with an argument that implementing social policy changes to abolish institutional forms of discrimination may ultimately reduce mental health disparities in LGB populations, an important public health priority.”³²⁸ Unfortunately, here we have just one study, which shows some conflicting results and calls for more research before drawing firm conclusions.

17. The RCPsych submission cited a further American study.³²⁹ Argued from the American situation, where marriage benefits under federal or state law would result in improved access to health care, this has no obvious relevance in UK under the NHS.

18. The RCPsych submission then asks the pertinent question, *Do LGB people want marriage equality?* They say that “LGB people around the world are interested in having the freedom to marry”, and they quote an Australian survey of same-sex attracted people, which found that 78% of respondents reported that they would like to see marriage become available *as an option* for same-sex couples.

19. Yet at least 85% of gays in the UK have declined the option of entering Civil Partnerships, so it is difficult to expect a sudden surge of interest. They may want the “freedom to marry” available as “an option”, but most do not evidently want it for themselves.

20. The RCPsych submission dogmatically asserts that opponents of marriage equality produce no evidence to support the claim that the institution of marriage will be harmed by fundamentally redefining it. Rather, they assert that even to claim that equal marriage will harm the upbringing of children contributes to the ‘minority stress’, which LGB people experience.³³⁰ That may be the case, but it should not stop health professionals from addressing that vital question!

21. It is widely recognised that the ‘gold standard’ in the upbringing of children is for them to be brought up by their biological mother and father. No-one else will love and care for them as much as they do. Boys and girls need the complementarity of the sexes in their parenting. Boys need their father and their mother, and so do girls.

22. Now this is a very important matter. The RCPsych claim in their submission that there are no health arguments in favour of denying marriage equality.³³¹ This is patently not the case. The largest and best study on this subject was published 2012 by the University of Texas.³³² Greeted with howls of protest from the Gay Community, the University was forced to withdraw the paper while it performed a thorough analysis of its design, structure, results and conclusions. It eventually gave the study a completely clean bill of health. Any dismissal of its findings now, which is not grounded in a proper discussion of the inevitable limitations of the study and a sound interpretation of its data, must face the charge of bias.

23. Mark Regnerus surveyed both a large and, importantly, a random sample of American young adults, who were raised in one of eight different types of family arrangement. With nearly 3000 respondents, this was a much larger study than nearly all its peers. Measuring 40 different outcome variables, he compared them according to their family structure. The study clearly reveals that children appear most apt to succeed well as adults if they spend their entire childhood with their married mother and father. The children of women brought up by a mother in a lesbian relationship had the most suboptimal outcomes (measured in categories such as education, depression, employment status, drug use).

24. Certainly marriages fail and parents die but such things are not planned for. Step-parents usually provide for the best default arrangement. It is quite another thing to set out intentionally to create what we now have good evidence to see as a sub-optimal family arrangement. This puts the desires of the couple ahead of the needs of their children and the well-being of the wider society.

25. Children need the permanent and exclusive commitment of their parents and are unsettled and harmed when that fails. The LBG community, however, has a very poor track record in providing exclusive, stable relationships. As Michael Shernoff wrote: “*One of the biggest differences between male couples and mixed-sex couples is that many, but by no means all, within the gay community have an easier acceptance of sexual nonexclusivity than does heterosexual society in general.*”³³³

26. Numerous studies have documented this. McWhirter and Mattison found that all couples whose relationship had lasted more than five years had incorporated some external sexual activity into their relationship.³³⁴ Exclusive monogamous relationships among gays seem destined to be the experience of only a small minority.

³²⁸ RCPsych. *College responds to Equal Civil Marriage consultation*. June 2012 p 6.

³²⁹ Buffie WC, *Public Implications of same-Sex Marriage*. American Journal of Public health: June 2011, Vol 101, No 6, pp986–990.

³³⁰ RCPsych. *College responds to Equal Civil Marriage consultation*. June 2012. p5.

³³¹ *Ibid* p. 2.

³³² Regnerus M. *How different are the adult children of parents who have same-sex relationships?* New Family Structures Study, University of Texas. 2012.

³³³ Shernoff M. *Family Process Journal*, Vol.45 No.4, 2006.

³³⁴ McWhirter & Mattison, *The Male Couple How Relationships Develop*, 1984. pp 252–3.

27. Changing the definition of marriage will not bring stability to the world of marriage. As Stanley Kurtz of the Hudson Institute, the American futurology think-tank, has said, “*what gay marriage is to homosexuality, group marriage is to bisexuality.*” Bisexuality is more common among women. The aggregate pooling of all recent studies in April 2011 shows that bisexuality is now the largest sexual minority identity label.³³⁵

28. The next logical step therefore from the promotion and full acceptance of homosexuality is the promotion of bisexuality. Kurtz again: “*It is easy to imagine that, in a world where gay marriage was common and fully accepted, a serious campaign to legalize polyamorous unions would succeed. We’ll someday be endlessly told that not all marriages are monogamous.*”³³⁶

29. As of July 2009, it was estimated that there were more than 500,000 polyamorous relationships in the United States. In Holland and Brazil now three-way polyamorous unions are legal.

30. What other causes of mental health problems besides discrimination might the RCP Psychiatrists have mentioned? It is well recognised that there is a higher incidence of general health problems in the gay community, and physical illness itself, as well as bereavement, causes anxiety and depression.

31. Gays and Lesbians are much more likely to suffer from sexually transmitted infections (STIs) than heterosexuals. This is true for all types of STIs. More than a third of all new cases of gonorrhoea are in men who have sex with men.³³⁷ It is estimated that their risks of contracting syphilis, gonorrhoea and HIV/AIDS are some 50 times greater than for heterosexuals. (Although in UK a similar number of heterosexuals suffer from HIV/AIDS, LGB people amount to only 1.5% of the population.³³⁸)

32. Various reasons have been put forward to account for this vastly increased risk but the most significant probably concerns the thin rectal lining compared to the thick musculo-fibrous lining of the vagina, and this risk is present in both giving and receiving anal sex.

33. Despite all efforts, HIV incidence of new cases has remained steady for 10 years. Latest research³³⁹ shows the HIV rate among men who have sex with men (MSM) in UK is at an all-time high. Analysing data from 1990–2010, it is estimated that without retroviral treatment, which reduces infectivity, the incidence would have increased by a further 68%. Overall, 1 in 20 MSM are infected with HIV, which without treatment takes about 10 years to develop into AIDS.

34. Although 680 people with HIV in UK died in 2011, life expectancy has improved with treatment. In 1996, a 20 year old with HIV could expect to live to 50 yrs. In 2008, that had increased to 66 years. However, the average life expectancy of a 20 year old male is 85 yrs, so even with anti-retroviral treatment, HIV reduces life expectation by around 20 years. This is partly because half of those infected were diagnosed late. It is estimated that one in four people with HIV in UK currently remain undiagnosed, presenting a serious risk of spreading the infection to other partners.

35. The health risks involved in teaching children and adolescents that same sex relationships are equally valid and as desirable as heterosexual relationships, and thereby encouraging teenage experimentation, are unconscionable.

36. The estimated annual cost of treatment and care for HIV is £858 million.³⁴⁰ The savings to be made by preventing new cases, who would now require lifetime treatment, are estimated at £320k per person.³⁴¹

37. Several of these infections progress to cause cancers. Cervical, anal, mouth, prostate, liver, lymphoma and skin cancers have all been directly linked to STIs.

38. In general, lesbian, gay and bisexual people have more than twice the rate of suicide attempts of heterosexuals.³⁴² While women are particularly at risk of alcohol and drug dependence, the men are at higher risk of suicide attempts.

39. Will gay marriage ease the suicide rate? Denmark should provide its LGBT community with one of the lowest levels of discrimination in the world. Same-sex activity was legalized there in 1933, and since 1977, the age of consent has been 15 yrs, irrespective of orientation or gender. It was the first country to legalise same-sex unions in 1989. This provided the basis for a unique study. Over a twelve-year period, it found that death in Denmark from suicide among men in same-sex registered partnerships was eight times greater than among men in heterosexual marriages.³⁴³

³³⁵ Gates Gary J. *How many people are lesbian, gay, bisexual?* Williams Institute, April 2011.

³³⁶ Kurtz S. *Here come the Brides* The Weekly Standard, 26.12.2005.

³³⁷ Health Protection Agency, 2012.

³³⁸ Office of National Statistics, 2012.

³³⁹ Health Protection Agency Report: *HIV in the United Kingdom 2012*.

³⁴⁰ Department of Health. Programme Budget 2009–2010. Dept of Health 2010 [cited 2012 Nov 2].

³⁴¹ Health Protection Agency 2009.

³⁴² King M, Semlyen et al. *A systematic review of mental disorder, suicide and deliberate self harm in lesbian, gay and bisexual people.* BMC Psychiatry 2008;8:1471–224.

³⁴³ Mathy RM et al. *The association between relationship markers for sexual orientation and suicide: Denmark 1990–2001* Soc. Psychiatry Psychiatr Epidemiol (2011) 46:111–117

40. Another major cause of low mood is broken relationships. It is recognised that many homosexuals have difficulty forming and maintaining intimate and exclusive relationships. Few things destroy relationships more acrimoniously than jealousy. Then there is the lack of children and wider family ties, which lead to isolation and loneliness, rather than support.

41. If one is trying to understand the causes of low mood in the lesbian and gay communities, not least in the UK, there are far more powerful forces at work than perceived discrimination and stigma. All these things, in addition to discrimination and stigma, contribute to the poor mental health and high suicide rates found in the same-sex community.

42. Medical science progresses by peer review. Before publication, papers are sent to scholars in the field for approval. In particular, a Journal Editor wants to know if the authors have been biased and selective in their treatment of evidence? No such process appears to have been at work in the RCPsych submission.

March 2013

Memorandum submitted by Barry Crown (MB 103)

1. This submission relates to the problems arising where a same-sex spouse or civil partner dies overseas. An amendment to the Marriage (Same Sex Couples) Bill 2012–13 would provide a solution to many of these problems.

2. An important issue to be considered in drafting equal civil marriage legislation is the fact that whatever arrangements are made for the UK, same-sex marriages performed here will not be recognised in most countries of the world. In today's highly mobile society, that potentially creates serious difficulties for same-sex couples.

3. One particularly troublesome case is that of the death overseas of a civil partner or same-sex spouse. Unlike the position in the UK, in many countries the registry of births and deaths is not open to the public.

4. In Malaysia, for example, only immediate family members may obtain death certificates directly from the registry. Other persons must apply through a solicitor, who must furnish reasons satisfactory to the authorities as to why the death certificate is required.

5. Civil partnerships and same-sex marriages are not recognised under Malaysian law, so a British civil partner or same-sex spouse would not be able to obtain a death certificate for his/her partner/spouse directly from the Malaysian registry.

6. As homosexuality is a criminal offence under Malaysian law, it would be inadvisable for the surviving civil partner or spouse to state his or her true relationship with the deceased when applying through a solicitor to obtain a death certificate. Obviously this creates a difficulty in supplying a reason satisfactory to the authorities for the issue of the death certificate.

7. Where it is not possible to obtain a foreign death certificate at all, the surviving partner's only recourse would be to apply to the English courts for a presumption of death order, which is an expensive procedure.

8. Where a foreign death certificate has been obtained, a practical difficulty occurs should this document be mislaid or should further death certificates be required.

9. Where the deceased was a British national, this problem can be avoided by registering the death with the Foreign and Commonwealth Office or with the British consular authorities overseas. (See <http://www.fco.gov.uk/en/travel-and-living-abroad/births-deaths-marriages-civil/registering-a-death>.)

10. The advantage of this procedure is that a British-style death certificate will be issued and a permanent record kept at the General Register Office in the UK, where further death certificates can be obtained.

11. Where the deceased was not a British national, there is currently no way to obtain further death certificates except by applying again to the foreign authorities with all the difficulties that may involve.

12. There is potentially a very simple solution to this problem, which would be for the UK General Register Office to accept the deposit of foreign death certificates of civil partners or spouses of British citizens.

13. Currently, the General Register Office in the UK does accept the deposit of foreign same-sex marriage certificates or foreign civil partnership certificates where one of the spouses or partners is a British citizen (Civil Partnership Act 2004, section 241).

14. This would therefore be only a slight extension of existing practice, but it would require legislation.

15. I made a representation on this point as part of the consultation process leading to the current bill and I wrote a short note published on 5th October 2012 on the Law Society Gazette website. I am disappointed to note that this proposal has not been adopted in the current bill.

16. Allowing the deposit of foreign death certificates of civil partners and spouses would solve a very real problem, which will affect more and more people as a result of the extension of marriage rights and increasing globalisation.

March 2013

Memorandum submitted by Dr Carla Skinner (MB 104)

SUMMARY

1. This memorandum is addressed specifically to Schedule 4-Part 6—Occupational pension schemes and survivor benefits. On other aspects of the Bill I fully endorse the comments made in the memoranda submitted by GIRES (MB29) and Mrs Janet and Mrs Sarah Woods (MB69).

INTRODUCTION

2. My wife and I married as a heterosexual couple 44 years ago. In the past year I have transitioned to female with her full support. We intend to continue as a married couple, which under present legislation means that I am denied the opportunity to obtain full legal recognition of my female status. The Bill is intended by the Government to enable a person to change their legal gender without ending their marriage. But I now discover that provisions in respect of occupational pensions in Schedule 4 mean that, should my wife survive me, the provider of my public service pension would be obliged to substantially reduce her survivor's pension compared to that to which she would be entitled if we were to stay, legally, man and wife. The existence of survivor's pensions is a recognition of joint rights accrued through the lifetime of a partnership and it seems perverse that a welcome piece of legislation designed to extend the benefits of marriage should not protect those rights when a heterosexual marriage becomes a same sex marriage.

SCHEDULE 4-PART 6—REGRESSION OF SURVIVOR'S RIGHTS IN OCCUPATIONAL PENSION SCHEMES ON GENDER RECOGNITION

3. The Bill provides an exception to avoid the loss of a wife's state pension upon a spouse's gender recognition, but fails to avoid loss of wife's survivor rights in occupational pension schemes. I had assumed that this was perhaps an oversight because of the complexity of pension scheme provisions but it emerged from questioning of the Secretary of State in Committee (Q353, 12 February) that it is the Government's intention to remove accrued rights and Mrs Miller gave two arguments to justify it.

4. These were to avoid administrative/regulatory burdens and to avoid intrusive questions in evaluating survivor benefits. I question both of these. Pension scheme managers already have all the necessary information and have developed systems to manage documentation of trans pensions. They are adept at managing the already complex and various provisions of pension schemes and, for the small number of people involved, it is not credible to argue that a significant burden would be created. The second argument fails for the same reason—the pensions schemes already have most, if not all, of the relevant information. On top of that spouses who have shared the trauma of gender dysphoria with their trans partners will be well rehearsed on the issues and well used to the intrusions of bureaucracy.

5. In my case the pension rights accrued over nearly half a lifetime of work are at risk of being disregarded for administrative convenience and delicacy of questioning!

6. I wish to emphasise, because in the answers Mrs Miller gave the Committee she seemed to be under a misapprehension, that public sector pension providers are obliged to follow statute and are allowed no discretion in computing survivor benefits. So the only way to meet the problem is to make sure that the matter is properly addressed in statute.

7. The Bill as a whole enjoys widespread support because it extends and encourages marriage. For trans people it would allow us to embrace both marriage and full legal rights in our correct gender. Unless the bill is amended, for a small minority of trans people such as myself, these benefits will only come at an unacceptable price, that of imposing a financial loss on my wife should she outlive me. That would be an intolerable legacy to leave to someone who has shared and supported my life and my transition.

8. The absence of provisions to protect survivor's pensions in Schedule 4 is unreasonable, unjust and no credible argument has been made for excluding them.

March 2013

Memorandum submitted by Affinity (MB 105)

WHAT IS AFFINITY?

Affinity is a partnership of 1200 Christian churches from all parts of the United Kingdom. Affinity also embraces more than 30 Christians agencies including theological colleges, publishers and missionary and relief agencies. Our churches stand in the historic evangelical tradition which has played a significant role in the

history of the United Kingdom since the time of the 16th century Reformation. The authority for our beliefs and practices is the Bible. Our website, www.affinity.org.uk gives more information about us.

We believe that the present Bill, if passed, will negatively impact our society in general and family life in particular. We believe we have a responsibility to urge you not to approve this legislation because it will be detrimental to the people of our nation and especially to our children and to future generations.

This submission addresses the following areas of concern:

1. Marriage is the essential foundation for human life and a stable society
2. The detrimental effects on children
3. The marginalisation of Christians
4. The wisdom and importance of carefully assessing the potential for unintended consequences

1 MARRIAGE IS THE ESSENTIAL FOUNDATION FOR HUMAN LIFE AND A STABLE SOCIETY

We believe that the unique nature of marriage should be maintained because it is the foundation for human life and stable societies around the world. We believe it is possible to provide legal provision and safeguards for other kinds of relationships without changing the definition of marriage.

The Bible bears witness to the following facts about marriage:

1.1 Marriage has existed from the beginning of time. Human history also bears witness to this fact both for nations which stand in the Judaeo-Christian tradition and in other cultures as well. The Church of England Wedding Service says that God gave marriage as a gift to all people from the time of creation.

1.2 Marriage is a heterosexual union between a man and a woman in which the created gender differences are expressed in the physical, sexual union.

1.3 Marriage involves a lifelong commitment which expresses the essential equality and value of maleness and femaleness through the physical, sexual union. In this way the natural affection and desire between a man and a woman can be expressed so that they live in purity and honour.

1.4 Marriage provides the natural context for children to be born and nurtured by a father and mother. This social unit created by such a family is the foundational building block of a stable society.

1.5 The complementary roles of fathers and mothers within marriage provide a model for children which prepares them for the time when they may enter into a marriage relationship.

1.6 The complementary roles of husband and wife are seen in the Bible as a particular expression of the image of God in humanity. Marriage is also portrayed in the Bible as a picture of the relationship of Christ and his Church. Any change to the definition of marriage involves a significant rejection of the character and being of God and the nature of the Church.

2 THE DETRIMENTAL EFFECTS ON CHILDREN

2.1 According to official statistics, twenty years ago depression in children was almost unknown. Now the fastest rate of increase in depression in the UK is among young people.³⁴⁴ These alarming statistics are a reminder that we have a duty of care to our children and young people when their world is increasingly complex and insecure.

2.2 It is a constant finding among sociological surveys that, by a large margin, children are safer, happier, healthier and get on better in life when they are brought up in the home of their married, different-sex parents³⁴⁵. Putting the institution of marriage at risk therefore puts the wellbeing of children at greater risk, which is a strong reason for not going ahead with the Bill.

2.3 The changes brought about by this Bill will greatly increase the confusion of children regarding sexuality, needlessly causing them to be self-questioning and even adversely experimental. This is a cruel imposition, and destructive of personal and social happiness and wellbeing.

3 THE MARGINALISATION OF CHRISTIANS

3.1 This Bill recognises as marriage, relationships which the Bible clearly declares to be sinful and wrong. It changes marriage for *everyone*, leaving those who believe same-sex relationships to be sinful with no public marriage status to which they can belong with true joy and wholehearted gladness. Given that same sex partners represent so small a minority of all couples, the number of people who will feel a significant loss of meaning in their own marriages will greatly eclipse the number of same sex couples actually marrying. This shows not only a lack of proportion, but makes it all the more surprising that, for so little gain, the country should be willing to

³⁴⁴ <http://www.clinical-depression.co.uk/dlp/depression-information/teen-depression/>

³⁴⁵ e.g. <http://www.ifs.org.uk/comms/comms114.pdf>

sacrifice the value which marriage (as currently defined) has proved to be to the strength of our country's social and family structure and order for many centuries.

3.2 The overwhelming majority of the millions of Christians who live in the United Kingdom are law-abiding and peaceable people. Indeed the influence of Christianity has been mainly responsible for the tolerance which has come to characterise British society. People from many nations who have come to live in the United Kingdom bear testimony to this. The new "tolerance" can be profoundly intolerant of those who take a different view.

3.3 In seeking to establish the legitimate rights of the various minority groups within our society we must not "demonise" Christians who are involved personally, and through their churches, in a multitude of activities which benefit all sections of our society. Every day Christians and churches play a leading role in providing services to all sections of our society including mothers and children, families, the elderly, the homeless and poor.

4 THE WISDOM AND IMPORTANCE OF CAREFULLY ASSESSING THE POTENTIAL FOR UNINTENDED CONSEQUENCES

4.1 Other countries have already legislated to redefine marriage. We feel it would be wise for the United Kingdom not to act hastily in doing the same, especially since this Bill was not part of the manifesto of any of the political parties.

4.2 There are indications of unintended consequences in social changes and financial consequences which need to be carefully assessed before passing new similar.

4.3 Indeed, because of the fundamental importance of marriage in any society it would be reasonable to expect that redefining marriage will have far-reaching consequences, some of which may be unintended and seriously prejudicial to the wellbeing of the people of the United Kingdom.

March 2013

Memorandum submitted by Roger Harris (MB 106)

SUMMARY

1. I am very grateful for this opportunity to submit views to the Public Bill Committee. In essence I want to demonstrate that this Bill is inherently divisive. Furthermore, it represents a major assault on world religions in far more subtle ways than whether ministers will be forced to carry out same sex weddings, which is where the religious freedom aspects of the debate seem to have focused so far.

2. At a time when we desperately need to pull together, uniting round our common humanity and accommodating our differences, the legislation goes down an alternative route, seeking to trump the rights of one group over those of others. The grave danger this creates is that the new regime will become more oppressive than that which it sought to replace.

3. Paragraphs 6–10, outline the perspective from which I am writing, as well as some personal information largely to counter the unhelpful stereo-types already thrown up by this debate.

4. Paragraphs 11–16 outline some dangers to be addressed.

5. Paragraphs 17–22 propose some possible ways forward, including actions to be taken by churches and religious groups, as well as the Government

INTRODUCTION AND BACKGROUND

6. I am writing as a private individual, a husband, father and grandfather. I have been happily married for 36 years. Whilst the latter admission may cause some to discount my contribution, I do not conform to the stereo-type of the over 60s, referred to so dismissively by some commentators.

7. Whilst I can be broadly described as an Evangelical Christian, I recognise the term has become somewhat toxic thanks to the heretical dogma of our American cousins on the Religious Right. Suffice it to say that the British evangelical tradition is more socially compassionate (and authentically Christian.)

8. Since retiring from my professional career in social housing, I have served as a trustee on two large charities, developing a measure of expertise in charity governance. I currently serve as a trustee on the board of a large Christian charity, seeking to help homeless young people.

9. Whilst raised in the Church of England, for the past 32 years I have attended one of the so-called "new" churches, serving as a member, and at different times as a pastoral care group leader and trustee. It is a large multi-racial church in South East London. In addition to a vibrant programme of overtly spiritual activities, we currently run a wide variety of community services from our church building, from "Exercise in retirement" to a Baby Cafe. All these services are supported at our members' expense and are freely available to those of all beliefs and none, irrespective of their gender, nationality, ethnicity or sexuality as an expression of God's unconditional love for all mankind.

10. I therefore consider I am able to make an informed contribution to this debate.

DANGERS TO BE ADDRESSED

11. High-jacking the language of matrimony deprives Christians, Jews, Muslims and Sikhs of orthodox beliefs of the one word in the English Language that translates directly, the meaning of the union between a man and a woman described in our Holy Books.

12. This corruption of language and the definition of terms will make it infinitely more difficult to convey what the Bible, Torah, Koran and Sikh Holy Book mean by marriage to future generations. Whilst some may rejoice at this, it must be seen for what it is: government interference with the practice of religion. It is not for Government to demand the “development” of religious doctrine in a free society.

13. The political process is inherently divisive, polarising opinion and often encouraging unhelpful stereotypes of people with whom we disagree, forcing us apart: urbanites from the “turnip Taliban”, under sixties from over sixties, orthodox believers of the major religions from their secularist neighbours and “progressive” cousins.

14. Leading advocates for the policy have claimed everyone will forget it in a few years, gay people will marry, schools will teach the new definition and the world will move on as it has always done. Again, one cannot help but see a hidden agenda here, to purge the world of those with whom they disagree, using the (non-violent!) levers of Government over an extended period.

15. The unintended consequence of the legislation could be to create a regime more oppressive than the one it seeks to replace. Not all change is progress, the “infallibility of the Zeitgeist” is not a Christian doctrine, and secularists should equally be wary of it. As an example of oppression, I would like to cite is the case of Andrew Smith and Trafford Housing Trust before Mr Justice Briggs on 16 November 2012. (Case number 11R54453.) In this case a Christian lay preacher was disciplined, and demoted for an innocuous remark about Gay marriage on his personal pages of Facebook. The remark did not incite violence or intolerance. Peter Tatchell, (a man of considerable integrity), spoke up for his right to free speech so long as it was non-violent even if he was wrong! The fact remains that despite winning his case for breach of contract, Andrew was unable to raise the funds to go to an Industrial tribunal within the statutory time scale. He has suffered a considerable loss and justice has been denied. How many more Andrew Smiths will the new legislation create?

16. Lastly, the legislation will not strengthen marriage, it will weaken it. I am sure other respondents will have shown how the removal of adultery as a ground for divorce for same sex marriage will eventually carry across to heterosexual marriage. Some may shrug their shoulders at this, but the need of the hour is for individuals to model the beauty of fidelity within marriage and to offer help to those who struggle. However, the legislation could result in churches such as my own, being unable to offer help in the form of marriage courses, as we do at present, without a fundamental crisis of conscience or legal challenge.

POSSIBLE WAYS FORWARD

Actions by Government

17. It will be obvious to those who have read thus far, that my preferred approach would be for the Government to abandon this disastrous course upon which it has embarked and to vigorously campaign for the international acceptance of Civil Partnerships, securing the legitimate aspiration of same sex couples to commitment with respectability. It would also leave the definition of marriage unchanged, avoiding some of the dangers outlined above, in particular, the challenge to the freedom of religion and freedom of speech.

18. However, my opening premise concerned the need for us to unite as a nation and accommodate our differences. There must therefore be scope for more creative solutions than “I win, you lose” scenarios.

19. If Parliament insists on redefining marriage, then there should be a robust duty on the Secretary of State for Education to ensure schools teach respect for the broad range of definitions of marriage current in our society.

20. Better brains than mine need to consider some of the legal threats posed by organisations which, in their enthusiasm for acclaim by the Gay community, put the rights of others at risk. Likewise the informal surveillance of colleagues for perceived equality slips by staff who may have an “agenda,” brings back all the oppressive horrors of Eastern Europe in the Soviet era and must be addressed.

21. All groups should have a right to promote and live by their definition of marriage.

Actions by the Church, Christian organisations and other religious groups

22. The degree of homophobic attacks in this country highlighted by the debate, is truly horrendous and an affront to the love of God. Whatever we believe about same sex marriage and gay life-styles, the Church must mobilise all its campaigning might in defence of the most vulnerable in our society, including those in the gay community.

23. Just as the Church has actively supported married couples, so it must get much better at supporting all who are single, reflecting the God who “sets the lonely in families.”

24. The Church must always remember that it has been at its most magnificent when operating counter culturally eg John Bunyan wrote Pilgrim’s progress whilst languishing in Bedford jail; John Wesley scandalised the upper classes and defied Canon law to preach to the poor miners of Bristol outside the confines of a

consecrated building; and the Underground Church grew exponentially in the former Soviet Union and in China during the latter part of the last century.

25. Thank you for the opportunity to comment, I hope the Committee will be able to bring forward amendments to address the dangers I have identified.

March 2013

Memorandum submitted by Helen Belcher (MB 107)

1. This submission is made by Helen Belcher. I am a woman with a transsexual history, in that I was registered male at birth and changed my name and gender presentation in 2004, following three distinct diagnoses of gender dysphoria. I did not choose to be trans. Indeed, for many, many years, I tried very hard not to accept that I was trans. This denial almost drove me to suicide.

2. I still live with and am still happily married to my wife of nearly 19 years, and we have two teenage children. We decided that, in order to provide a stable family life for our children, we would not go through the barbaric process of divorce, gender recognition and civil partnership. This has forced me to unfairly choose between Article 8 and Article 12 of the European Convention on Human Rights.

3. We know other people who undertook this process and, with only one exception, they found it traumatic and long-winded—there being significant difficulties in ensuring that the three processes could dovetail seamlessly. The exception was, perhaps unsurprisingly, the trans woman and her wife who had significant media interest and attention on the day the Gender Recognition Act came into force.

4. My lack of gender recognition does cause us some occasional administrative inconvenience and me some personal unease and distress, particularly when dealing with insurance renewals and other official forms that demand I provide my gender.

5. **Both of us strongly welcome the principles behind the Marriage (Same Sex) Bill** that is currently before the Committee, especially as it relates to the gender recognition process, as this makes the divorce/annulment and re-constitution of our marriage unnecessary. I have said as much to both the Prime Minister and Home Secretary in person.

6. However I still have some concerns about some of the implications that arise from the way the Bill is currently worded. A Bill, motivated by equality and fairness, and which correctly rights wrongs, should not leave obvious wrongs still in place.

7. I have contributed to the submission to the Committee already made by the Gender Identity Research and Education Society (GIREs). Many of the points I make will be similar to those raised by GIREs, although I may approach them in a slightly different way.

8. The issues I wish to highlight include the dilemma that trans people will face if they are members of public and/or occupational pension schemes, the imposition of a spousal veto upon gender recognition, the difficulties with the gendered language currently in the Bill, a proposal to re-introduce a fast-track gender recognition procedure, a request to resolve the issue of those marriages that were dissolved (effectively under duress) in order for one spouse to gain gender recognition, and an issue with the Matrimonial Causes Act 1973.

PUBLIC AND OCCUPATIONAL PENSION SCHEMES

9. It is my understanding that the spouses of trans people in public sector and occupational pension schemes may lose out financially, in some cases quite considerably, if their trans partner is granted gender recognition as a woman if the Bill remains unamended. The proposal seems to be that the surviving spouse's pension rights would be restricted to the equivalent same-sex marriage basis. However these are contributions that have already been paid for.

10. This financial dilemma is as barbaric as the current choice between gender recognition and ending a marriage. It would be a disincentive for those who were married before 2004 and/or 1988 to consider gender recognition. For those who have been married a long time, this would be a considerable disincentive. I know at least one couple where the spouse's survivor benefit would be effectively halved if the trans person gained gender recognition.

11. The proposal appears to be as a result of perceived administrative convenience, and also appears to be in direct contravention of a European Union Council Directive from 1986.

12. The European Court of Human Rights, in its judgement in the *Goodwin v UK* case in 2002, states "*the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.*"

13. The Bill should be amended so that the prior "opposite-sex" status for such marriages is recorded within the pensions scheme records (presumably held by DWP or HM Treasury) to enable the benefits to continue to be treated on the basis of the contributions that have been paid. To do otherwise would seem like the state is stealing benefits from the surviving spouse.

SPOUSAL VETO

14. The Bill before the Committee currently requires the spouse's consent to change the context of the marriage. Pension rights aside, it is not entirely clear what the spouse is actually consenting to—after all, not every trans person is a member of a public or occupational pension scheme. The legislation still continues to allow a discriminatory distinction between “same-sex” marriage and “opposite-sex” marriage, presumably on the grounds of perceived sexual orientation, without clear purpose, especially if the pensions issue referred to above is resolved.

15. By the time a trans person becomes eligible for gender recognition, people will generally perceive that individual as already being of their “acquired gender”. If the spouse refuses consent (to this intangible, perceived change of status to their marriage), then the trans person's gender recognition process halts, and there is nothing the trans person can do to change that situation. It is quite possible that divorce proceedings may already be underway. This is a gross breach of the trans person's rights under Article 8 of the European Convention on Human Rights.

16. Relationships where one partner “comes out” as trans can cause disruption and hostility between the partners. Because of my work on support forums for trans people, I know of several cases which have resulted in acrimonious divorce as a result of such disclosure. Some trans people have been forced through long, drawn-out divorce proceedings with no ability to resolve them. The legislation as currently drafted would hand the right of gender recognition solely to such an obstructive spouse, who may delay it, without good purpose, for many years and, potentially, indefinitely.

17. I believe that there is an amendment before the Committee which removes the right of spouses, obstructive or not, to block gender recognition by withholding consent. I would urge the Committee to support this amendment.

PRE-EXISTING CIVIL PARTNERSHIPS

18. There are trans people who have contracted civil partnerships who may, for a number of reasons, desire that the civil partnership be allowed to continue without interruption following one partner's gender recognition. The current proposals do not allow this to happen. Instead the civil partnership would have to be converted into a marriage prior to gender recognition, thereby incurring the couple additional costs compared to those already in a marriage prior to gender recognition. This additional cost could be considered as discriminatory on the grounds of sexual orientation.

19. Further, some trans people may have entered civil partnerships with other trans people. If their paths to gender recognition do not coincide then the “same-sex” civil partnership will be forced to convert to a “same-sex” marriage, before converting (upon partner A's gender recognition) to an “opposite-sex” marriage, before reverting (upon partner B's gender recognition) to a “same-sex” marriage. The forced conversion to marriage achieves no purpose here, and the civil partnership cannot be regained without divorce.

20. I understand that the Ministry of Justice appreciates that two trans people may be in a civil partnership, but the Ministry appears to have only recently understood that the partners' paths to their respective gender recognition may take place in completely different timeframes. The current proposals require the partners to co-ordinate their gender recognition applications. While I am aware this has happened, my experience leads me to consider this to be the exception rather than the norm.

21. I consider it far more likely that two trans people in a civil partnership will “transition” and seek gender recognition at different times—as described in paragraph 18. To allow the current proposal to stand unamended may place unreasonable pressure on the “late-transitioning” partner to consider “transition” and gender recognition at the same time as their partner, which may not be appropriate for that individual, or to place unreasonable pressure on the “early-transitioning” partner to defer gender recognition.

22. I strongly urge the Committee to pass an amendment to allow “opposite-sex” civil partnerships to cover the situations in paragraphs 17 and 18/20, even if the Bill is not amended to allow “opposite-sex” civil partnerships to be contracted. The German model, where a civil partnership is valid if it was contracted by two people who were the “same sex” at the time, is a useful precedent here.

GENDERED LANGUAGE AND INTERSEX/NON-BINARY PEOPLE

23. It is important that the legislation avoids gendered terms, such as “husband” and “wife”, as much as possible. In the consultation phase prior to the Bill being published, the term used was equal marriage. I greatly prefer this term.

24. My wife is still my wife, despite my “transition”. However, she may well struggle to refer to me as her wife, even after 10 years. For the state to impose that description on me would cause her great difficulty, which may disrupt our family life, thereby breaching Article 12 of the European Convention on Human Rights. Equally, however, I would (and do) object to being labelled the husband of my wife. I do not consider myself to be male, despite the absence of a Gender Recognition Certificate.

25. There are many people who do not identify themselves as either male or female, or identify themselves as a mixture of both male and female. These “non-binary” people would include some intersex people and some

trans people. Studies indicate that as many as 1% of the population may be intersex—although that is not to say that 1% of the population consider themselves “non-binary”. Research is lacking in this area.

26. I have noted that some members on the Committee seem concerned about consummation. Talking in such terms may well alienate some intersex people who could not effectively consummate their marriage as either male or female—the current law thereby rendering such people, in theory at least, unmarriageable.

27. The language in the Bill needs to be inclusive, and must not alienate intersex or non-binary people. Indeed, this is an additional reason for removing the distinction between “same-sex” and “opposite-sex” pension rights discussed above.

28. The Bill should be amended to make it possible for parties to a marriage to be able to choose which terms are applicable, including but not necessarily restricted to “husband”, “wife”, “partner” and/or “spouse”.

FAST-TRACK GENDER RECOGNITION

29. Section 27 of the Gender Recognition Act 2004 implemented a fast-track procedure for those individuals who had lived in their “acquired gender” (to use the term in the Act) for more than 6 years. People applying under section 27 were required to provide less evidence than those who were not applying under that section. It was recognised that the original documents that (or medics who) diagnosed gender dysphoria may be tricky to track down in such cases. This section had a sunset clause, and expired in 2007.

30. Some trans people who were eligible for this fast-track procedure prior to 2007 would have also been married, and would have decided (as I have) not to undertake the gender recognition process because they valued their marriage more. It is fair, therefore, that the fast-track procedure be reinstated, at least for these people.

31. However, the argument that original documents or, indeed, medics may be difficult to track down remains as valid today as it did in 2004. Even though I “transitioned” in 2004, and would not have been eligible for the fast-track procedure by the time it expired, the psychiatrist who provided my diagnosis and covered my transition has retired some years ago. There are many others in similar situations.

32. I would like to see Section 27 of the Gender Recognition Act reinstated without a sunset clause. It should be reasonable to assume that someone who has lived in their “acquired gender” for 6 years or more is unlikely to revert, and they may well have difficulties providing the relevant documentation from that time back.

33. Additionally reinstating such a fast-track procedure should reduce the workload on the Gender Recognition Panel for each application made under such a procedure—something that should be valuable in these cash-straitened times. I note that the Ministry of Justice appears concerned about the increase in workload that may result for the Panel should this Bill be enacted. This proposal should go some way to alleviating that pressure.

“STOLEN MARRIAGES”

34. There are some trans people whose dysphoria was so great, or whose financial circumstances were such, that they felt forced to go through the current process of divorce or annulment prior to gender recognition. Many people I know who did undertake gender recognition and reconstitute their marriage as a civil partnership feel that their marriage was, in some way, stolen by the state at much cost. Often they had to pay thousands of pounds for the various court proceedings and lawyers’ fees, let alone the fees for the gender recognition process and subsequent civil partnership. The emotional cost of this action should also not be ignored.

35. I appreciate that defining such relationships in law may be difficult, but it would be again barbaric to force such people to have to pay to have their relationship once again recognised as a marriage. Indeed, I believe that many such couples would greatly value having the marriage reinstated as if it had never been dissolved or annulled in the first place.

NON-DISCLOSURE OF GENDER HISTORY AS GROUNDS FOR DIVORCE/ANNULMENT

36. Currently, a marriage involving a trans person may be annulled (under section 12(h) of the Matrimonial Causes Act 1973) if the trans person has a Gender Recognition Certificate and does not disclose their gender history to their spouse.

37. If the trans person does not have a Gender Recognition Certificate, then section 12(h) cannot be used, even if the trans person does not disclose their gender history to their spouse.

38. This discrepancy places a discriminatory burden upon trans people who hold Gender Recognition Certificates to disclose their gender history to prospective spouses. As such, it is a disincentive to apply for gender recognition.

39. To resolve this, section 12(h) of the Matrimonial Causes Act should be repealed. Instead, divorce in such situations may be granted under section 12(c), which gives grounds of duress, mistake or unsound mind. The process would be that the petitioner would claim that informed consent to the marriage was not gained due to the mistake made by the trans person in not disclosing their gender history.

Memorandum submitted by Groundlevel Churches UK (MB 108)

1. INTRODUCTION

This submission is made on behalf of Groundlevel Churches UK. Groundlevel is a network of over 100 churches from as far north as Morpeth in Northumberland to as far south as Penzance in Cornwall. There are around 12,000 members within the Groundlevel network and that constituency is predominantly white European but by no means exclusively so. The views expressed in this submission represent the majority of the constituency and were determined by discussion with the leaders of the network and the churches.

The first point we would make is that we positively promote the current definition of marriage, which is between one man and one woman for life. This reflects our belief in the Biblical principles, that marriage is more than a simple contract, and is a covenant made before God. Marriage predates the state and any organised religion. It has existed from time immemorial. It is not the role of the state to redefine it, but rather to recognise it and protect it as a unique institution. Throughout history, heterosexual marriage has been the norm, with proven social benefits, especially to children brought up by their mother and father.

2. PRESENT POSITION

Through recent legislation, currently gay couples can enter civil partnerships. Within such partnerships the legal rights of those couples are protected. They will not gain any substantive new rights through marriage that are not already available to them in civil partnerships. So there is no need to make any change to the definition of marriage.

3. PROCESS.

When major constitutional matters are placed before Parliament there is normally a commitment made in the manifesto of the ruling party outlining the intention and seeking a mandate. No such mandate has been received by the Coalition Government, nor was it part of the Coalition Agreement. Convention would suggest that the processes usually followed are that a Green Paper, or a White Paper, would be published, followed by meaningful consultation. Then there would be a proposal in the Queen's Speech. None of these seem to have been followed in this case. The "so called" consultation was really a meaningless exercise. The statements made by the Minister, that this was going through no matter what, gave the lie to any meaningful consultation. The consultation process itself was flawed. It was an anonymous process and it seems anyone could have responded any number of times simply by using a different e-mail address. In addition, the views of the more than half a million people who signed the petition against redefinition were apparently not taken into account. So much for the democratic process!

This process has ignored the usual conventions on introducing major constitutional changes, and those changes should therefore be voted against.

4. PROTECTION

The Bill purports to protect the Anglican Church and the Church in Wales from being required to perform same sex marriages. This protection would seem to be worthless in the light of the European Court of Human Rights and its approach. The Anglican Church has a responsibility to marry couples. If marriage is redefined it will not be able to refuse to marry same sex couples.

Other churches may fall foul of the approach that many local authorities are taking at the moment if they refuse to marry same sex couples, and will eventually simply lose their licence to marry. Indeed even to express a private view supporting the traditional view of marriage has resulted in people being demoted and being removed from their positions because their views do not conform to the diversity policies of local authorities.

This is clearly shown by the case of Adrian Smith, an employee of the Trafford Housing Trust. On his Facebook page he expressed some concern about the redefinition of marriage and was demoted for expressing his views. Although he won his case, in fact he was the loser, because he only got £100 compensation. The law has not been changed as yet and still the man was demoted for expressing his view. If the law is changed will that make it impossible to express a view disagreeing with the change in the law?

There is no employment protection for teachers or for chaplains in the NHS, the armed forces or the police within the Bill. Rev. Brian Ross, Christian chaplain for Strathclyde Police, was forced to step down after being told that he would need to comply with the "equality and diversity policy" to continue in his role. He had expressed the view on his personal website that marriage was a "God-ordained institution between a man and a woman". The Strathclyde Police spokeswoman said "Whilst the force wholly respects the Rev. Ross's and, indeed, any employees' personally held political and religious beliefs, such views cannot be expressed publically if representing the force, as it is by law an apolitical organisation with firmly embedded policies which embrace diversity and equality". How much more likely is this type of case if marriage is redefined? Will any chaplain who is employed by a public authority be sacked because they express a view supporting the traditional view of marriage, and refusing to promote same sex marriage?

A report in the Daily Telegraph stated that a senior person in the Department of Education said that the Government of the UK may not be able to prevent teachers, and other staff, who hold traditional views on

marriage, from being dismissed from their employment for refusing to promote same sex marriage. The ultimate decision might be taken by the European Court of Human Rights in Strasbourg. It was put this way, “These are all under the control of nine guys in Strasbourg. It is fundamentally uncertain because Britain isn’t in control of this.”

So the protection promised by the Government in this Bill will prove to be worthless, and there is no protection for those who hold traditional views on marriage.

5. SUMMARY

The present position gives gay couples in civil partnerships the same legal rights as married couples, so there is no need for a redefinition of marriage.

The process by which the Bill has come about is flawed and undemocratic, and thus should not become law.

The protection which the Bill purports to give will be seen to be worthless, and the Bill does not protect those who wish to express traditional views.

March 2013

Memorandum submitted by Alan J Williams (MB 109)

A Critique of the Political Movements Demanding Same Sex Marriage

EXECUTIVE SUMMARY

The political movements driving the demand for same sex marriage are based on totalitarian ideologies injurious to western democratic principles and practice.

PERSONAL DETAILS

Alan Williams is a contributor to Anglican Mainstream on the same sex marriage campaign and the Frankfurt School—MA—Philosophical and Psychological Problems in Education—Counselling—Dissertation on Self Concept and Self Esteem—Book reviewer

CAMPAIGN CRITIQUE—SUMMARY

1. Two cultural/political movements underpin demand for Same Sex Marriage (SSM)
 - (a) Gay Rights Movement. b. Neo-Marxist Counter Culture Movement (Frankfurt School)
2. Lenin/Münzenberg—seduction of West’s intellectuals—Lukacs—Sex ‘Ed’ for children
3. Lenin’s concept of ‘political correctness’ used by elite for both movements.
4. Marcuse—Cultural Marxist- Critical Theory—attacks western democratic cultural traditions of family, Church and patriotism. Aim to replace capitalism with neo-Marxism.
5. Gramsci—Neo-Marxist ideologue urges activists to make alliances with ‘victim’ anti-establishment groups & infiltrate institutions. Change and control language.
6. Alfred Kinsey—Self appointed ‘sexologist’—scientific fraud—Kinsey Institute—homosexuality as ‘life style’—Forms of homosexuality—Sexual anarchy advocates
7. Homosexuality and the Law—Decriminalisation—Stonewall—political action groups—removal from list of psychological disorders—removal of Clause 28—Civil Partnerships—Diversity and Equality legislation
8. HIV/AIDS threat to gay rights movement.—compassion for AIDS sufferers—initiative regained—After the Ball—propaganda campaign for homosexual equality—media strategy Desensitisation—Silencing critics with homophobia accusations (Jamming)—Conversion
9. Narcissistic nature of homosexual relationships. Gay ‘marriage’ a legal fiction.
10. Longer term consequences—sexual anarchy—social disorder—demands for ‘strong’ totalitarian government—loss of democratic freedoms—Huxley’s vision

A critique of the psycho-political roots of the same sex marriage campaign

1. The demand for Same Sex Marriage (SSM) shocks many who believe that the establishment of Civil Partnerships for homosexuals was the end of their demands for legal recognition as couples. When supporters of natural heterosexual marriage contemplate the social implications of SSM they are greatly disturbed to discover that SSM legally:

- validates the false concept that children do not need both a mother and a father
- treats parenting roles as wholly interchangeable
- renders marital complementarity irrelevant

- contradicts the clear differences in biology and reproductive roles of males and females
 - denies the right of any child born via IVF for same sex couples to know and be cared for by their biological parents as established by the UN Convention on the Rights of the Child³⁴⁶
2. Many landmarks of western civilisation are being swept away in a riptide of radical social and political movements. The most obvious one is the Gay Rights Movement which has made increasingly strident demands for special legal rights and protections. This international political movement is organised through six major organisations; the Human Rights Campaign (HRC); the Gay and Lesbian Alliance Against Defamation (GLAAD); the National Gay and Lesbian Task Force (NGLTF); Parents, Families and Friends of Lesbians and Gays (PFLAG); the Gay, Lesbian, Straight Educational Network (GLSEN) and Stonewall. The movement is well funded with very powerful political connections. It claims the credit for UK homosexual rights legislation being passed after the year 2000.
3. The other movement, less obvious and less well known but even more influential than the Gay Rights Movement is the Counter Culture led by ideologues influenced by the neo-Marxist/neo-Freudian Frankfurt School. Tasked with covertly undermining western democratic capitalism the School was set up in the early 1920s in conjunction with Frankfurt University as the Institute for Social Research (ISR)³⁴⁷. It is the ISR which has given us Lenin's concept of 'political correctness' invented to control the Bolsheviks.³⁴⁸
4. After WWI Lenin realised the West's workers were not going to rise up against their capitalist overlords and install communism, so he decided to find other people to do it. Identifying the family, the Church, democracy and patriotism as the main points of resistance to international communism, he chose to seduce the West's political elite, the most gullible of whom came to be known as the 'useful idiots,' into betraying their civilisation. Two key players in this enterprise to make western civilisation 'stink' were Willi Münzenberg³⁴⁹ and Georg Lukacs. Münzenberg recruited the 'idiots' into what he called his 'Innocents Clubs, manipulating them into promoting the foreign policy of the USSR and undermining their patriotism.³⁵⁰ To destroy the natural traditional family Lukacs, the first Frankfurt School director, forged premature sex 'education' to young children to stimulate sexual experimentation and promiscuity. When Sheffield parents recently discovered their children were being given the same 'education' it caused a storm of protest.³⁵¹ Lukacs also encouraged easier divorce and access to contraception, pornography and 'free' love. Abortion on demand was legalised in the USSR in 1920. (With a Russian population crash forecast Putin is now supporting larger Russian families. He has also banned Americans from adopting any more Russian children because of the pro-homosexual adoption laws in some states.)
5. Berlin by 1930 was a byword for decadence. But in 1933 the Scholars had to move because Hitler had come to power and most of the academics, like Herbert Marcuse, were Jewish and Marxist. Eventually finding a new home in New York's Columbia University courtesy of communist sympathizer and leading educationalist John Dewey, they quickly became the highly influential gatekeepers of American academe and culture. Columbia played a leading role in educating America's public school teachers and this gave the Frankfurt School, now known as the International Institute of Social Research, prime access to them.³⁵² Here America's young elite learned Critical Theory. While posing as intellectual criticism of their culture, it was in fact cultural Marxism. They learned to attack the western cultural traditions which supported marriage and family life, respected the Christian Churches, protected democratic freedoms and encouraged patriotism. So when graduates entered the professions they were saturated with the values of 'Critical Theory.' Unwittingly they had become ambassadors for cultural Marxism.
6. It was during the 1930s that Antonio Gramsci, a highly intelligent Italian neo-Marxist, produced what came to be known as his *Prison Notebooks*. Smuggled out of prison they detailed how his followers could change the West's culture from being led by Christian tradition into one led by neo-Marxism. A key idea was for them to acquire 'soft power' by forming alliances with anti-establishment groups who saw themselves as 'victims' of prejudice and discrimination by society at large. These alliances were to last as long as they were useful. Activists were also encouraged to infiltrate institutions like the Law, the Trade Unions, the mass media, Education and the Church, to establish left leaning policies when they could. Gramsci also advocated the use of politically correct language claiming it was the way to abolish prejudice. Few know about its Marxist-Leninist assumptions.
7. In the 1940s and early 1950s Alfred Kinsey, a well respected zoologist, became a self designated 'sexologist.' But he had an undeclared agenda. He wanted to destroy Christian sexual morals. He was a sexual anarchist, who believed that orgasm, obtained in any way other than rape, was self justified. His father, a Christian, was overbearing and very demanding of him. And Kinsey hated him for it. Kinsey believed that if he could show that human beings were just like animals so far as sex was concerned, then he would free himself

³⁴⁶ Is There a Case for Same Sex Marriage? p. 98, R. S. Harris, Anglican Mainstream/Voice for Justice UK, 2012.

³⁴⁷ Cry Havoc! p. 31, Ralph de Toledano, Anthem Books, 2006.

³⁴⁸ On the Origins of Political Correctness (F. Ellis) Political Correctness and the Ideological Struggle: From Lenin and Mao to Marcuse and Foucault. <http://thephora.net/forum/archive/index.php/t-40456.html>

³⁴⁹ Double Lives: Stalin, Willi Münzenberg and the seduction of the intellectuals, p19, Stephen Koch, Harper Collins, 1995 edn.

³⁵⁰ Ibid. pp. 12f.

³⁵¹ The Telegraph, *Parents in protest over 'explicit' sex education*, 17/ 11/ 2011.

³⁵² Cry Havoc! p.80.

from any criticism of his own perverse practices and ‘liberate’ what he regarded as the prudish attitudes of his fellow Americans. So he ‘cooked’ the research he published in 1947 and 1954 on male and female human sexual behaviour. By selecting candidates who fitted his desired profile he was able to demonstrate by this ‘statistical research’ that people were just like animals when it came to sex. Criticised by other academics for his ‘poor’ methodology, the FBI wanted to arrest him for corrupting America’s youth but they didn’t know how to handle him or his ‘statistics.’ He died in 1956 believing he had failed. How wrong he was. His research wasn’t thoroughly discredited until 1990 by Dr Judith Reisman et al.³⁵³

8. Unfortunately in the meanwhile Hugh Hefner, acknowledging his debt to Kinsey, had popularized the essence of Kinsey’s heavy ‘academic’ tomes through Playboy magazine delivering a message every adolescent male wanted to hear; you don’t have to be married to have sex!³⁵⁴ And the same message has been delivered by other highly respected figures like anthropologist Margaret Mead, who also produced false findings in her seminal research,³⁵⁵ and Helen Gurley Brown whose autobiographical *Sex and the Single Girl* (1964) inspired *Sex in the City*. Gurley Brown also edited *Cosmopolitan*. Before the 60s sexual revolution there were two major venereal diseases, today there are over two dozen! Tragically the Kinsey Institute became the world’s leading authority on sex and how to educate children about it! Kinsey himself endorsed consensual homosexual behaviour as legitimate along with paedophilia and bestiality.

9. But Kinsey was not a psychologist. His idea that sexual polarity was like shoe sizes, with most people’s sexual orientation being potentially bi-sexual and rightly placed near the centre of a Bell Distribution Curve is simply nonsense. Bi-sexuals are rare. Homosexuals are less so. Featuring disproportionately in the media gives a false impression of greater numbers. Some do have a high public profile. Nevertheless about 97% of people are heterosexual. A psychologist specializing in treating people with unwanted homosexual desire sees male homosexuality, for example, in two ways. Firstly, it is a psychological disorder, originating in childhood trauma, and secondly as opportunistic in the absence of women, hence its appearance in single sex institutions, and disappearance outside them.³⁵⁶ Also Kinsey’s estimate of the prevalence of homosexuality as 10% was a complete fabrication. Very large and well publicised surveys since carried out put it at 1.5–3.00%. And in any event prevalence does not justify it as a sexual practice, as Kinsey implied, just as a high proportion of murderers would not justify murder. Lastly homosexuality is not a personally benign feature like being left handed. While radical, it is not a fixed trait and renders practitioners very vulnerable to illness and disease. Those unhappily involved in homosexual practices can stop with the right help and begin a heterosexual life.³⁵⁷

10. Until 1967 homosexual acts were illegal in the UK. Since then homosexuals have gained more and more legal rights and now demand the right to ‘marry.’ There are some countries around the world which have endorsed same sex marriage but there are also others like Honduras and Latvia which have specifically banned it. Recently the Russian government has taken a very hard line against Gay Pride and the promotion of homosexuality. Not to be put off gay activists continue trying to ‘make the whole world ‘gay.’³⁵⁸ In the UK they have achieved the removal of Section 28 which specifically forbade the promotion of homosexuality in schools; the introduction of Civil Partnerships and Sexual Orientation Regulations granting rights to services secured through the Equality Act, and other Parliamentary Acts favouring homosexuals. But by far the most important change in the social/political status of homosexuality was made by the world leading American Psychiatric Association (APA). In 1973 it was manipulated and intimidated by activists aided by Kinsey Institute personnel into removing homosexuality from its Diagnostic & Statistical Manual of Mental Disorders (DSM III).³⁵⁹ After that decision almost every professional psychiatric, psychological and health organisation in the West followed suit. Along with Diversity and Equality Legislation, which includes the new category of Sexual Orientation, homosexuals have the legal tools to trump any challenge to them obtaining their new ‘rights.’

11. And all of this despite the emergence of a disease killing tens of thousands and incubated and spread so widely by homosexual activity that initially it was popularly referred to as the gay plague. Indeed so dominated were the first casualty lists by homosexuals that it was officially called the Gay Related Immunity Deficiency Syndrome or GRID. But gay rights activists were having none of it; because bi-sexuals and heterosexuals also became infected they insisted it be called Acquired Immune Deficiency Syndrome (AIDS) to remove any reference to homosexuality; and they got their way. But even today, and in spite of the safe sex message, most diagnoses in today’s renewed epidemic are very much found in men who have sex with men (MSM).³⁶⁰ So with this massive backlash by nature itself against homosexual activity how did the gay rights movement manage to stay on the rails?

³⁵³ Kinsey, *Sex and Fraud: The Indoctrination of a People*, Dr J. Reisman, Edward Eichel ed. Dr J H Court & Dr J G Muir. Lochinvar Inc. 1990.

³⁵⁴ *Mr Playboy: Hugh Hefner and the American Dream*. p.47 Steven Watts, J Wiley & Sons, 2008.

³⁵⁵ *Architects of the Culture of Death*, p.258, D De Marco & B Wiker, Ignatius Press, San Francisco, 2004.

³⁵⁶ *A Freedom Too Far*, pp. 15-36, C Socarides, Adam Margrave Books, 1995.

³⁵⁷ *Ibid*, p.115.

³⁵⁸ *Ibid*. p.30.

³⁵⁹ *Ibid.*, Chapter 6, & *Homosexuality and American Psychiatry*, R. Bayer, Princeton University Press, 1987.

³⁶⁰ *The Shocking Second HIV Epidemic Among US Men No-one is Talking About*: <http://www.alternet.org/activism/shocking-second-hiv-epidemic—15/08/2012>.

12. It nearly didn't. Ironically public compassion for film stars like Rock Hudson, who millions saw virtually dying on TV, saved the day for the gay rights movement. Driven to do something by the crisis activists had a conference in 1988. The following year a plan of action was set out in *After the Ball: How America will conquer its fear & hatred of Gays in the 90s*. Written by gay activists, Kirk & Madsen, they described exactly how the mass media could be used to carry gay propaganda and capitalise on the public's compassion. They also set out to capture the mass media itself to control what the public knew about homosexual matters. Any negative item was to be squashed, anything positive was to be widely published. The success of the campaign surpassed their wildest dreams.

13. In the introduction they write, "*AIDS gives us a chance...to establish ourselves as a victimized minority.. deserving ... special.. care... 'The campaign....of unabashed propaganda, (is) firmly grounded in.. principles of psychology and advertising.*"³⁶¹ Kirk was a neuroscientist and he knew similar propaganda had worked in communist China in the 1950s. After demanding that activists stop confronting the public with narcissistic displays, they proposed a three part strategy for what they called their "Waging Peace" campaign as they reopened their front in the Culture War.

THE STRATEGY

- (a) **Desensitisation.** Supported by gay entertainers and media professionals activists were urged to talk about homosexuality at every opportunity and claim equal civil rights. On no account was intimate homosexual behaviour to be shown, certainly in the early stages. Instead homosexuals were to be depicted as harmless, average young people from loving families. (NAMBLA The North American Man Boy Love Association was to be kept completely out of the picture.)
- (b) **Jamming.** Objectors were to be silenced using a special psychological technique used in totalitarian societies. They were to be accused of having a socially unacceptable attitude; 'homophobia.' (This rare psychological disorder actually describes an irrational fear of sameness or monotony—reminded the word means to have a bigoted hatred of homosexuals.) As no-one wants a reputation as a prejudiced bigot their silence avoids it.
- (c) **Conversion.** Lenin believed that films were vital in the making or the breaking of a nation's culture.³⁶² And by using films the emotions of susceptible people can be conditioned into actually liking homosexuals by stimulating their desire to protect innocent 'victims,' and by always associating homosexuals with them. Films like *Philadelphia* and *Broke Back Mountain* are Oscar winning examples. Also a myriad of today's TV soaps, sitcoms, drama series and even adverts selling beds, desensitise viewers further by showing homosexuals as unthreatening and normal just like everyone else.

This strategy is reinforced by activists being urged to use the following eight tactics.

- (i) Don't just express yourself; claim that gays deserve special protection.
- (ii) Appeal to the Ambivalent Sceptics.
- (iii) Keep talking about gayness.
- (iv) Keep the message focused; the issue is homosexuality.
- (v) Portray gays as victims not as aggressive challengers
- (vi) Give potential protectors a good cause.
- (vii) Make gays look good.
- (viii) Make the victimizers look bad.³⁶³

14. For the propaganda campaign to work the public had to accept that homosexuals are *victims of circumstance* because they are born gay. But the campaigners themselves knew this was false. As they write, "*We argue that, for all practical purposes, gays should be considered to have been **born gay**—even though sexual orientation, for most humans seems to be the product of a complex interaction between innate predispositions and environmental factors during childhood and adolescence.*"³⁶⁴

15. If homosexuals are not born gay then what is it that drives homosexual activists into demanding absurd things like gay 'marriage' and that their relationships be beyond criticism? Kirk & Madsen had the answer to this too but applied it only to certain 'sick' gays. It is a combination of histrionic and narcissistic personality disorders. As Kirk & Madsen write it is *often associated with a homosexual arousal pattern ... and such patients have a grandiose sense of self importance ...fantasies of unlimited ability, power, wealth, brilliance, beauty or ideal love ...are exploitative ...have irrational, angry outbursts ...tantrums...extreme self-centredness ... exploitative ... outright lying.* And these few symptomatic behaviours are from a very long list. Contradicting themselves Kirk and Madsen make it clear that these characteristics don't just apply to certain 'sick' gays they are very common amongst homosexuals.³⁶⁵

³⁶¹ *After the Ball*: pp. xxv-xxvi, M Kirk & H Madsen, Doubleday, 1989.

³⁶² *Cry Havoc!* p. 212.

³⁶³ *After the Ball*: pp.148-191, M Kirk & H Madsen, Doubleday, 1989.

³⁶⁴ *Ibid.* p.184.

³⁶⁵ *Ibid.* pp. 296f.

16. If same sex marriage is legalised it will be an endorsement of an essentially narcissistic, disordered and sterile relationship in which the lover sees him/herself perfectly reflected in the beloved. As with Narcissus this vision is an illusion. So same sex marriage is not a relationship which can qualify as equal to heterosexual marriage in which the husband and wife complement each other in a potentially procreative union. Also whereas faithful heterosexual couples without previous sexual relations are not vulnerable to physiological damage and disease. So called 'faithful' homosexual couples are highly vulnerable, in part because in homosexual culture 'faithful' does not mean completely exclusive.³⁶⁶ Homosexual marriage would be a legal fiction with no intelligible meaning and become the focus for social friction if its supporters attempt to force those who deny its legitimacy to accept it; and/or vice versa.³⁶⁷

17. In the longer term it would inevitably encourage those who wish to have their poly sexual relationships legally recognised too.³⁶⁸ Such recognition will not be for the public good but it would be logically impossible to deny once the natural definition is rejected. This would encourage an increase in the level of sexual anarchy we suffer already and eventually more social unrest. Such a future would almost certainly lead to demands for 'strong' government to control the streets. And for that government to take any draconian action it would need totalitarian powers. So same sex 'marriage,' rather than strengthening heterosexual marriage as some would have us believe, could play a part in ending the democratic freedoms for which our forbears fought and died. As Aldous Huxley stated, in such a society people will come to '*love their servitude*'³⁶⁹... and at least 60 percent '*would be drones existing in a miasma of unrestrained sex*'³⁷⁰ with maybe millions in Gulags.

March 2013

Memorandum submitted by Adrian Tippetts (MB 110)

EQUAL MARRIAGE IS THE MARK OF A CIVILISED SOCIETY

1. In this submission to the Parliamentary Commission charged with deliberating on the Same Sex Marriage Bill, I wish to explain why extending the right of marriage to same-sex couples is the fair and just thing to do, fitting with the tradition of British democracy and the principle of 'one law for all'. I also appeal to the Commission

2. I also want to explain why opposition to this is illogical, does not reflect the reality of relationships, is selectively discriminatory and thus morally wrong.

3. You may ask, why all the fuss about marriage? Don't gay people have civil partnerships that offer almost all the same rights? In fact civil partnerships do not enjoy the same protections as marriages. They do not have international recognition and there are still restrictions on pensions entitlements for partners. But it would still be demeaning for the law to discriminate, even if civil partnerships *were* legally on a par with marriages. Enforcing a different legal name for the arrangements of gay and straight people is segregation which has harmful consequences.

SEGREGATION HURTS

4. Legal segregation tells society that it's alright to treat LGBT people differently simply because of who they are. A large proportion of gay people learn to be treated as outsiders and outcasts, rejected and abused by families, bullied at school and in the workplace, vilified by church leaders, and all too regularly, subject to violent assault. We should be breaking these prejudices, not shoring them up.

5. Segregation harms in a most personal way, too, by making LGBT people feel different. When schools teach about *marriage and civil partnership* they are reinforcing a feeling of difference among LGBT children. Marriage, off limits to gay people, is seen as a 'gold standard' relationship, elevating heterosexuality and thus straight people as 'ideal'. It encourages LGBT people to feel inferior and ashamed for not meeting the ideal. The testimonies of people like rugby player Gareth Thomas show how feeling set apart from the rest has ruinous psychological consequences that last well into adulthood.

6. Heterosexuality is not an ideal because our sexual orientation is part of our nature, and cannot be aspired to. A just law, however, would recognise that there is something we can all aspire to, whether gay or straight. Loving relationships are one of life's great aspirations and lie at the heart of what makes a good life. We show how much loved ones and friends mean to us by celebrating and encouraging their relationships. That encouragement, in turn, strengthens bonds further.

³⁶⁶ One-in-three Americans has a sexually transmitted infection: Centers for Disease Control report. 16/02/2013.

³⁶⁷ Is There a Case for Same Sex Marriage? p. 71, R. S. Harris, Anglican Mainstream & Voice for Justice UK, 2012.

³⁶⁸ Ibid. p. 87.

³⁶⁹ The Ultimate Revolution: Aldous Huxley's speech at the Berkeley Language Centre 20/03/1960 Speech Archive SA 0269 <http://pulsemedia.org/2002/02/02/aldous-huxley-the-ultimate-revolution>.

³⁷⁰ Cry Havoc! p.95.

LOVE IS ALL YOU NEED

7. We marry the person of our own choosing, on equal terms, for love alone, and society is far better for that reason. We should be thankful marriage has changed in definition, from the days when all the wife's possessions were legally transferred to the husband, or when services could be solemnised by the Church of England. Marriage is neither the preserve of the church nor the religious. Commentators who claim there is more to marriage than love owe some explanation to their spouses, as to why they proposed in the first place. Would you still have loved and married your spouse if that person had turned out to be infertile?

8. Daily Telegraph's Charles Moore³⁷¹ says that because same-sex couples can never produce children, their domestic arrangements make no difference to the human future and therefore they should be excluded from the institution of marriage. Don't children 'exist because of men and women'?

9. This is arbitrary discrimination because we don't deny this grand institution to the infertile or to parents of adopted children. But in any case, civilisation's success is not just due to the ability of people to produce new generations. Society flourishes because of the way we connect and cooperate with each other. We depend on our neighbours, colleagues, team-mates, customers, suppliers, for help and support on all kinds of levels. Sometimes we are called to help strangers in emergencies. One extreme example was the case of the young children rescued from a house fire in Birmingham³⁷². Would they 'exist' today, were it not for the bravery of the gay couple next door? Don't read this as a plea to make an exception for courage: the point is, we would probably all do our best to help our neighbour if we were in those shoes. Gay couples, with or without children, too contribute to the education system and welfare state through their taxes and dole on, support, teach, inspire and care for their cousins, nieces and nephews like anyone else.

10. And gay people *do* have children anyway. There are thousands of stable families headed by same-sex couples where well-adjusted children are being nurtured in loving supportive environments. Some of these children would never have existed were it not for the stable relationship in the first place. If you then say that such a family unit is not ideal because same-sex couples can never both be their biological parents, then you do a grave injustice to the integrity of all families with adopted children. The fact that the children see this couple as loving parents and their own family as equal to any other family unit is all that matters.

WHO IS HARMED BY THE LOVE OF OTHERS?

11. Many opponents excuse banning gay people from marrying because they want to 'protect the definition of marriage as a man and a woman'. But this begs the question: from what, or from whom, is marriage being protected? The mere extension of existing marriage rights to a small minority will have no effect on the status of millions of marriages of straight couples across the nation. As noted by the Dean of Worcester³⁷³, we aren't entering an institution; we are making a commitment to one person, we hope, for life. It is thus inaccurate for straight couples to describe the change in law as a 'redefinition' of their marriage.

12. Some say that same-sex marriage will cause a major upheaval and even a wave of persecution. This is hysterical conjecture. Same-sex marriage has been legal in several countries without any evidence of any such 'persecution'. In Belgium or the Netherlands, 12 years on, life goes on as before, whether in the tranquility of e.g. the *Achel* Trappist monastery, or the villages of the Veluwe, or Amsterdam city centre. Nothing has changed, apart from the fact that a small minority of people are given their due recognition. Churches still continue to teach and conduct marriages according to their beliefs, just as before.

13. Some MPs feel uneasy about allowing marriage to gay people because of the 'offence' it will cause to religious people. But the majority of religious people in this country find that allowing equal rights to LGBT people is the moral, just thing to do. Legally enforcing one religious interpretation would only deny religious freedom and attacking conscience of liberal faiths. Who has the right to say who is more in tune with the mind of God on this issue?

14. Opponents to equality at least have satisfaction of knowing that no gay people are being married in the eyes of their god. Churches except our established one have the right to make their own rules, to opt in and opt out. The simple challenge to anyone who might sue, to determine God's mind on whom we might sleep with. Equally, it is only fair that the people have freedom from the beliefs of others too. I, personally, am not religious; in fact two-thirds of marriages in the UK are non-religious.

15. A member of the Committee, Mr. David Burrowes, proposes opt-outs for civil marriage registrars who do not believe same-sex couples should be able to marry. This is a highly selective and inconsistent form of discrimination and I urge the Committee to reject this proposal.

16. It would mean that lesbian, gay and bisexual people would be the only social group of people who could be legally refused a service by secular and state service providers. This is humiliating for LGBT people, who

³⁷¹ Charles Moore, 'When Conservatives forget how to be conservative, they lose', Daily Telegraph, 14 December 2012; Link: <http://www.telegraph.co.uk/news/religion/9745592/When-Conservatives-forget-how-to-be-conservative-they-lose.html>

³⁷² 'Birmingham gay couple saved life of man who abused them', Birmingham Mail, 2 August 2010; Link: <http://www.birminghammail.co.uk/news/local-news/birmingham-gay-couple-save-life-248732>

³⁷³ 'Dean of Worcester: I agree with allowing equal marriage because marriage is not an institution', 10 January 2013; Link: <http://www.pinknews.co.uk/2013/01/10/dean-of-worcester-i-agree-with-allowing-equal-marriage-because-marriage-is-not-an-institution/>

learn to expect rejection. It would also entrench the perception that LGBT people are less worthy citizens, fuelling existing homophobic prejudice.

17. It is fatuous to claim that if other registrars are able and willing to officiate for gay couples, no harm is done. But allowing a marriage registrar to refuse to fulfil his or her obligations arguably causes harm within her workplace and in society at large. It costs the employer and colleagues extra time and money, the bill for which is passed ultimately to the taxpayer and customer. It means inconvenience in scheduling and holiday arrangements. Suppose there were not just one registrar wishing to object, but all? In the Netherlands until recently, that has been exactly the scenario. In the country's Calvinist bible belt, some local municipalities had to go to great efforts to ensure a *single* registrar willing to marry gay couples, years after the enactment of equal marriage legislation.

18. A secular employee has the right to his or her views, which he or she may express to full satisfaction outside of work. However, when one works in the secular sphere, one must put aside personal convictions and abide by the law of the land. A state employee is able to choose another position if the terms are not to his or her liking. It is highly selective to plead sympathy for the 'sincerely held beliefs' of marriage registrars, who work for the state and disagree with same-sex marriage. Why would a civil marriage registrar single out homosexuality on religious grounds, when there are a whole galaxy of biblical transgressions of which virtually every married or engaged couple, will have committed at least a handful? Where is the call for marriage registrars to opt out of marrying couples who have divorced or had sexual intercourse before their marriage?

19. Some MPs call for teachers who believe marriage can only be between a man and a woman to be excused from teaching children that same-sex couples can marry also. This is grossly unfair on children. In the captive environment of the classroom, where children are instructed under the authority of the teacher, one expects the children to be given the facts and objective, informed views about the human condition. We do not allow children to be indoctrinated with personal prejudices of the teacher. We teach about evolution and ban creationism, for example. Many faith schools do excellent work in teaching about inclusivity of minorities, sex and relationships, but a minority of faith schools, thanks to loopholes in equality legislation, cause a great deal of harm. To tell an LGBT child that a relationship outside of heterosexual marriage is sinful, and thus, that the only salvation is a loveless life of chastity is a cruel, inexcusable, perverse abuse of authority. Every child should know that he or she can fall in love, and that the joy, affection and commitment that comes with it is equally worthy and authentic, regardless of who you love.

20. Being told that gay relationships are less valuable than straight relationships is especially damaging to adolescents coming to terms with their sexuality. An ongoing survey by LGBT support service The Metro Centre³⁷⁴ suggests that people become aware of being LGB from the age of 14, and that it takes on average another two years to come out. Nearly three quarters of respondents said they needed emotional support during this period. Young people in vulnerable positions who are made to feel deviant, or different are more likely to be subject to bullying and less likely to report it.

ONE LAW FOR ALL IS ALWAYS A PRIORITY

21. You may think that extending marriage to gay couples shouldn't have gone ahead because 'we have other priorities' and because 'we should be focusing on the economy'. This is curious, because the very people making this argument have spent thousands on media campaigns, leafleting campaigns, briefings and conferences to get this very message across. But the principle at stake here is a big priority: that of equality under the law, and of there being one law for all.

22. Opponents say allowing gay people to marry is 'untraditional'. Quite the contrary: ensuring that minority groups receive equal protection and rights under the law is a fine example of strengthening our democratic tradition. Britain is rightly regarded as the cradle of modern democracy. Ever since Magna Carta, through the struggle for freedom of conscience, fair representation, women's suffrage and equal civil rights, brave thinkers and campaigners have paid dearly to make this country the beacon of democracy that other nations look up to. John Stuart Mill reminds us that the highest measure of civilised society is how we treat minorities and enable the pursuit of personal interests. LGBT people are such a minority.

23. If the overwhelming evidence shows that same-sex couples are just as capable of love and commitment, and just as capable of providing stable parental homes as straight couples, then opinions of others cannot count. However this Bill proceeds in parliament, one can no more vote on the authenticity and value of LGBT relationships than vote on the age of the Earth.

24. It is sad that some wish to put marriage equality to a referendum. They point to the large numbers of signatories opposing marriage as a reason to deny equality. But this far removed from democracy in a civilised society. I suspect you, like I, are rightly appalled at the treatment of Christians, whose freedom to assemble and worship is severely restricted by some Middle Eastern dictatorships. We are appalled when their protections will be erased from the new constitution, validated by a simple majority vote. Here in Britain, we have an opportunity to send a message that voting against the rights of minorities, whether racial, religious or sexual, is not democracy but the rule of the mob.

³⁷⁴ 'Survey: gay teens come out at 16 with a little help from their friends', Pink News, 15 February 2013; Link: <http://www.pinknews.co.uk/2013/02/15/survey-gay-teens-come-out-at-16-with-a-little-help-from-their-friends/>

25. Supporting the right of gay people to have full equality under the law, including equal recognition of relationships, then, is very much the traditional thing to do: it is in the tradition of decency, fair play and democracy in its truest sense.

26. When you deliberate on this, you will be stating whether LGBT people should be treated differently and separately because of who they are and whom they love. You and your colleagues will be choosing between inclusion, acceptance and integration on one hand, and exclusion, separation and segregation on the other. The law as it stands effectively states that no gay relationship, no matter how loving, supportive, stable, faithful or committed can match the standard of a heterosexual relationship, however abusive, adulterous, deceitful, dysfunctional or short-lived. Did we even need a consultation to debate this?

March 2013

Memorandum submitted by Sarah Noble (MB 111)

My name is Sarah Noble. In addition to the application of the bill to LGB people, as a transgender rights advocate, I have particular interest in the bill as it applies to transgender people.

1. I notice that when the consultation into the bill was announced, Lynne Featherstone, then a junior minister for equalities, and also Theresa May, then also the Minister for Women and Equalities, announced that the bill would allow people to seek a gender recognition certificate (GRC) without having to annul their marriages. Such a change is welcome, given the “Sophie’s Choice” that many trans people must make between legal recognition of their gender and of their relationship.

2. During the Report Stage of the Gender Recognition Act 2004 (GRA), Andrew Mitchell tabled an amendment that would allow people who married prior to that Act’s commencement to retain their marriages. The amendment was opposed by the Government of the time, was whipped against, and fell. The minister responsible for the Act, David Lammy, stated:

Based on a fundamental principle, the Government stand by the requirement that marriage is for opposite-sex couples. I realise that the hon. Gentleman’s proposal is well intentioned towards transgendered people who are together, but the Government’s position is that such a possibility is remote, and in those circumstances, we believe that ending such a marriage and beginning afresh would not be unreasonable. On that basis, I am unable to accept the new clause.

3. This statement, I believe, also puts to rest the canard that civil partnerships were, from their outset, the start of a “slippery slope” towards same-sex marriage. It is clear that the Government of the day were committed to the idea that civil partnerships for same-sex couples was enough, somewhat to the detriment of many couples in this situation.

4. The bill as proposed does mitigate this awful choice somewhat, but there are parts of the bill which still force trans people into making a difficult choice:

- (a) As proposed, married people seeking a GRC must include a statutory declaration of their partner’s consent to the continuation of their marriage. Otherwise, the applicant will only be issued an interim GRC. For many trans people, this is impossible due to estrangement with their partner. As separation is in itself grounds for divorce/annulment, removing this provision would cause no harm.
- (b) People in civil partnerships seeking a GRC must dissolve their partnership under the bill, as civil partnerships will remain exclusive to same-sex couples.

5. On that basis, I support amendments tabled by Julian Huppert, Hugh Bayley, Chris Bryant, and Kate Green to not only allow people to remain married or in civil partnerships while one or both partners are seeking a GRC, but reinstate marriages, with retroactive effect, for those people who have already made the choice to seek a GRC. I also support amendments tabled that would:

- (a) Introduce civil partnerships for mixed-sex couples, not only on a general point of equality, but also to provide a solution for the problem outlined in 4b.
- (b) Remove the “spousal veto” as mentioned in 4a.
- (c) Remove one partner holding a GRC as a reason under the Matrimonial Causes Act to void a marriage.
- (d) Reinstate the “fast track” to gender recognition that expired two years after commencement of the GRA.

6. I have my concerns, along the same lines as GIREs, UKIA, and Christie Elan-Cane, that the bill includes unnecessary gendered language. A bill that ensures marriages of two people *regardless* of gender is preferable to one that only allows marriages for male-male, male-female, and female-female couples. While a moot point due to the current legal system of gender, it may be a subject of discussion in the future.

7. I also have my concerns that the bill and amendments tabled expose how complicated the pension system, especially concerning survivor benefits, is with regards to gender and sexuality. I believe that reform of the pension system to introduce progressive pension equality should be considered by this and future Governments.

8. I would also like to address some comments made both during the Second Reading debate and in committee that imply that this is progress the LGBT community do not want. While Stonewall indeed did not press for same-sex marriage until 2010, this opposition/recalcitrance was highly controversial amongst the LGBT community. Indeed, Stonewall themselves admitted, under pressure, that they “never pretended to be a democratic member organisation”. There also remain serious criticisms within the transgender community of Stonewall.

9. In general, I support the bill as introduced over no bill at all, but I also support an amended bill over the introduced bill.

March 2013

Memorandum submitted by Nick Turner (MB 112)

I am writing as a private individual who does not wish to see the definition of marriage changed. I am most alarmed at the way the government appears to be trying to rush this measure through and value the opportunity to put some points to you for your consideration.

Please consider the following:

1. Empirical studies have shown that despite its failures, the traditional family unit is the best arrangement for raising children. How has the government addressed this?

2. Has the government sought any empirical evidence to show that gay couples can provide as good a home for children as mixed marriage? If not why not? (I believe that psychologically, a mother and father are needed for optimal development and such children will lack one of these).

3. Has the government carried out any research on or examined any evidence about the stability of same sex relationships? If these are fragile (anecdotal evidence suggests there is a tendency for gays and lesbians to have many partners) such relationships will not provide good stable homes for children.

4. Gay and Lesbian publications say that because of society’s attitude to them they have significantly higher drug and alcohol abuse problems than heterosexuals. The same is said of depression, suicide and STDs. How will children be safeguarded against these things when they are adopted by married same sex couples?

5. No major society in history has ever regularised same sex relationships in formal marriage even when homosexual relationships have been socially acceptable. That means the consequences are completely unknown. What research into these consequences has been carried out by the government in particular with reference to children?

6. The government has said they want to make marriage more relevant to strengthen it. The proposed law is not strengthening marriage, it is fundamentally changing its definition. The government will argue that the legal definition of marriage has been evolving over centuries but the changes have been tinkering with formalities etc. not fundamentally changing its basis—ie that it is between a man and a woman. The change will not strengthen marriage it will simply change it to include a group of people who already have a legally recognised union called Civil Partnership. The change is unnecessary and will have complicated legal consequences (amendments to other legislation etc.) that will be expensive to deal with.

7. In addition, the modelling of homosexual relationships will undoubtedly encourage more children to consider a homosexual lifestyle (even when they are not actually homosexuals) because they are seeing it modelled so freely. This will lead to greater confusion and insecurity for our children and for the generations to come. It will also consign some to a lifestyle they would not have chosen and because of that, they will miss out on having children or grandchildren.

8. This has a knock-on effect with the education of children. Presumably same sex unions will have to be presented equally in sex education in schools since it will be an equal option. What happens to children from traditional Christian, Jewish, Muslim or other faith communities where their parents do not hold with this being a valid choice? Will they be exempt from these classes?

9. What about the teachers of such topics? Where a Christian or Muslim teacher *cannot* teach this material for conscience sake will they be allowed to qualify their statements about same sex unions?

10. What safeguards will there be for such teachers from unfair dismissal for refusing to teach the standard line on this? How in fact will *their* human rights to believe certain things be protected?

11. It will not stop here. Today same sex unions. Tomorrow, different combinations of partnerships between men and several other men or a man with a woman and her mother. The key phrase seems to be that the relationship should be “loving, committed and faithful”. On that basis, in years to come, one can imagine a scenario where a man will be allowed to marry his dog on the basis that he is his “loving, committed and faithful” best friend?! Do we really want to start down this path?

12. Other legal and social problems:

12.1 We already have a society where children are psychologically confused about their identity because of things like sperm donation and surrogate mothers (eg who is my father? Who is my mother?).

The requirement for more artificial arrangements to provide same sex couples with children will only increase these problems. We seem to be laying up a lot of problems for future generations without properly considering the consequences. Again, what studies has the government carried out to consider these issues?

12.2 There is already a shortage of children for adoption. Has the government considered how it will deal with the likely increased demand for adoption?

13. Safeguards for the churches and other religious groups.

It is said that there will be a “quadruple lock” to prevent any challenge in the courts to, say, a church not agreeing to marry a gay couple. The gay lobby is very militant and wants above everything to be regarded as “normal”. If it can coerce the churches into doing this then it will.

If that means deliberately provoking a situation that it can then appeal to the European Court of Human Rights it will do so and I expect that the Court would find in their favour whatever the government says. How can the government be so sure that this safeguard will not be challenged?

14. Why does “marriage” need to be redefined in this way? Gays and lesbians already have

Civil Partnerships, giving them the same legal rights as a marriage. The proposal is fundamentally changing the vocabulary which has for many hundreds of years in this country recognised marriage as between 1 man and 1 woman. As one person said “you are asking us to call orange something that has always previously been red, without changing orange itself”. This is a recipe for confusion and chaos and is completely unnecessary and distracting when many other issues are crying out for the focus and attention of the government.

15. The government has not been honest about the statistics.

In a letter to The Daily Telegraph on Tuesday February 5th, signed by the Right Hon. Members of Parliament Theresa May, George Osborne and William Hague it was stated that the proposal is supported by ‘a substantial majority’ and that ‘support is rising’.

Apparently, and according to my MP (Don Foster), the basis for this statement was a YouGov/Sunday Times Survey in which 2030 British adults were questioned in various parts of Britain, including Scotland. (Since Scotland is being considered separately the survey is invalid).

In addition, the population of England and Wales in the last census was 56.1 million and so the 2030 adults are a fraction of a percentage! This cannot possibly be representative of public opinion. The proposed legislation would be to cater for a minority of a minority.

In the meantime the government has completely ignored the petition of the Coalition for Marriage, which has more than 644,000 signatures.

My hope is that this Bill will be abandoned and that the parties include the proposal in their manifestos at the next election so that there can be a full and proper debate over a reasonable period. The current attempt seems to be trying to curry favour with a very small minority of people while ignoring the wishes of a very large number of people.

March 2013

Memorandum submitted by the Sibyls (MB 113)

The Sibyls (<http://www.sibyls.co.uk/>) is a UK-based confidential spirituality group for transgender people and their supporters, offering companionship along the journey, and information/advocacy to churches.

Sibyls seek to fulfil the two great commandments of Jesus to love God and to love one another. To this end we try to hold two retreats a year, in safe, friendly establishments, to provide an opportunity to meet, talk, learn, pray and seek God’s will. We also produce a regular e-newsletter and offer a listening service for members.

SUMMARY

The Sibyls, a UK Christian spirituality group for transgender people, is in favour of equal marriage and pleased that the Bill extends this option to religious organisations that wish, at this stage, to opt in. Many of our members belong to the Church of England and in due course we hope that the Church of England will make provision for clergy and parishes that wish to opt in, which is possible under this legislation. We welcome the provision that married transgender people who apply for full gender recognition will no longer have to dissolve their marriages. Some of our members have done that, and entered into a civil partnership with their former spouse. The Bill should include appropriate compensation for these couples and the removal of any further anomalies affecting transgender people’s rights (eg pension/partner rights) and hence we also support the case for equal civil partnerships.

EQUAL MARRIAGE

1.1 We would like to thank the Government for last year's Consultation on Equal Marriage to which we contributed.

1.2 We are pleased that the Bill, if passed, would enable equal civil marriage, with which we are in favour.

1.3 We are also pleased that the Bill contains an 'opt in' provision for religious organisations, which we also advocated in our submission at the Consultation stage.

1.4 Having read the Church of England's submission to the Consultation we regret, but can understand why the Bill contains the so-called 'quadruple locks' to protect the Established Church, and other religious bodies, which, officially at least, are reluctant to opt in at this stage.

1.5 However, as we said in our submission, we believe that a number of ministers of religion, including Church of England clergy, would wish to officiate at such ceremonies, and that many Church of England parishes would wish to host them.

1.6 Ideally, we would have preferred the right of parishioners to marry in their Church of England parish church to be extended to same-sex couples, with an exemption for those clergy who could not conscientiously conduct such a marriage. (In relation to the Gender Recognition Act the Church of England was able to accept this arrangement where one or both parties to the marriage has undergone gender reassignment).

1.7 However, we would not wish the progress of equal civil marriage, with the provision for opt in by religious bodies, to be undermined by pushing 1.6 to the point where the Bill is lost.

MARRIAGE & TRANS PEOPLE

1.8 We are delighted that the Bill, if passed, would enable married transgender people to obtain full gender recognition without dissolving their marriage, which was the main focus of our submission last year.

1.9 We are pleased that the legislation will enable those who did dissolve their marriage in order to obtain full gender recognition, and then entered into a civil partnership with their former spouse, to convert their civil partnership into a marriage.

1.10 We are disappointed that in the Bill these couples can only backdate their marriage to the start of their civil partnership, and urge the committee to explore ways in which the couple's marriage can be recognised from the date of their original marriage.

1.11 We consider that there should be a no cost fast track system for the restoration of such marriages, ie that the fee for converting a civil partnership into a marriage should be waived in the case of couples who had to dissolve their marriage in order to obtain full gender recognition, as compensation for the stress and trauma this involved for the couple.

1.12 We believe that the Bill should include legislation for the restoration of any missing pension rights for those who have had to dissolve their marriage to obtain a Gender Recognition Certificate. These should be backdated to the date of the original marriage. The same right of restoration should also apply to all the partners in the relationship.

1.13 We regret the continuing inequality of the clause that allows dissolution of the marriage because one spouse has not declared that they are Trans.

1.14 We believe that the language used in the part of the legislation relating to transgender people should be, as far as possible, gender neutral, eg 'spouses' rather than husband or wife. Terms which define a relationship as "heterosexual" or "homosexual" should also be avoided.

1.15 As stated in our submission, we remain in favour of equal civil partnerships, both from the point of view of equality and to address the following anomaly: not to introduce civil partnerships for heterosexual couples will mean that, should a trans person in a civil partnership transition, they would be faced with the dilemma of having to dissolve their civil partnership—with a possible impact on partner rights—or not proceed to full gender recognition.

OTHER MATTERS:

1.16 We believe that the provisions of the Bill should be extended to include adequate provision for the inclusion of intersex people or those people who regard themselves as "Gender Queer" or non-gendered people. No provision appears to have been made for these people under the present draft legislation.

Memorandum submitted by the Maranatha Community (MB 114)

THIS DOCUMENT

This submission has been prepared in response to the House of Commons, Public Bill Committee's invitation to those with relevant expertise and experience or a special interest in the Government's proposed legislation on civil marriage for same-sex couples, to submit their views on The Marriage (Same-Sex Couples) Bill.

THE MARANATHA COMMUNITY

The Maranatha Community is a Christian movement with many thousands of members throughout the country, active in all the main churches. Its membership includes a substantial number of people involved in teaching, child care, youth services, health and justice professions and many workers concerned with children in the voluntary sector. It has been deeply engaged with work for children and families, especially the abused, disabled and disadvantaged for over 30 years.

The Community has produced a broad range of reports on the subjects of Family & Marriage and children, both in Parliament and at international conferences. It has taken the initiative in a broad range of projects directly contributing to the health of the nation and it also has extensive international experience.

THE MARRIAGE (SAME-SEX COUPLES) BILL

COMMITTEE STAGE SUBMISSION

We have carefully monitored the deliberations of the Bill Committee to date. In particular, we have observed the difficulties which the Bill Committee has experienced. We now present our principal concerns, which we know are shared by vast numbers of people of every political persuasion throughout the country.

1. Unclear definition

1.1 The Bill contains serious inconsistencies. Purporting to address a perceived inequality, it actually succeeds in introducing new inequalities and creates confusion.

1.2 This incoherence results from the Bill's failure to define what marriage is. This is encapsulated in the phrase "to live as a married couple". Nowhere in the Bill is this fundamental concept defined. It is not good enough to say that it is self-explanatory, for in the context of same-sex marriage (SSM), it is not.³⁷⁵ Not only is this a recipe for confusion and litigation, with all the attendant future costs and wastage of resources, it is also an abrogation of the duty of Parliament and a return to the approach that has seen the passage of so many poorly drafted laws in recent years. Parliament, therefore, needs to state now, with great precision, what it means to 'live as a married couple'. A suitable definition should be included in the Bill, rather than leave it to secondary legislation or the courts.

1.3 To define living as a married couple requires analysis of what marriage is. Few dispute that marriage is qualitatively different from friendship, for husbands and wives are something more than best friends (though they may be that, too) and it is preposterous to think that the State should regulate friendship in the same way that it regulates marriage. It follows that living as a married couple cannot just be a question of feelings (for those who are merely friends can have deep feelings for each other), and neither can it be based simply on sharing domestic arrangements (for flatmates whose relationship is platonic do that). Nor is it a question of sexual relationship alone, since this can exist outside marriage. It cannot even be based on legal recognition of certain rights and duties, for civil partnerships do this.

1.4 Marriage, therefore, must mean something more than any of these things, individually or collectively. It cannot be such unless the established meaning of marriage is retained: that it is a comprehensive, permanent and exclusive consensual union of a man and woman and their activity, aims and commitment. This union is expressed in mind and body, and is fundamentally oriented to procreation, family life and broad domestic sharing. In this it is specifically different from the view that the Bill tries to propose, namely that any two people (opposite or same-sex) who love one another should be allowed to marry, so defining marriage as merely dependent on the depth of emotional connection. This view of marriage entails expectations at odds with marriage as traditionally understood, for logically its parties would be under no compulsion to remain together once they have ceased to find emotional fulfilment, bodily union would be optional (in some cases, impossible), broad domestic sharing and orientation to family life would likewise be optional and commitment would not necessarily be all-encompassing or involve exclusivity.

1.5 Specific inconsistencies and inequalities are:

³⁷⁵ This is especially the case where non-consummation is not grounds for annulment (since this suggests that the act of coitus is not central to what it means "to live as a married couple") and where adultery is not grounds for divorce (since this suggests that neither is life-long faithfulness). The fact that, by definition, same-sex couples cannot procreate naturally suggests that having (or potentially having) children that are the product of coitus between them cannot be, either. All this very much begs the question of what it means for same-sex partners "to live as a married couple".

- There is no definition of what constitutes adultery in the context of SSM. To the contrary, the Bill states there will only be adultery if there is sexual intercourse between people of opposite sex. Thus one group is effectively denied divorce on grounds of adultery whilst another is not. This is absurd.
- There is no definition of what constitutes consummation of SSM, so one group will have consummation defined by law and another will not. Consequently, one group will be able to seek annulment on grounds of non-consummation and another will not. This is absurd.
- There is no definition of which partner will be husband and wife in SSM. This is not an issue of mere semantics, since the terms husband and wife appear in existing Acts of Parliament and legal decisions—how can these be applied to same-sex couples if it is not possible to say which is which? This is confusing.
- Civil partnerships are only an option for same-sex couples.

1.6 The inconsistency, discrimination, introduction of new inequalities and lack of clarity in the Bill point up the mistaken premises on which it is based: same-sex partners simply cannot live as a married couple. It is not possible to make two different things equal. This conclusion is reached by straightforward factual analysis and without recourse to any religious or subjective argument at all.³⁷⁶ The Bill is, therefore, intrinsically flawed and unsatisfactory.

2. *Impact on marriage*

2.1 It is logically and rationally wrong to assert that SSM would strengthen the institution of marriage. It would, in fact, change it in ways that diminish and undermine it.

2.2 Because same-sex partners cannot, in any meaningful sense, live as a married couple, the introduction of this Bill would severely damage all marriage, as is already evident through data from countries that have legalised SSM, through the following revisions:

- Adultery would cease to be grounds for divorce and non-consummation grounds for annulment in any circumstances, whether the couple be same-sex or opposite sex.
- The concepts of husband and wife would be radically changed and probably disposed of.
- Civil partnership and marriage would be interchangeable.
- Exclusivity and permanence would not be requirements of marriage, merely optional extras—in other words, a licence for adultery and increased divorce.
- The link between the marriage-based family and the bearing and rearing of children would be weakened yet further.
- Marriage would become subject to the vagaries of changing emotions, rather than an enduring bond in which a man and a woman commit to support each other for life through thick and thin.

2.3 Why has no proper analysis been carried out on the societal costs, both financial and non-financial, and the trend in marriage rates after SSM has been allowed?³⁷⁷

2.4 Why is there such failure to acknowledge honestly what this Bill means and where it will inevitably lead?

3. *Children*

3.1 It has been said that a civilised society is judged by the way it treats its children. Worldwide, the focus of societies is upon creating and rearing children who will continue the stable reproduction of that society. There is no evidence of any proper consideration of the impact of this Bill upon children, young people and future generations. They are not even mentioned in the ‘consultative document’.

3.2 It is widely recognised that our children and young people face unprecedented pressures, and that these are the source of considerable anxiety, stress and unhappiness for many. One of the first acts of the present Government was to commission a report on the sexualisation of children,³⁷⁸ yet now it is promoting a Bill which would exacerbate these very concerns:

- The Bill would positively approve the conception of children intentionally conceived and born without one or both of their biological parents. It also removes the presumption of a child being the offspring of the wife’s husband. This would deliberately deprive children of the most basic aspect of their identity and security, namely their parentage. It is universally recognised that children need both paternal and maternal influences and both male and female role models.

³⁷⁶ It is noteworthy that even the highly homoerotic culture of ancient Greece never considered instituting same-sex marriage, recognising that the purpose of marriage was for procreation and the furthering of a stable society.

³⁷⁷ After same-sex marriage was allowed in the Netherlands marriage rates dropped by the fastest in Europe (some 2% a year). Falls were also recorded in Brazil and Canada. For reasons unspecified Canada stopped publishing marriage rates 5 years after same-sex marriage was allowed.

³⁷⁸ *Letting Children be Children: the report of an independent review of the Commercialisation and Sexualisation of Childhood* was published on 6 June 2011.

- The Bill amends the Gender Recognition Act so that people may choose to remain married even if one of them transitions, meaning that a child may find the person who was their mother one day being their father the next, and vice versa.
- All children would be explicitly taught, from a young age, that relationships and families are formed according to a variety of equivalent sexual identities—straight/gay/transgender/bisexual etc.—rather than around the complementary differences of the two sexes.
- The confused messages given to children will inevitably increase unhappiness, insecurity and confusion among the young.
- The weakening of the institution of marriage inevitably increases the number of children being brought up by single parents and those with unstable relationships.
- The acknowledged health and material benefits that accrue to both spouses and children as a result of traditional marriage would be lost at great cost to their own wellbeing and to society.

3.3 This Bill would give precedence to the rights of a minority of adults to pursue their desire for marriage to be redefined over and above any responsible concern for the effects upon all children of this and future generations.

3.3.1 Why has no proper assessment of the impact of this Bill upon children been carried out?

3.3.2 Why is there has been no attempt to build protections for children into the Bill?

4. *Freedom of conscience*

4.1 The so-called quadruple ‘lock’ is both discriminatory (it applies only to the Church of England and the Church in Wales) and subject to challenge under Equality Act and Human Rights Act provisions. It is nonsensical to say the Equality Act would be amended to remove the possibility of challenge under its provisions unless Government is at the same time prepared to countenance change to the European Union treaties which compel these provisions to be enacted into the law of the United Kingdom. Changing the law of this land without changing the treaties would simply mean legal challenges would be made in the European Court of Human Rights rather than British courts.

4.1.1 On what basis does the Government expect other parties to the relevant treaties to agree changes to suit the UK?

4.1.2 Is the Government prepared to abrogate the relevant treaties (or the offending parts of them) if changes cannot be made?

4.1.3 Within what time frame would all this take place?

4.1.4 Would the coming into force of the Bill be delayed until after the necessary changes are in place?

4.2 Even assuming all these hurdles could be overcome, the freedom of conscience issue would not be dealt with adequately. The issue concerns not just churches as denominations or institutions but individuals and employees. It is clear that, whatever protection this Bill might afford to the former, it would do nothing to protect the latter. As the recent series of legal cases involving Lillian Ladele shows, those who act according to conscience can lose their jobs if they do not agree to support, promote and take part in unions between same-sex partners.³⁷⁹ Just last week, Brian Ross, a police chaplain, was reported as being dismissed for expressing a view in support of marriage as currently defined.

4.2.1 What protection is it proposed to give those who act according to conscience in these circumstances?

4.2.2 What changes are proposed to the Public Sector Equality Duty to ensure government departments and local authorities do not override conscience in pursuit of ‘equality’?

4.2.3 What would be done to help those who fall foul of the internal policies and procedures of employers which would otherwise compel them to act contrary to their conscience or penalise them for doing so?³⁸⁰

4.2.4 What would be done to protect teachers who are required by a school or Local Authority to use materials which promote same-sex marriage rather than merely teaching about it factually?

4.2.5 Does Government propose to limit the jurisdiction of the European Court of Human Rights in these areas and, if so, how and within what time frame?

³⁷⁹ Lillian Ladele was a registrar who refused to register a civil partnership on grounds of freedom of conscience and was sacked as a result. After hearings before English courts, her case went to the European Court of Human Rights, which ruled that she had no redress: *Eweida and others v the United Kingdom* (2013) (Application nos. 48420/10, 59842/10, 51671/10 and 36516/10). This was even though there were presumably other employees who could readily have registered the civil partnership concerned without meaningful disruption to the employer’s business or inconvenience to the couple seeking registration.

³⁸⁰ Conscience clauses in relation to equivalent matters are not unknown. For example, NHS employees who object to abortion on grounds of conscience are not compelled to take part in them.

4.2.6 The Bill requires that new premises licensed to conduct marriages are licensed also for same-sex marriages. How would this apply to new churches? Would they be caught by this provision or protected by exemptions elsewhere in the Bill?

5. *Unintended consequences*

5.1 Legal and social confusion

Generally, people take their cue from signals given by the world around. One of the strongest of these is provided by law, which expresses not only how things are but also how legislators desire them to be. The inconsistency and lack of clarity that characterise this Bill would cause confusion to the public—as to what type of relationships they should aspire to and why, what the fundamental aspects of such relationships are and what distinguishes marriage from other types of living arrangement. There would be a plethora of court cases, for such are the lacunae in and deficiencies of this Bill that lengthy legal disputes are almost guaranteed.

Why does Parliament consider it right to knowingly risk these serious consequences?

5.2 Health

Numerous studies confirm that marriage (though not other forms of cohabitation) makes people less likely to suffer depression and psychological problems, makes them live longer and makes them healthier. It is widely recognised that the epidemic of fatherlessness contributed greatly to the English riots of 2011. This Bill would ensure that more people fail to gain the health and other benefits that flow from marriage and that more children experience the absence of their biological fathers. How can that be right?

5.3 Disproportionate impact on the poorest

The burdens resulting from the undermining of traditional marriage have fallen and will continue to fall on the poorest, most vulnerable and most marginalised. They cannot afford to forego the financial rewards that come from traditional marriage, nor move out of deprived neighbourhoods, nor buy themselves out of poorly performing schools. It is to the shame of all in Parliament that such consequences have not been raised and the resulting issues properly debated. Who now will speak for the poor?

5.4 Cost and the need for expanded government provision.

The Government's published Impact Assessments (March 2012 & January 2013) are defective in that they do not address the wider societal costs of the proposed legislation.

This Bill would weaken families. That is not only a tragedy for individuals: it carries a high cost to society—in all manner of social ills and the resulting need for greater state provision.

5.5 Immigration

Government is committed to reducing immigration to manageable levels, but is intent on enacting a Bill which would inevitably create new incentives for immigration either as it stands or in the future as the consequences outlined above come into play:

- The Bill envisages no connection at all with the United Kingdom, whether residency, birth or any other factor, for those seeking to have their union recognised here as SSM. Is it envisaged that people from anywhere in the world, who have no other connection with this country should be able to come here for this purpose?
- What assessment has been carried out in relation to the impact that the Bill would have on the ability of Government to prevent sham marriages being used to gain access to the United Kingdom? What steps will be taken to ensure appropriate protections are included in the legislation?

5.6 Further redefinition

The thinking which considers it right to extend marriage to same-sex couples ought logically to facilitate demands for legal recognition of polygamy. How is it proposed to prevent the Equality Act and Human Rights Act being used to compel such recognition? How would the Bill prevent what has already been seen in other countries that have enacted same-sex marriage, namely a push for fixed-term marriages (Mexico), three-party marriages (the Netherlands and Brazil) and legalised polygamy (Canada and some States of the US)?

5.7 Procedural matters

We protest strongly at the lack of due process in the promulgation and passage of this Bill. There was no mention of it in party manifestos, election addresses, the Coalition Agreement or the Queen's Speech. The "consultation" before the Bill was published was a sham and a Government department (the Home Office) has distributed material which amounts to propaganda. There has been neither White Paper nor Green Paper. Neither has there been any significant public demand for this. A very highly controversial piece of legislation is being hurriedly imposed on the nation and already this has caused deep divisions. Apparently, the public will have no say in this matter and are even being deprived of expressing their views in a national referendum. The make-up

of the present Committee is unrepresentative of Second Reading voting in the House of Commons. Both the electorate and Parliament have been treated with contempt, setting dangerous precedents for the future.

6. Conclusion

6.1 This Bill illustrates a profound disconnection between politicians and the public. The Bill is based on flawed reasoning and is the product of an undemocratic process. It is grossly unfair to the majority, it is totally unnecessary and threatens freedom of speech with destruction of the right of conscience. It would prove deeply damaging to Society.

6.2 The Bill demonstrates a profound lack of understanding of the significance of the institution of marriage as currently defined. It puts the rights of a tiny minority of adults before the rights and future of all the children of the United Kingdom.

March 2013

Memorandum submitted by the New Family Social (MB 115)

SUMMARY

New Family Social (NFS) is the UK charity for LGBT adoptive and foster families.

We believe that all schools should be inclusive about the diverse families that make up their school community. This would include children with single parents, same-sex parents and separated parents as well as children with carers other than their parents. This is particularly important to help adopted and fostered children feel positive and confident about their families, and to prevent bullying of children whose parents are LGBT, or who may be LGBT themselves.

In March 2013, NFS surveyed its members on their views and experiences of the school system. The sample size was 137 people. The results suggest that while experiences are on the whole good, significant problems exist for these families.

The shared experiences of the respondents, and the views expressed, show that it is vital that no protection is lost in how our relationships and families are discussed in schools. In any debate about the freedoms afforded to adults, we feel strongly that the well being of children should be considered of paramount importance.

94% of respondents felt that their child would be negatively affected if amendments to the Equalities Act 2010, or to other acts, gave a teacher the freedom to express the view that *“the teacher is personally against two people of the same sex marrying”*.

97% of respondents felt it was very important that individual teachers follow a school’s advertised diversity policy in relation to sexuality

1. APPLICATIONS PROCESS

- 56% of respondents checked school’s diversity policies when applying for schools.
- 20% of respondents said they experienced a negative reaction from schools they considered because of their sexuality.
- 23% of respondents said that they found it difficult to find a school for their child that they felt would be fully inclusive of their family.

Some experiences shared by respondents:

“Our daughter was allocated a catholic primary school place last year. On finding this out we arranged a meeting with the head teacher. We asked how they would deal with the fact that our daughter had two mummies? There response was that it would “not be promoted or condoned with in there school” I went on to ask how they would deal with a topic such as families and if the children had to send in photos for a display... We were told that they would not be able to display our family photos. Needless to say we joined a waiting list for another local school and were lucky enough to gain a place. Had we not of gotten a place we would of home educated our daughter rather than her social and emotional health being affected by such views.”

“We had a choice of two schools and one of the schools we found that the Head did not find it easy to talk to both of us face to face. When asking questions on same sex parents/issues the Head appeared unprepared, and wanted to avoid the subject.”

“We met with the head and discussed how she and the school would support out children’s needs as adopted children and as the children of 2 mummies. We felt this helped lay the foundation for a healthy relationship with the school should any difficulties arise.”

“I experienced a very poor feedback from the Catholic school in our area, ‘we would not recognise you as his parents, but we would pray for you’. We sent our boys to Church of England Primary School, that has been wonderful.”

“The main reason why sexuality wasn’t an issue for our son to be admitted to school is that looked-after children get priority placements. Having said that, it was clear when heads were trying to put us off. We went to one CoFE school where the headteacher clearly told us that for parents’ consultations it would be best if only one of us turned up as the rest of the parents “held certain views”. She also suggested that only one of us did the drop-off/pick up. We’d rather have our son home educated than send him to such a school.”

“The school we chose for our eldest son was out of our catchment area but recommended by his headmaster. We worked hard with social workers reports, meeting the school, letters of recommendation from his headmaster and therapist to secure him a place. There were a few embarrassing conversations with various school employees as they had never had a same sex family in before—on a couple of times we let ourselves dig a bigger hole and get redder and redder in the face until we rescued them—but we never felt it was deliberate but just down to the fact they hadn’t been in the situation before and where struggling to be appropriate, sensitive and understanding.”

“We felt that the COE school we applied to was covertly homophobic. We were glad that they were somewhat open about their prejudice—so that we could avoid them!”

2. EXPERIENCE AT SCHOOL

- 29% of members feel that their sexuality has had a detrimental effect on their child’s treatment at school.
- 14% of members, or their children, have experienced a negative reaction from teachers or other staff at school because of their sexuality.
- 15% of members, or their children, have experienced a negative reaction from other parents at school because of their sexuality.
- 27% of members’ children had experienced a negative reaction from other children at school because of their sexuality.

Some experiences shared by respondents:

“We live in London and felt we had a limited choice in searching for a quality state school that would appropriately support our son with any issues that might arise for him. We decided on an independent school which has proved to be a great choice. It promotes an inclusive community and we feel very at home and know our son has been helped and encouraged to take pride in who he is and his life story—he has a cohort for whom same-sex parents are just another kind of family and who know that any questions are welcomed and honestly answered. We recently adopted another baby and we feel celebrated by the staff, other parents & pupils. Deciding to invest resources in private schooling is paying dividends.”

“On two separate occasions our youngest has been called homophobic names at school—the nastiest for us was when a girl told him that an adopted child could never have a good family and that having two Dads meant that his family would always be second rate. This so obviously came from parents through the child—sadly the child’s mother was a receptionist at the school. The school reacted very quickly and spoke to both mother and child and the girl wrote a letter to apologise. The other occasion was when 1 child encouraged 2 others to call our son nasty, homophobic names which left our son in tears. Again the school reacted very quickly, called in the parents concerned and it hasn’t happened since.”

“Homophobia at my children’s school is largely subtle and unspoken. There are key members of staff who clearly work hard to be aware of what they are saying and doing, to be welcoming and supportive. However, other staff do little to hide their ‘disdain’ of the fact that I’m gay—and a parent. The worst effect is when other parents curtail their children’s friendship with my children; after an initial presumption that I’m straight, I can spot the moment when they ‘realise what’s going on’. I work in a primary school as well and I’ve definitely been treated with suspicion until proven ‘safe’. All unspoken, so it’s all virtually impossible to challenge.”

“Our children have attended state primary and secondary schools in South London. We were always braced for negative reactions about our sexuality as a male same-sex couple with two adopted sibling boys. It never came. We were never aware of any issues with other parents, with teachers, with school management or with other children. All of our children’s schools have overt anti-homophobic bullying policies and we felt supported by staff. We have never had to put these policies to the test.”

“My children’s school is a church of England school and the reverend from the local parish is a governor at the school. The reverend performs worship and has had quite a lot of contact with my two children, consequently my children expressed a desire to be baptised something that we hadn’t considered but pursued because it was what our children wanted, we also thought it would be a positive thing for them having recently had our celebration day and changing their surnames to our family name. I approached the school with regards to the reverend baptising our children and they asked if they could get back to me. The head of the school called me in and informed me not to contact the reverend as he didn’t recognise our same sex family and wouldn’t baptise our children and if we did find somewhere that did we would have to ask his permission.”

“Our eldest son is now at secondary school, our youngest is still in our local village Church school which has always been very supportive of our family and had been open to learn about a different family setup. I was asked to work at the school by the head who consisted my abilities to be ideal for her school. We regularly socialise at school events and integrate thoroughly with every other family.”

3. ATTITUDES TOWARDS TEACHERS' FREEDOM OF EXPRESSION

- 97% of respondents felt it was very important that individual teachers follow a school's advertised diversity policy in relation to sexuality
- 94% of respondents felt their child would be negatively affected if amendments to the Equalities Act 2010, or to other acts, gave a teacher the freedom to express the view that "*the teacher is personally against two people of the same sex marrying*".
- 97% of respondents felt that their child would be negatively affected if amendments to the Equalities Act 2010, or to other acts, gave a teacher the freedom to express the view "*that heterosexual marriage is the best form of relationship*".

Some comments from respondents

"To a primary school aged child there is no distinction between the policy of the school and the personal opinions of the teachers. My children believe everything their teacher tells them. For their teacher to suggest to them that their parent's relationship is in any way second rate would be very distressing for them."

"I am a teacher myself in a CoE school—all members of staff have been positive in our process of adopting twice. It is important that same-sex relationships are given equal standing to that of straight people otherwise we and our children will consistently be seen as inferior and second class citizens."

"If it came from their teacher it may well be devastating. Because of their troubled background, the stability they feel in their family is even more important. Also as their parents, we would be forced to show we disagree with the teacher, and we think they are ignorant, and I imagine there would be discipline issues from then on. Who is going to listen to a teacher that doesn't like their mum, and who their mum thinks is ignorant?"

"A school's diversity policy should be exactly that and teachers should ensure that they do not promote one kind of relationship over another. There are so many kinds of families these days that to promote a heterosexual one as the ideal would be damaging to many children, not just ones of gay couples."

"A teacher with racist opinions would not be able to express views on race and mixed race relationships or children. This would have happened in the past."

March 2013

Memorandum submitted by Cornwall's Community Standards Association (MB 116)

By Miss Ann Whitaker, M.A.(Oxon.), Hon. Secretary of Cornwall's Community Standards Association

ABOUT CORNWALL'S COMMUNITY STANDARDS ASSOCIATION

Cornwall's Community Standards Association was founded in 1974 because of the serious concerns expressed by Christian individuals and groups in the county about the nation's slide in moral and spiritual standards. We saw the need to stand up for right and oppose evil, warning of the prospect of spoilt lives, family breakdown and poverty. We are a gathering of like-minded people from across Cornwall and we meet together every two months. Over the years we have consistently and constantly provided MP's, members of the House of Lords, local council representatives and others in responsible positions in our nation with informed research material and expressed our convictions.

CHANGING THE DEFINITION OF "MARRIAGE"

1. Marriage is at the foundation of our society and no improvement to the definition of it has been found. Any change to the definition of marriage will have a far-reaching impact on society. The tried current definition of marriage in English Law is: "The voluntary union for life of one man and one woman, to the exclusion of all others."
2. To argue a departure from this model and to establish it in law is to protect the less good and to encourage it.
3. Law-makers are surely responsible for upholding the good of society as a whole as a first consideration, but the present initiative is that of a tiny minority of a small minority, whether in Europe or the United Kingdom.
4. "Love" alone is not enough to describe marriage.

NO MANDATE FOR A CHANGE IN THE LAW

5. At the time of the civil partnership legislation we were given an undertaking that this measure would not lead to marriage for same-sex couples.

6. Following deliberations in the Council of Europe in March 2010, ministers from 47 countries proposed that where national legislation recognised same-sex partnerships, these should be given the same legal status as those between heterosexuals. Marriage was not suggested at this point, but four days before the 2010 general election, the Tory party published a pamphlet which included the promise that the party would "consider the case for changing the law to allow civil partnerships to be called and classified as marriage". But, as Christopher Booker

points out (*The Telegraph*, 09/02/13), this was not in the manifesto, nor, after the election, in the Coalition Agreement.

7. It would seem to us that government ministers have been working “behind closed doors” in both the Council of Europe and at Westminster, to push forward the concept of marriage for same-sex couples and to legislate for it in the UK.

8. The proposal is entirely unacceptable considering the unprecedented scale of the change which it will produce, not in relation to a few but to our entire society and that of the future. Already and inevitably the unreality of the attempt to “redefine” is occurring in the use of the terms “same-sex marriage” and “traditional marriage” when discussing the Bill.

9. We submit that our fundamental democratic rights have been violated and the proposal to introduce “marriage” for same-sex couples should therefore not go forward until and unless the electorate has been properly consulted on all the issues, and the far-reaching implications of a change in the law have been exposed and publicly debated. The government should then follow the consensus of the country as a whole.

CONFUSION BETWEEN THE WORDS “EQUAL” AND “SAME”

10. There is confusion as between the words “equal” and “same”. It is a well-established social ambition that people be regarded and treated as equal before God and the law of the land. However, we are not all the same and justice with compassion seeks that we should be seen as individuals with many differences. Legislation should ensure that these differences are safeguarded.

THE FAMILY, CHILDREN AND THEIR UPBRINGING

11. The removal of such words as “husband” and “wife”, or the use of these words in relation to either gender, will inevitably undermine what has been regarded as foundational to family life and values.

12. Altering the established definition of marriage will erase the terms “father” and “mother”. These terms have fundamental connotations in secure and loving family relationships. There will be an explosive chain reaction!

THE WRONG MESSAGE TO CHILDREN

13. As an organisation we have spent much of our time opposing the teenage pregnancy strategy, which was supposed to reduce the number of teenage pregnancies and has failed miserably. We have represented parents over the content of undesirable sex education material and teaching in some of our schools. We have campaigned for parents to know when a child of theirs is considering an abortion. We have now had sight of the explicit books available to primary school children which promote and attempt to normalise same-sex relationships.

14. Parents are being seriously side-lined and often kept in ignorance of what is being taught in this important realm of sex and relationship education.

15. Whilst the government are purporting to be dealing with child abuse, they are at the same time bringing about the early sexualisation of children through explicit teaching material at an inappropriate age.

SOME INEVITABLE CONSEQUENCES OF A CHANGE IN THE LAW

16. Marriage as we have always known it, between one man and one woman, will no longer hold a distinctive and distinguished position in law. Those marrying with the future prospect of raising their own children—and with all the responsibilities which then go with parenthood—will have the same status in law as a same-sex couple with no intention of rearing children. In redefining marriage we are creating two unequal unions. Those who are bringing up children will necessarily be financially disadvantaged by comparison with those in a same-sex marriage.

17. The concept of the family and family life, including the extended family of grandparents and other relations, will be weakened by a change in the law, instead of cherished and nurtured as the mainstay of our national life.

18. We have studied the repercussions of the legislation as introduced in Sweden and elsewhere. Research has shown that the number of marriages has declined in these countries. The status of marriage has been undermined and is no longer seen as “special”.

19. We have no confidence in the “quadruple lock” and the undertakings given by the government that there will be no prosecutions of individuals or churches who refuse to conduct same-sex marriages.

20. The whole issue of the marriage of same-sex couples is deeply divisive in our society and not least in the churches. What happens to the minister who does not agree with same-sex marriage, when most of his congregation have a different opinion? And vice-versa?

21. There are also deep divisions over this issue within some families and amongst friends. Even here, in our experience, individuals are holding back from expressing their views. In the public place we know that people are fearful of declaring their beliefs. This is because members of the LGBT lobby can be venomous in their opposition.

22. A church which uses school premises for its Sunday meetings may now be forbidden to do so by the local authority, because of its stance on homosexual practice and, more particularly, same-sex marriage. (This is a concern which has been brought to our attention very recently with regard to a church in Cornwall.)

23. Those unable to agree that homosexual practice is right have been forced from their professions. How much more so may this be if the proposed legislation is enacted? What will happen to the teacher who is not willing to promote the “normality” of same-sex marriage?

24. The attempt to advertise publicly sexual practice of any kind is not the habit of this country. Imagine the school setting as Mrs Amy and Mrs Angela Blog collect their adopted (or surrogate) children from school. Are the young expected not to display at least surprise and, being young, laughter? Are they to be punished for so doing? Will a “snigger” go down on their records, which will stay with them throughout their school life and perhaps be available to a future employer?

25. Already other countries are now legalising polygamy. Is that really the road to be taken by our government, and that without consultation with its people? Sexual practices of an unmentionable kind lie that way, for there are advocates of same-sex marriage who believe that there should be no limit to sexual expression of any kind.

26. Any promotion of homosexuality—whether in the school, youth club or by acceptance of “gay marriage”—will inevitably increase the practice and thereby the number of cases of sexually transmitted infections and AIDS. The financial burden will fall on the NHS.

DELEGATED POWERS

27. We are concerned at the intention to delegate powers to the Secretary of State and the Lord Chancellor to alter legislation.

SUMMARY

28. The natural family consisting of a father and mother and children, together with their extended family, is the mainstay of our national life. This is the model to be retained and not undermined and weakened.

29. When homosexual practice was made legal there were those who advised most strongly against further social promotion. At the passing of civil partnership legislation we were given to understand that civil marriage was not intended as the next progression. It is distressing that this understanding has been ignored and that there are those determined to assert their will, in spite of the general public’s concern for so many other social problems to be addressed at this time.

30. There is an element of juvenile selfishness about this Bill. Its measures should never be contemplated in a country which has benefitted by the teaching of the Bible for centuries.

31. The accepted definition of marriage in English Law is: “The voluntary union for life of one man and one woman, to the exclusion of all others”.

March 2013

Memorandum submitted by Rev Stephen Parratt (MB 117)

Rev Stephen Parratt, minister of Cleland Baptist Church, previously secondary school teacher of English and RE

SUMMARY:

Introduction: I introduce myself and my view that marriage can only be between a man and a woman, and that the proposals to redefine marriage are a threat to society.

Paragraph 1: deals with my objections as a parent and former teacher, highlighting the fact that no same-sex relationship can create children and thus continue society.

Paragraph 2: deals with the situation which will face teachers who object to teaching ‘same-sex marriage’ the proposed relationship.

Paragraph 3: highlights the danger posed to ministers of religion due to the inability of the proposals to safeguard ministers who object to ‘same-sex marriage’.

Paragraph 4: argues that marriage has not, as the government’s arguments suggest, ‘evolved’ through history. Rather it is legislation which has evolved in order to protect marriage.

Paragraph 5: highlights a fundamental inequality contained in the government’s proposals with regard to adultery as a ground for dissolution of marriage

Paragraph 6: shows that the proposals in fact undermine the stated intention to promote long-term commitment and responsibility.

Paragraph 7: Conclusion—Marriage should be retained as it is!

INTRODUCTION:

I write to you as the minister of a local church, a former teacher and as a parent of four daughters to express my very grave concern about the legislation currently being discussed to redefine marriage in the statute books of our country. I wholeheartedly support marriage as it has always been understood, not only in this country, but in every country around the world and from the very earliest times—as between one man and one woman. This is universally the definition of marriage, because this is what marriage is. The proposed redefinition of marriage is unwarranted and will prove damaging to society.

1. MISGIVINGS AS A PARENT AND FORMER TEACHER; SAME-SEX RELATIONSHIPS CANNOT PRESERVE SOCIETY

As a parent, and former teacher of RE and English, I am greatly disturbed at the impact the proposed changes would mean within education. I would certainly not want my daughters to be taught that marriage can be between two people of the same sex. Such a view is fundamentally at odds with the pattern of family life which lies at the heart of society. Two members of the same sex cannot bear children and all the evidence demonstrates unequivocally that the best environment for children to grow, flourish and become mature members of society is within a situation where they have a mother and father. No ‘same-sex’ relationship can provide that, no matter how loving and committed the two partners may be to each other. For, fundamentally, marriage is not simply about a relationship of loving commitment between two people, important though that certainly is. Nor is it primarily about the inclinations and desires of the couple. Marriage lies at the very bedrock of human society, because it is the relationship within which new life can be created and society can continue. Every society throughout history has recognised this and thus protected the one woman, one man marriage relationship in law. No society in history has advanced homosexual relationships as normative and indeed it is unknown in any tribal society. For the very good and simple reason that were same-sex relationships to be normative the tribe and society would not and could not survive! The proposals as made do not provide sure guarantees, as indeed they cannot, that I, as a parent, would not be able to remove my daughters from school lessons in which the validity of ‘same-sex marriage’ was to be taught, without facing penalty.

2. THE RISK FOR TEACHERS OPPOSED TO ‘SAME-SEX MARRIAGE’

Were I still a teacher of RE I would, for reasons of conscience, as well as out of concern for the foundation of our society, be unable to teach that ‘same-sex marriage’ is simply another option, or possible marriage relationship. Yet if the proposed legislation is carried forward I would find myself being required to teach that which the whole of history demonstrates cannot be a foundation of a society, and which moreover stands in the most fundamental opposition to the teaching which I believe to be for the good and best of human society—the teaching of the Bible. Were I to refuse to teach the equal validity of ‘same-sex marriage’ I would face penalisation by the local education authority and quite possibly removal from my teaching post. The situation facing registrars who do not accept ‘same-sex marriage’ is even more precarious.

3. THE RISK FOR MINSTERS OF RELIGION; THE PROPOSALS INABILITY TO GUARANTEE ADEQUATE SAFEGUARDS FOR THOSE WHO OPPOSE ‘SAME-SEX MARRIAGE’

As a minister a significant part of my calling is to present and teach the truths of the Bible, which is absolutely clear that marriage is between one man and one woman and that the practice of homosexual activity is wrong. It is quite impossible for me, therefore, as for the vast majority of my colleagues in ministry, to countenance conducting a so-called ‘same-sex marriage’. The term itself reveals how erroneous the idea is. Marriage is marriage! As soon as additional terms are required to ‘explain’ it, marriage itself has been left behind. The legislation being proposed, in spite of government assurances to the contrary, cannot give any cast-iron guarantees, that ministers like myself will not be liable to prosecution for refusing to conduct ‘same-sex marriages’ if asked to do so. Expert legal opinion is clear that the final jurisdiction in such cases would not be the national courts, but the European Courts.³⁸¹ However my major concern is not a fear of possible prosecution, but that the very foundations of society are being undermined by the proposals.

4. MARRIAGE HAS NOT ‘EVOLVED’. RATHER IT IS THE LEGISLATION REGARDING MARRIAGE WHICH HAS EVOLVED.

It is argued that marriage has always evolved and needs to evolve to stay at the centre of society and that ‘same-sex marriage’ is simply one more step of evolution.³⁸² This is one argument my own MP has used in correspondence with me. This idea is deeply flawed, confusing as it does the institution of marriage, which has always been exactly the same—between a man and a woman—with the role of government and law, which is to provide a framework of regulation which protects marriage as the cornerstone of society. Certainly the legal framework has developed and evolved through history, but marriage itself has not. The role of government in regulating for marriage is vastly different to seeking to redefine it! Marriage predates both the state and the law.³⁸³

³⁸¹ See <http://www.care.org.uk/wp-content/uploads/2013/02/CARE-The-REAL-Mythbusters-Feb-2013.pdf> paragraph 7.

³⁸² See <http://www.care.org.uk/wp-content/uploads/2013/02/CARE-The-REAL-Mythbusters-Feb-2013.pdf> paragraph 4.

³⁸³ This fact is clearly stated in the 1866 court case *Hyde v Hyde and Woodmansee* LR 1 P&D 130.

5. THE INEQUALITY CONTAINED WITHIN THE GOVERNMENT'S PROPOSALS

Crucially, the Government's proposals themselves are flawed. The term which is being emphasised by proponents of the bill is 'equal marriage', giving the impression that this is all about equality. In reality what the proposals lay out is a quite unfair playing field. If the bill proceeds adultery will, as is currently the case, be grounds for the dissolution of a marriage between a man and a woman, but not in the case of two persons of the same sex! This creates a two-tier system of 'marriage' in which the legal obligations placed on a heterosexual couple are greater than those placed on a homosexual couple. Whatever else that is it is manifestly not equality, so the proposals are not, as is suggested, introducing 'equal marriage'.

6. THE PROPOSALS UNDERMINE RATHER THAN UPHOLDING LONG-TERM COMMITMENT AND RESPONSIBILITY.

Furthermore, this two-tier approach arising from the unequal application of adultery is, as legal opinion has stated,³⁸⁴ (CARE doc) very likely to lead to the removal of adultery altogether as a cause for the dissolution of a marriage. Whilst this would certainly bring about more equality between different types of marriage it would at the same time completely undermine the government's stated intention to promote and encourage "principles of long-term commitment and responsibility".³⁸⁵ (Myth busters) Because marriage is so important, and so fundamental to the well-being of any society, the commitment and fidelity it calls for needs to be strengthened, not undermined. That is why adultery is so serious and needs to be maintained as fence around marriage.

7. CONCLUSION

Marriage, as it has always been understood and recognised—between a woman and a man, has served every society throughout history more than well. Without it no society would have survived. It is striking that, as the eminent historian Toynbee has observed on many occasions, one of the characteristics of every civilisation in the last stages of its decline is a rise in rampant homosexual practice! Seeking to legislate for the acceptance and approval of such practice in Britain, by introducing 'same-sex marriage' looks like an attempt to precipitate this nation's decline as a civilised society. I sincerely doubt that any MP wishes to be a part of that! For this, and all the above reasons, I urge the committee to abandon the proposals being made and to retain marriage as it always has been and should be.

March 2013

Supplementary evidence submitted by Dr. George Strang (MB 118)

SUMMARY:

My comments reflect being a Christian and a retired consultant physician with an interest in infectious disease. I practised medicine for 40 years and was a consultant physician for 33 years. I worked in South Africa for 21 years, but have visited other African countries. I shall comment on the Biblical perspective and on the medical aspects of same-sex marriage. In addition I shall make some general comments as a British citizen

1. BIBLICAL PERSPECTIVE

I accept that many members of the government may not hold any faith, but for Christians and for many practitioners of other faiths, same-sex marriage is unacceptable. Historically, Christianity has been responsible for many good features of life in this and other countries as a result of the work of individuals and of organizations. For example:

- (a) William Wilberforce [1759–1833] and the abolition of legal slavery.
- (b) Thomas Barnado, [1845–1905] who opened orphanages and whose legacy is the development of services for children in need.
- (c) Sir David Brewster, [1781–1868] whose studies on light led to the invention of laser technology.
- (d) James Clerk Maxwell, [1831–1879] whose contributions to science involving electromagnetism contributed to the development of radio, television, computers and mobile 'phones.
- (e) Lord Joseph Lister, [1827–1912] a medical scientist who pioneered sterilization in surgery.
- (f) Sir James Young Simpson, [1811–1870] who developed anaesthesia in Britain.
- (g) The Mothers' Union [founded in 1896] which is represented in 83 countries with a membership of 4 million.

The Bible is clear about marriage being the union of a man and a woman. In Genesis 2: 24 'For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh.' The same union is emphasized by Jesus in Matthew's gospel 19:6 'So they are no longer two, but one. Therefore what God has joined together, let man not separate'. The Bible records no example of same-sex marriage and in the book of

³⁸⁴ See <http://www.dailymail.co.uk/news/article-2268689/Concept-adultery-abolished-law-grounds-divorce-wake-Government-s-plans-gay-marriage.html> as cited in <http://www.care.org.uk/wp-content/uploads/2013/02/CARE-The-REAL-Mythbusters-Feb-2013.pdf> paragraph 3.

³⁸⁵ See <http://www.care.org.uk/wp-content/uploads/2013/02/CARE-The-REAL-Mythbusters-Feb-2013.pdf> paragraph 2.

Leviticus 18:22, sexual relationships between two men are forbidden, 'Do not lie with a man as one lies with a woman; that is detestable'.

You will appreciate why the union of a man and a woman is what most Christians understand as the only definition of marriage. It is supported by most people worldwide and the different structure and function of men and women makes the union complementary. The partnership of a same-sex couple cannot be defined as marriage because of the very different structure and function of men and women. Civil partnership caters for same-sex couples who wish to be united legally, but it is impossible for them to be united physically or to procreate naturally.

2. MEDICAL FACTS AND CONSIDERATIONS

I believe that the way in which homosexuality was considered 50 years ago was wrong. However, in the past 30 years, society has been conditioned to accept it, sometimes without due consideration. It is a fact that the homosexual lifestyle is hazardous and potentially life-threatening. The Health Protection Agency website indicates the risks involved in acquiring venereal diseases, including HIV-AIDS. I would like to draw your attention to the following information, available on the HPA website:

- (a) *HIV in the UK: 2012 Report. The following is an extract from the Key Findings:* 'Men who have sex with men (MSM) are a socially and culturally diverse group, some of whom may not self-identify as 'gay'. MSM remain at greatest risk of acquiring HIV infection within the UK with no evidence of declining infections in this group.'
- (b) *'Syphilis: one city's response to the re-emergence of an old public health threat.'* Published in *Health Protection Matters Issue 13, Spring 2009, P.26.* An account of Syphilis in Birmingham [England] with details from 2002 to mid 2008. The majority occurred in homosexual and bisexual men.
- (c) *Sexually transmitted infections in men who have sex with men in the UK: 2011 report.* [Please see Annex 1 which contains the key findings, copied directly from the report. I have marked those of particular concern with a double asterisk.]

The publications mentioned above are serious from the public health point of view. Same-sex sexual intercourse is unnatural and therefore it is not surprising that it carries the risk of disease. The cost of this in human suffering and financial cost is considerable. The risk of re-infection is increased by promiscuity. The rise in impaired susceptibility of Gonorrhoea to first-line treatment is worrying. It can be argued that the risk would be no greater for a homosexual couple in a same-sex marriage than it would be in a civil partnership, but if children were to be adopted by such a couple, they would be exposed to the risk of disease. The government proposes to make IVF available for same-sex couples through the NHS, which would complicate matters in terms of health risks and would add considerable expense to an already over-burdened service. Furthermore, the government would be sanctioning potentially dangerous relationships and including them in the definition of marriage, which is not acceptable. Additional problems could arise if a same-sex couple were to seek help through the NHS, if medical staff or adoption agency staff were unwilling on grounds of faith or conscience to assist with surrogate pregnancy or adoption. The above-mentioned medical details are factual and the concerns are real and must be considered.

During the Second Reading of the Same-sex marriage Bill on Feb.5th., one of the speakers quoted Peter Tatchell as saying that 'We are out to turn society upside down'. I find that very disturbing, particularly as it is the comment of a man reflecting a minority opinion.

3. GENERAL POINTS AS A BRITISH CITIZEN

- (a) Britain has been respected for years around the world, especially in the countries of The Commonwealth. We fought two World Wars to overcome oppression and dictatorship. The government's proposal to redefine marriage and introduce same-sex marriage will affect millions of people who do not want it and we shall be despised by millions of people to whom something so unnatural is unacceptable. Diplomatic relationships and overseas assistance will be compromised.
- (b) Recently the trial of three terrorists who had received radical instruction, admitted to 'despising' our nation as motivation for their intended bomb attacks. In the Middle East and in countries in which Islam is followed, the West is seen as decadent.
- (c) Increasingly, young people do not know right from wrong and we see increasing social unrest, trouble in schools and an epidemic of alcohol related disease. In my lifetime there has been a deterioration in the standard of service provided in education, health, transport, industry, postal services, business and banking integrity and sadly in parliament itself. I can remember a time when the expression mentioned with particular reference to the stock market 'My word is my bond' was taken for granted in many walks of life. We do not hear it today and the expression 'Anything goes' is more applicable to much of society. It is not surprising that we have a bad reputation and the government's proposed legislation would make matters worse.

Finally, I would like to quote a passage of scripture from the book of Proverbs in the Bible. The book of Proverbs contains much wisdom and is as relevant today as it was when it was written. Ch.22, v.28 states 'Do not move an ancient boundary stone set up by your forefathers' It is folly to try to redefine marriage, an institution respected for thousands of years. When the Prime Minister says that he supports marriage he should

be referring to the union of a man and a woman, because that particular union, if honoured and respected is what our dysfunctional society needs. Same-sex partnerships cannot offer the same quality and stability. It is impossible to predict the consequences of the proposed legislation which is unnecessary, divisive, dangerous and unwanted. I hope and pray that it will be abandoned totally and permanently.

Annex 1

Key findings of the Health Protection Agency Report: 'Sexually transmitted infections in men who have sex with men in the UK: 2011 report.

- In 2010, an estimated 40,000 men who have sex with men (MSM) in the UK were living with HIV, 26% of whom were unaware of their infection.**
- Overall, one in 20 MSM is living with HIV in the UK, with one in 11 in London.**
- MSM living with a diagnosed HIV infection in the UK can expect a near-normal life expectancy, particularly if they are diagnosed promptly.
- In 2010, an estimated 3,000 MSM were newly diagnosed with HIV, the highest annual number ever. They accounted for almost half of all HIV infections diagnosed in that year.**
- One in four of all MSM and one in three of those aged 15–24, who were diagnosed in 2010, acquired their infection recently.
- Two% of MSM who tested HIV negative at an STI clinic in 2009 were subsequently diagnosed with the virus at the same STI clinic.
- Out of those diagnosed in 2010, 39% were diagnosed late (CD4 count <350 cells/mm3) and 18% very late (<200). A late diagnosis increases the risk of dying within a year 10-fold compared to those diagnosed promptly. **
- Diagnoses of *Lymphogranuloma venereum* rose from 190 in 2009 to 530 in 2010. The majority (84%) were known to have been diagnosed with HIV either prior to LGV diagnosis or at the time of LGV acquisition.**
- In 2010, a third of gonococcal isolates from MSM were less susceptible to first-line treatment (cefixime) compared to a quarter of isolates in 2009.**
- More than 51,000 MSM had an HIV test in a STI clinic in 2010, with coverage at 82%. The number of MSM testing covered approximately 7% of the MSM population in England.

March 2013

Memorandum submitted by Kingdom Faith Churches UK (MB 119)

Kingdom Faith Churches UK is an evangelical church denomination that was begun in the late 1970's, at that time under the name Bethany Fellowship. It has grown over the years to now include over 50 churches spanning the length and breadth of England along with a Christian training centre and a week long annual event that attracts over 5000 people. There are many nationalities represented by Kingdom Faith Churches UK, the training college especially has a large mix of students from across Europe and beyond. Kingdom Faith Churches UK is currently involved in social action projects including: working with prostitutes, debt advise, child contact centre, street angels and others.

We are aware that this is a very emotive bill for many, and that some of the issues we raise are unintended consequences. However we believe there are a number of fundamental flaws within the wording and context of the bill that we would like to make comment on. This is in the bills relation to marriage and family life. There are also civil liberty issues that the bill would bring about. Also there are concerns raised as to the validity of the public consultation results and speed at which this bill has been rushed together.

1. We made a submission to the equal marriage consultation in 2012, via the online form on the government website. It was very disappointing that it was not possible to log the name of the organisation. When the consultation results were published, a list of the organisations that responded was published. Obviously the name of this organisation was not there as it was not possible to give at the time. We presume that the list of organisations derived from them submitting their responses by other means than the government prepared method. This appears to call in to question the list of organisational contributors as there may be many other organisations that contributed by the online form.

2. The institution of marriage pre-dates the state. If the state decides to redefine the fundamental meaning of marriage now, what is to stop future changes to allow polygamous marriages etc. There may be no current plans for further changes. But what is to stop further change once a fundamental change to the meaning of marriage has been made. This bills fundamental change proposes different meanings to marriage for a same sex couple from that of a mixed sex couple. If a different meaning is necessary are not the two different and therefore not equal ?

3. Since same sex marriage has been legalised in Canada there has been an attempt in the courts to also legalise polygamy. It has been stated that same sex marriage has definitely given polygamy a legal boost in

Canada³⁸⁶. However at this point it is still a criminal offence. However in the United Kingdom Polygamous marriages performed elsewhere are already recognized³⁸⁷. So conceivably it would be easier once same sex marriages are legal to bring a court case that would ultimately end up in legalising polygamy and polyandry in the UK. This is also made easier by the separate definitions of marriage for same sex and mixed sex couples proposed in the bill.

4. Also we would like to suggest there should be a further consultation of faith based organisations to get a list of those that would like to be included alongside the church of England and the church in Wales to be banned in law from offering same-sex marriages. As this does not give equal rights to all faith based organisations.

5. All registrars should be allowed a ground to opt out of same sex marriages on the basis of conviction. This should apply to both state registrars and those of churches whose denominations have decided to allow same sex marriages.

6. There is a clear lack of equality throughout the wording of the draft bill. We would like to take this opportunity to comment on the general lack of equality to the Christian faith of which this nation is still constitutionally Christian. Christians should not be penalised for their beliefs but in a nation that is seeking equality they should continue to be accommodated within this and future legislation. Therefore Registrars, Ministers of Religion, Teachers and those from other professions, who have a belief that is contradictory to this and other legislation, should be catered for within the scope of equality and not penalised. People should be free to live out their religious beliefs in the workplace in the same way that people are free to live out their beliefs of sexuality.

7. Marriage is about family, there are many studies that have been carried out that show that both a man and a woman are needed as they have differing attributes that work together to raise and nurture children. When one sex is missing from the adults in a family unit the children suffer from the loss. There is no evidence to support that marriage will be strengthened by the proposed change as has been stated, the evidence from other countries that have done this is actually quite the opposite³⁸⁸. We believe that we should be looking for ways to strengthening the family unit which is the basic building block of society.

8. There seems to be undue rushing of legislation through parliament at this time, with The Succession to the Crown Bill having missed due process. There is a reason for the various stages that ALL bills should go through to ensure that nothing is missed and to hopefully prevent unforeseen consequences. This legislation has been rushed and will result in unforeseen consequences in the coming years if it is not put through proper scrutiny before continuing its progress. Also we are very concerned that although MPs were given a free vote initially, the rest of this bill is to be whipped.

9. Finally we are very concerned that the views of the great majority of evangelical churches in this nation have been ignored and not even questioned to the present time. That no evangelical church denomination has been called to give evidence to the committee is very concerning.

March 2013

Memorandum submitted by Nicholas Townsend (MB 120)

SUMMARY

I am glad to take the opportunity to make a submission to the Public Bill Committee. The aim of the submission is modest, to appeal for greater rigour in the way arguments for the central provision of the Bill, to introduce same-sex marriage, are made. I focus on two prominent arguments:

- the argument from unjust discrimination
- the argument from equality.

I show (section 2), in a clear way I hope, that the first of these is logically fallacious and should not carry weight in the case for same-sex marriage.

I show (section 3) that an argument from the principle of equality alone is insufficient to justify a change to same-sex marriage.

I then consider (section 4) another argument from equality, namely that, at present, equality contingently requires *sameness* as a *means*. This argument requires an assessment of likely consequences and faces an objection that it is unlikely to lead to its intended outcome.

I have long identified with the liberal political tradition and conclude (section 5) with a point that arises from this. Having shown that neither the argument from unjust discrimination nor that from the principle of equality alone justifies same-sex marriage, the question arises: what is this legislation doing? It is using state power to change what words mean, although there is nothing wrong with their existing meanings. This is a real concern.

³⁸⁶ <http://www.washingtontimes.com/news/2011/mar/20/same-sex-marriages-give-polygamy-a-legal-boost/?page=all>

³⁸⁷ <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/set/set14/>

³⁸⁸ <http://www.telegraph.co.uk/news/politics/9908951/Gay-marriage-will-destabilise-family-life-sociologist-warns.html>

1. INTRODUCTION

1.1 I am grateful that Parliament offers the opportunity for citizens to make submissions to this Public Bill Committee.

1.2 I respond to this opportunity in the light of two decades experience of teaching in Higher Education in areas including political theory, the history of political thought and Christian ethics.

1.3 I have also written a briefing on this Bill, specifically for Christian Parliamentarians, published last month.³⁸⁹ However this submission to the Public Bill Committee is intended for all members of the Committee.

1.4 This submission focuses on some of the central issues at stake in the Bill's main provision, namely to introduce same-sex marriage. I am well aware that, after the Second Reading, the House of Commons voted by a large majority for the principles of the Bill. However the Government's unexplained rush to legislate, as well as the lack of normal pre-legislative governmental process (no enquiry, no Green Paper, no White Paper), means that it surely remains legitimate for citizens to scrutinise the basic arguments to which MPs appeal in supporting this Bill.

2. THE ARGUMENT FROM UNJUST DISCRIMINATION

2.1 In its simplest form, this argument can be put briefly. In law, gay couples can't get married, which shows that the law discriminates against them, so the law should be changed so that they can marry.

2.2 Especially as this argument is so prominent in advocacy of same-sex marriage it should be scrutinised carefully. Anticipating what this section of the submission sets out, the problem with this argument is that its conclusion is assumed in one of its premises, which makes it logically fallacious. It assumes the view of what marriage is that it needs to demonstrate.

2.3 One way in which this argument can be examined carefully is by setting it out in the form of a series of syllogisms, as follows. The conclusion of each forms the first premise of the next.³⁹⁰

- A. (i) In law, the good called 'marriage' is the union of a man and a woman.
(ii) Same-sex couples do not comprise a man and woman.

Therefore, in law same-sex couples cannot have the good called 'marriage'.

- B. (i) In law same-sex couples cannot have the good called 'marriage'.
(ii) The law is wrong, not truthful, in saying that same-sex couples cannot have the good of marriage.

Therefore a different law could enable same-sex couples to have the good of marriage.

- C. (i) A different law could enable same sex couples to have the good of 'marriage'.
(ii) A law that deprives someone of a good that a different law could enable them to have unjustly discriminates against them.

Therefore the current law on marriage unjustly discriminates against gay couples.

2.3 Each of these three arguments is logically valid, I think. Therefore the argument that the three make together is equally valid.

2.4 In logic, 'validity' is not the same thing as 'soundness' or 'truth'. Whether each of the syllogisms is also a 'sound' argument, ie whether it reaches a conclusion that is true, depends on whether its premises are true.

2.5 Both the premises of the first argument are true (all would agree). As the conclusion of this argument is the first premise of the second, this is true also.

2.6 However the second premise of the second argument, B(ii) (italicised above), is open to dispute. Whether it is true depends precisely on what 'marriage' is, ie on what this word is being used to refer to.

2.7 Summarised below are two different conceptions of what marriage is. There may well be more than two such conceptions at stake in public debate about this Bill. For simplicity I focus on two.

2.8 'MARRIAGE A'

In this conception 'marriage' names a male-female sexual relationship of a certain kind, one in which both partners have committed to being faithful, sexually and in love and care for each other, while they are both alive. Such marriage is constituted by two things (corresponding respectively to the words 'committed' and 'male-female sexual' in the last two sentences):

- the unambiguously voluntary or free consent of both partners to be united in marriage (given in the vows)
- actual consummation of this union in full heterosexual intercourse.

³⁸⁹ This was published by the Kirby Laing Institute for Christian Ethics in Cambridge and can be accessed here: <http://klice.co.uk/index.php/news> (under 'February').

³⁹⁰ As these three syllogisms are formulated in the text, they assume that marriage is a 'good', something that benefits people. This would of course be challenged by some. But advocates of same-sex marriage tend to emphasise strongly what a good thing marriage is.

This conception of marriage, ‘Marriage A’, can reasonably be called ‘traditional’.

2.9 ‘MARRIAGE B’

‘Marriage’ names the kind of relationship referred to in the following quotation: “If two people love each other we should celebrate that and let them get married if they want to—love is love. We should celebrate it if people want to make commitments to one another....”³⁹¹

I am not quoting this for a polemical purpose. Rather, this statement expresses well the second conception of marriage. In this, marriage is a relationship between any two people (who are adults and not close blood relatives) in which both partners have committed to love and care for each other while they are both alive. Such a relationship may be sexually expressed but there is no particular act of sexual intercourse which is needed to make it marriage. ‘Marriage B’ is constituted, then, by one of the two things that constitute ‘Marriage A’:

- the unambiguously voluntary or free consent of both partners to be united in marriage (given in the vows).

This second conception of marriage, ‘Marriage B’, can reasonably be called ‘voluntarist’. This label is not perfect, but it fits to the extent that such marriage has the single constitutive element of voluntariness or free will (*voluntas*, Latin: will).

2.10 Here is the second premise in the second syllogism set out above:

- (ii) The law is wrong, not truthful, in saying that same-sex couples cannot have the good of marriage.

2.11 In terms of Marriage A, this premise is not true. This is simply because ‘marriage’ labels a certain kind of male-female sexual relationship. This means the premise is self-contradictory.

2.12 In terms of Marriage B, this premise *is* true because whether a couple is male-female or same-sex is irrelevant to what marriage is understood to be.

2.13 *From this it follows that the argument from unjust discrimination for same-sex marriage has no bearing on Marriage A, the traditional conception of marriage.* It is not a sound argument against this conception, because anyone who holds to this conception believes that *one of its premises is false*.

2.14 The argument from unjust discrimination holds *only if Marriage B, the voluntarist conception, of marriage is already accepted*.

2.15 But the Bill’s provision to introduce marriage for same-sex couples obviously rests on a conception of marriage that corresponds with Marriage B, in which sexual difference is not relevant.

2.16 This means that the argument from unjust discrimination is not logically sound as an argument against traditional marriage and for the Bill’s provision. This is because it assumes its conclusion in its premises, namely that ‘marriage’ is not necessarily a heterosexual relationship. The argument from unjust discrimination is convincing only for those who already assume what it is seeking to demonstrate.

2.17 Therefore it is not true that Marriage A, traditional marriage, discriminates against gay couples. To claim this rests on a category mistake.

2.18 Rather, in this conception, ‘marriage’ is simply the word that refers to a certain kind of male-female relationship. That there is a word in English (or any language) with this meaning in fact says nothing about same-sex relationships, whether positively, neutrally or negatively. That a word exists with this meaning is not discriminatory against anyone. It is simply referring to one particular, real category of relationships.

2.19 In deliberation about the current Bill, *the argument from unjust discrimination cannot carry weight as an argument against traditional marriage and for the Bill’s provision for same-sex marriage*.

2.20 It is really important that legislative change is not proposed or defended on the basis of logically fallacious arguments. I would like to ask, therefore, that Members of Parliament don’t appeal to this anti-discrimination argument in debate about same-sex marriage.

3. THE ARGUMENT FROM THE PRINCIPLE OF EQUALITY

3.1 Also very prominent in the case for the Bill’s main provision is appeal to equality as a principle, as though this principle alone requires same-sex marriage.

3.2 The logical problem with the argument from equality can be put briefly. Appeal to equality is insufficient to justify support for same-sex marriage because equality doesn’t justify sameness—but sameness is what the proposal requires, namely, use in law of the same word. The argument from equality is like having a train ticket from London that will take you as far as Manchester when you want to get to Edinburgh.

3.3 Appeal to equality takes you as far as equal provision of justiciable rights for other-sex and same-sex couples, that is, to civil partnerships (regardless of whether this particular label is used).

³⁹¹ Nick Clegg, at Nottingham Trent University, 13 Sep. 2012, accessed 29 Jan. 2013 at <http://www.thisisnottingham.co.uk/s-question-time-Nick-Clegg-drops-meet-public/story-16902285-detail/story.html>

3.4 But equality under the law does not require the same word to be used to refer to those who are thereby equal. The law can provide equally for men and women without requiring that they are all called ‘men’. The law can require that black and white people are treated equally even if they are not all called ‘black’.

3.5 Therefore, appeal to equality alone simply cannot carry weight in argument for the Bill’s provision that the *same* word, ‘marriage’ will be used for both straight and gay committed relationships.

3.6 I would like to ask Members of Parliament to avoid appealing *only* to equality in arguing for same-sex marriage, as the case for this requires a convincing argument for *sameness*. Thank you.

4. AN ARGUMENT THAT EQUALITY CONTINGENTLY REQUIRES SAMENESS AS A *MEANS*

4.1 I have argued that appeal to equality is not a sufficient ground for support for same-sex marriage. However, there is a possible response. Accepting that appeal to equality alone can’t generate a cogent argument for sameness, the claim could be made that, on this issue at the present time, equality contingently requires sameness as a *means*. In other words, using the word ‘marriage’ for committed two-person relationships (regardless of gender) is, at the moment, an effective means of bringing about equality in practice.

4.2 The argument could go like this. The basic problem facing same-sex couples now (since 2005) is not inequality of justiciable rights but *a difference in perceptions of the status*, in law and culturally, of civil partnerships and marriage. Thus, civil partnerships are regarded, both by (some) people in them and many others, as of lower status than marriage, a kind of ‘second best’.³⁹² Even if the legal provisions for civil partnerships and marriage are as equivalent as the law can make them, the injustice for gay couples of being able to enjoy only a lower status relationship can be removed by making the same legal status, ‘marriage’, available to both other-sex and same-sex couples. In short: in current circumstances, equality requires sameness as a means.

4.3 This line of argument from equality is coherent in a way that an appeal that equality in principle requires same-sex marriage is not. However it faces a number of hurdles, among which I shall refer only to one, perhaps the highest. Before doing so, it is worth noting that, as this is an argument about means to achieve an end, it makes a claim about consequences. It rests on it being reasonable to judge that there’s a good prospect that acting on it will actually achieve the end of equal status.

4.4 Perhaps the highest hurdle this argument faces is, again, a logical problem, although not one that is decisive (unlike those outlined earlier). To show what this is, I need to refer back to the two conceptions of marriage distinguished earlier, Marriage A or traditional marriage, and Marriage B or voluntarist marriage. As traditional marriage is by definition heterosexual, the Bill’s provision for same-sex marriage must be premised on a voluntarist conception of marriage. This shows that the Bill will, in effect, change how the law conceives of marriage from a traditional to a voluntarist view.

4.5 This is a major change and, incidentally, I appeal to members of the Committee to acknowledge this.

4.6 The significance of this point for the argument just outlined—that equality requires the sameness of ‘marriage’ as a means—is this. While the Bill’s provision will achieve such sameness, *ie in the word used*, this will have been possible only by changing marriage into something different from what it has been until now. What the law will recognise will no longer be the traditional conception but will be the voluntarist conception of marriage.

4.7 The problem of logic here is this. Whereas the objective was to overcome *a difference in perceptions of the status*, in law and culturally, of civil partnerships and marriage by making the higher-status word ‘marriage’ usable in law for same-sex as well as other-sex partnerships, what this word will now refer to will have changed. It will not be marriage as traditionally understood. Given that what it will refer to will be different—voluntarist marriage—it is unknown whether, in the medium and long term, it will have the same status as it had before. In principle it could have higher, the same or lower status. But we don’t know.

4.8 However, as there is nothing inherently discriminatory, or wrong in other ways, with a language having a word for the category of relationship which ‘marriage’ has traditionally named, it is overwhelmingly likely that English will generate a substitute for this word. (One or two already exist, eg matrimony.) Given this, it is unlikely that changing what marriage refers to, in order to use sameness as a means of achieving equality, will prove to have this outcome.

5. CONCLUSION

5.1 The aim of this submission is limited. It is to appeal for logical rigour in the way arguments for same-sex marriage are made. In particular, it seeks to show that two of the most prominent lines of argument for the Bill, those from unjust discrimination and from the principle of equality, are, at least in the way many make them, logically flawed.

³⁹² There are differences among advocates of same-sex marriage in Parliament on whether a claim that civil partnerships are currently perceived to be, in some sense, a second-best should have any place in argument for same-sex marriage. Nick Herbert MP has appealed to it in advocacy of same-sex marriage (see inter alia an interview in the London Evening Standard, 31 May 2012, in which he referred to civil partnerships as a ‘second order institution’). Chris Bryant MP appears to reject this line of argument (see exchange with Maria Miller MP in Public Bill Committee, 12 Feb. 2013).

5.2 There are some other arguments for same-sex marriage. There is what is seen as the distinctively Conservative argument, an argument from social stability. I don't comment on this, partly as I am not a Conservative and partly for lack of space. But I'd like to comment on an irony. The great insight that there is in (small 'c') conservatism is to do with political method. So far as possible, change—even radical change—should be made slowly and carefully, both so that we inadvertently avoid losing more than we gain, and so that people who are resistant to change can come to understand, or at least accept, it to some extent, so reducing the risks of cultural fragmentation and conflict (even 'culture war'). It is partly in order to enable us to reap the benefits of conservative method that there are time-honoured processes of government, such as enquiries into fraught and divisive issues, green papers, white papers, etc. It is ironic that a Conservative-led government is handling the introduction of same-sex marriage in a way that is the opposite of conservative in method—simply passing over those normal parts of pre-legislative, governmental process and now rushing the Parliamentary process.

5.3 The issue of same-sex marriage is complex and difficult. In this submission I have touched on only a few of the issues it raises. To conclude I would like to make one more point.

5.4 I have shown that same-sex marriage is not required on the basis that traditional marriage is discriminatory against gay couples, or to achieve equality in law for gay couples. Granted these points, what is the Bill doing? It is legislation to change the meaning of a word—when there is nothing wrong with the existing meaning, nothing wrong with the fact that English has a word that refers to what 'marriage' has referred to. The Bill will alter the meanings of other words too, notably 'wife' and 'husband', which have until now always been correlative, like left and right, or heads and tails. For someone who identifies with the liberal political tradition, the use of State power to change what words with acceptable meanings refer to is very disturbing. This is illiberal legislation. Isn't this clear?

5.5 Thank you for considering this submission.

March 2013

Memorandum submitted by Pinchus Anshelm (MB 121)

1. Summary: My name is Pinchus Anshelm, and I am writing as an interested individual. I am homosexual, in that I predominantly find love within members of my own gender. It is my belief that the current prohibition on marriage between two people of the same gender is wrong, and that the proposed exemption to be granted to the Church of England and the Church in Wales will harm the individual and society. The freedom to marry, and the freedom to not marry, should be granted to all, and Government should not interfere into the personal lives of individuals.

2. The many varied opinions on same-sex marriage draw on cultural, religious and personal beliefs. Some of those opinions invoke the notions of "gays" and "gay behaviour" and its affects upon others. It is my belief that the impediment to same-sex marriage, as is current UK law, is an over-reach of the State into the personal lives of individuals.

3. The main opposition to same-sex marriage is on religious and conscientious grounds. This religious opposition is so keenly felt by Parliamentarians that the Churches of England and Wales have been granted exceptions to the proposed Marriage (Same Sex Couples) Bill. The Bill, in its current form, will affect every group and individual existing in the United Kingdom—apart from the Churches of England and Wales.

4. The exemption afforded to the Church by statute on religious grounds is based on the historical opposition of Christianity to people engaging in same-sex behaviour.

5. As a historically Christian country, the UK does not recognize same-sex unions in the same way as opposite-sex unions. This is as a result of, and perpetuates, the discrimination against people who, for whatever reason, are incapable of behaving in any other way than finding love in members of the same gender.

6. Religious opposition to same-sex marriage is, in my opinion, bigoted[1]: those who believe, for religious reasons, that gays should not be allowed to marry further their beliefs by seeking to prevent, legally, others' liberty to marry who they love.

7. Denying gays the possibility of marriage—be it in a registry office or a church—is a significant shift from the mere personal beliefs of those who are against same-sex marriage into active, "positive" dominion over others:

8. Those who are against allowing gays to marry wish to force their beliefs upon others through this Bill so that the Church is disallowed from marrying two people, who otherwise would wish to marry and may love each other, but are same-gendered.

9. One opposition cited by religious observers is that people may not be born gay: finding love in members of the same gender is "abnormal", "a choice", "not consummative", "unprocreant" or "ungodly". This is an argumentum ad ignorantiam—that because we are currently unable to determine, with certainty, the origins of homosexuality, those who are opposed to gays marrying choose to believe—without any evidence except for holy books or preachers or personal conviction—that loving another person of the same gender is in some way

unchurchly, and therefore marriage by two people of the same gender is not deserving of recognition by either Church or State.

10. This is a false dichotomy, as legal recognition of marriage is not dependant upon the biological origins of love: marriage is always a choice, be it between two men, two women, or one man and one woman, and it is not for the State to decide what is or is not acceptable in the private affairs of individuals—unless we are to live under a theocratic regime with Scripture at its core, imposing its doctrine on every person in the UK.

11. To deny two people of the same gender marriage, based on an individual's biological origins or lack thereof, is discriminatory: it is to say that there is a class of people for whom their actions may not be biologically-determined—or are viewed by others as being “incorrectly” biologically-determined—and as such do not qualify for religious or legal recognition of a loving marriage.

12. Opposition to gays marrying, based on religious belief, is to say that those who are not religious—or indeed are religious but homosexual—are unworthy of equal respect or acceptance, and that their love is not the same as or as worthy as heterosexual marriage. This is morally wrong in my opinion and negatively affects the self-worth of individuals when such beliefs are State-sanctioned.

13. The belief that gays marrying is a reprobate behaviour is an ad hominem attack upon gays: it is to say that some people are inferior in the eye's of the believer and his or her God, and as such gay people shall not be afforded the same rights as heterosexual people who wish to marry.

14. The belief by the religious that their opinion is based on religious “truth” is a fallacious appeal to authority: it presumes that the religion is in possession of “the truth” regarding human behaviour and marriage, and as such should be given power over homosexuals to deny them marriage. This is a clear example of bigotry[1], and over-steps the boundaries of personal belief into impeding and infringing upon the private lives of homosexual individuals: legally forbidding some people, who the religious have chosen to disapprove of, to enjoy the same rights extended to others in society.

15. Forbidding gay people to do as they please, with whom they love, and forbidding the public declaration and eternal commitment that marriage is assumed to provide is a gross abuse of power by the State.

16. It is clear that two gays marrying impacts directly upon nobody else other than the two individuals who are marrying.

17. It is equally clear that forbidding two gays from marrying impacts gay couples in the starkest of ways: removing their liberty—their freedom to marry—and, ultimately, their freedom to express their love openly. This is not compatible with a free country.

18. Forbidding one section of society from committing their love in a formal ceremony of their choice is a damaging action that alters tremendously the lives of gay people, as it is an abuse of power.

19. Gays marrying is not a matter of popular opinion: saying that gays marrying is unpopular, or, perversely, that it is a “cause célèbre”, and so Parliament should not waste its time on such matters, is an appeal to popularity and irrelevant.

20. It matters not what others think, feel or believe; forcing your beliefs on others is always wrong.

21. Allowing free people to profess their love for whosoever they choose in the manner of their choosing is surely the most basic freedom of a free country.

22. What is right is not open to subjectivity; what is a human's right—his liberty and freedom to love and express his love for who he so chooses and how he chooses—should not be open to religious or political volleying. The issues of love and marriage are central to many people's lives, and the correct course of action is so patently clear that it beggars belief that gays marrying is still a contentious issue and a cause of outrage.

23. The “slippery slope” argument—that allowing gays to marry will lead to all manner of unions—is absurd. This argument is an attempt to redefine the terms of debate, and charge that as soon as gays are “permitted” to marry, then all manner of hell-fire shall break loose. This argument draws on no evidence and is merely scaremongering.

24. Similarly, the argument that allowing gays to marry will lead to a breakdown in society or a demolishing of the “sanctity of marriage” is further scaremongering. There is no possible way that two people who love one another and wish to express that love publicly will bring about the downfall of the UK. This is an absurd and abusive attack on gays, because it says that gays marrying are antithetical to the British way of life and are destroying the core of the country, the children in the country and the lives of everyone else. This is harmful to gay people, without question: it attempts to define gays who, like every normal human being, wish to live with a loving partner and possibly marry if they so choose. Portraying gays as inherently evil people who—through no fault of their own except finding, for whatever reason, that they love members of the same sex—will, by virtue of them expressing their love through marriage, unwittingly be the bearers of destruction upon all mankind owing to “God's will”. This is absurd and another religious scare tactic that is damaging to the mental health of gay people, damaging to the terms of debate and—as is the current situation—legally allows for the discrimination of gay people wishing to marry, or, as is proposed, allows for the continuation of discriminatory behaviour by

the Church. As gay people are humans too, they have families and friends, and therefore the impact of this discrimination is not limited to the many couples who would wish to marry, but extends to society as a whole.

25. Demarcating “proper” “heterosexual marriage” from “sinful” “gay marriage” is an attempt to separate and thrust gay people into a different group because they love members of their own gender and wish to marry them.

26. This separation, whether based on religious or personal belief, has no justification in fact or morality. The discrimination is purely subjective and should not be sanctioned by law, as it creates a group of people separate from the rest of society based on no reason other than who they love. This is alarming to those on the receiving end of this separation.

27. Discriminating against people based on who they love is one of the most perverse forms of hatred imaginable. It is hard for me to think of any belief more hate-filled than deciding that equal, shared, honest, true, faithful and reciprocated love is wrong and harmful.

28. Those who argue that marriage is the “foundation” of society and wish to sanction marriage as “heterosexual-only” do so from a perspective of bigotry[1]. Since, according to those who hold such beliefs, marriage is the “bedrock” of society, then it follows that if marriage is to be demarcated based on sexuality, then any other area of life can, too, be separated into “hetero-only” and “homo-only” groupings. Seeking to divide society in this way is not good for anyone nor society as a whole. This is a flimsy argument but I state it merely to show the preposterousness of those who wish to demarcate society based on sexuality.

29. Demanding that gays are not allowed to marry is divisive: it divides people based on their sexuality.

30. Insisting that gays are “different” from “straights”, as would be the case with the divisiveness of demarcating marriage based on sexuality, is not based on fact. There are no differences in mental, emotional or social wellbeing arising solely from being attracted to members of the same sex.

31. There is no proof that gay people are abnormal or dysfunctional human beings.

32. God does not provide any peer-reviewed statistics.

33. Demanding that gays are forbidden from marrying leads to a sense of disenfranchisement from those who are forbidden from expressing their love in the same manner as every other person in the UK.

34. Giving special exemption to the Church to continue to deny gays the ability to marry perpetuates this discrimination, segregation and disenfranchisement far beyond the members of the Church: it sends a bold statement that treating gays as separate, unequal and inferior people is acceptable so long as one is doing so in the name of God as embodied by the Churches of England and Wales.

35. The exemption afforded to the Church is an acceptance by the State of the bigotry[1] towards gay people’s wishes to marry their loved ones: this exemption reinforces, rather than removes, obstacles in the way of gay people’s lives to live their life unfettered and free from interference by outside forces.

36. In order to be free, one should not be denied the ability to perform actions or behaviours that do not harm or interfere with others against their will. Legally denying marriage to some people based on their sexuality is a clear violation of the freedom of individuals to live their lives as they choose, peacefully, lovingly and happily, with or without a voluntary marriage.

37. Allowing the Church to interfere with the lives of those members who wish to marry should not be codified by law as this is an over-reach by the State into the private lives of Christian individuals.

38. The Church should be free to marry or not marry whosoever it chooses.

39. Those who do not wish to perform marriages should be able to not do so—so long as we are prepared to accept the disallowance of marriages for any reason, be it skin colour, gender, age, nationality, or any trait. To single out sexuality is to reinforce the notion that people who love members of their own gender are especially wrong, and that the State has approved the Church’s singular discrimination against gay people.

40. This moral judgement against allowing gays to marry is itself wrong: denying gays the ability to marry because of a set of personal beliefs has no basis in any form of ethics equatable with justice.

41. Any objection to gays marrying based on concern for children is not based in fact: indeed, a recent study by Cambridge University has found no disadvantage to adopted children in families of same-sex parents[2].

42. The only cause for concern regarding adoptees of same-sex parents is potential bullying by others who disapprove of same-sex relationships or same-sex adoption[3].

43. Arguments that allowing same-sex marriage will deny teachers’ freedom to denounce those who marry someone of the same gender are very concerning to me. How can it be acceptable in state schools to permit the teaching of a denouncement of one section of society, based on a teacher’s personal beliefs? Are we to permit the criticism of gay people’s ungodly marriage simply based on their sexuality? If we are to cultivate contempt for other individuals, potentially promoting bullying and long-term mental health issues that arise from bullying in school, the workplace and society[4], and deny others’ humanity as an equal and good person, then by all means permit the criticism of gays marrying. It is not something I could ever support and I find it disgusting.

44. The argument that Civil Partnerships are a suitable commitment for gay couples and as such “redefining marriage” is unwarranted is not fulfilled: forbidding gays from marrying is intended to promote Biblical law, personal dislike or procreative endorsement, but comes at the expense of denying one section of society freedom to behave as all of the rest of society. This is unabashed discrimination and is principally wrong.

45. The argument that permitting gays to marry will “redefine” marriage misses the point: while contending that marriage is exclusively between a man and a woman, the purpose of which is to promote healthy relationships and conceive children, the argument goes that same-sex couples must be excluded. This is sheer nonsense: it makes no sense. Excluding loving couples from an institution intended to affirm love is madness—doubly so when the reason for exclusion is to protect others from proscribed love.

46. The only reasons for exclusive marriage between heterosexual couples are religion, tradition or personal belief. While all views are clearly permissible to hold, a view is no longer a view when it transforms into laws and practices. Legally forbidding marriage based on religious, traditional or personal views prevents the opposing actions from happening. That is a clear violation of the personal lives and beliefs of others.

REFERENCES

[1] bigoted: adjective. “Having or revealing an obstinate belief in the superiority of one’s own opinions and a prejudiced intolerance of the opinions of others”; “bigoted”. Oxford Dictionaries. April 2010. Oxford Dictionaries. April 2010. Oxford University Press. 08 March 2013 <http://oxforddictionaries.com/definition/english/bigoted>

[2]<http://www.cam.ac.uk/research/news/ive-got-two-dads-and-they-adopted-me>
“Research into adoptive families headed by same-sex couples paints a positive picture of relationships and wellbeing in these new families. The study, which was carried out by Cambridge University, suggests that adoptive families with gay fathers might be faring particularly well. In-depth research into the experiences of adoptive families headed by same-sex couples suggests that children adopted by gay or lesbian couples are just as likely to thrive as those adopted by heterosexual couples.”

[3]<http://www.cam.ac.uk/research/news/ive-got-two-dads-and-they-adopted-me>
“Responses from the same-sex parents, adopted children themselves and the children’s teachers indicates that these issues do not appear to be a significant problem—although the researchers, and some parents themselves, acknowledge that problems of bullying could become a problem as the children become teenagers.”

[4]<http://www.nhs.uk/Livewell/LGBhealth/Pages/Mentalhealth.aspx>
“Studies show that lesbian, gay and bisexual people show higher levels of anxiety, depression and suicidal feelings than heterosexuals. Poor levels of mental health among gay and bisexual people have often been linked to experiences of homophobic discrimination and bullying.”

March 2013

Memorandum submitted by Ralph Manning (MB 122)

As a teacher and Christian, I am extremely concerned about the hurried and ill-prepared content of the above Bill. There has been no Green Paper, or White Paper, and the Government did not test their intention in (either) Parties’ manifestos.

Firstly, I fear that teachers will be forced by the Bill, against their faith, to promote a view of marriage which their faith holds to be immoral, or face discrimination by their employer. The Government has argued that teachers would only have to teach the *fact* of same-sex “marriage”, but schools will expect their staff to use resources which often promote *values*, through published teaching schemes, or even just simple books such as “King and King” or “And Tango makes three”. Thus a teacher could be disciplined for not following the school’s policy here. Experienced legal opinion has found that there would be no protection under the ECHR, given recent cases—Ladele and MacFarlane—where reasonable accommodation could have been made by employers but was not.

The eventual longer-term outcome will be to close teaching as a profession to people of faith. Is this what the Government wants?

Secondly, as a committed member of a local free church, it seems to me that those churches who offer marriage may be subject to claims of discrimination by any same-sex “couple” who wish to challenge them in court. This is particularly likely following the recent legal cases brought and won against Christians offering “Bed & Breakfast” in their own homes. Again, serious legal opinion has shown that the ECHR would not uphold the “protections” in the Marriage Bill, however they may be worded.

In my own church we are now in the curious position of considering that for our legal protection we should no longer marry *any* couple in our church, and leave this in the hands of the civil authorities alone. Thus the outcome of the Bill would be to undermine, rather than promote and encourage marriage as the foundational and God-given building block of our society. Again, is this what the Government wants to achieve?

March 2013

Memorandum submitted by World Federation of KSIMC (MB 123)

Submissions in opposition to the Marriage Bill regarding same sex couples

SUMMARY:

- There is unanimous agreement in all Islamic schools of thought that homosexuality is a forbidden act and displeases God
- The Bill in question will raise a number of serious concerns for British Muslims in all walks of life and professions
- The Bill will confuse young Muslims over their identity and what is and is not acceptable sexual conduct
- The implementation of the Bill has no place in any mosque or Islamic centre
- We vehemently oppose the Bill

OUR SUBMISSIONS:

1. In Islam, Sodomy or homosexuality is regarded as one of the Major Sins. This is clearly recorded in the Qur'an, as well as in the teachings of Prophet Muhammad and the divinely-chosen Imams. In the Islamic legal system, homosexuality is a heinous crime and can be severely punished.

The Qur'an describes the act of Sodomy as indecent:

And Lot, when he said to his people, 'What! Do you commit an indecency none in the world ever committed before you?! Indeed you come to men with desire instead of women! Rather you are a profligate lot. (Qur'an, 7:80–81)

As such, Muslims will be outraged and will feel their views and beliefs were ignored if such a bill is introduced.

2. In addition to the legal prohibition of homosexuality, Islam poses strong ethical arguments against this act. Imam Ja'far al-Sadiq has said:

Sodomy decreases the family affection between wife and husband... and produces many other corruptions.

Islam regards the institution of the family as the nucleus of society, and a safe environment for a child to grow and mature into a valuable member of society. It is our submission that such a bill will dilute the significance and sanctity of marriage, which has traditionally been a religious institution.

3. We note with concern the alarming rate at which families are breaking and divorce is increasing. The Bill will only add to this alarming trend.

4. The communities, mosques and Islamic Centres that we represent will not opt into the Bill under any circumstance. They fear there may be coercion into the Bill at a later date. The Bill will therefore cause unnecessary stress and anxiety amongst vibrant and responsible communities.

5. Young British Muslims will feel a sense of alienation from society due to the sacrilege of one of the remaining and sanctified practices of British society: marriage.

6. The Bill will offend the vast majority of Muslims, and has the potential of causing resentment and anger.

7. Muslims join with other major world religions and Abrahamic faiths, including Jewish and Christian groups, and other key groups in society, in vehemently opposing this Bill.

March 2013

Memorandum submitted by Ian Michael LaRivière (MB 124)

1. SUBMITTED BY:

Ian Michael LaRivière

Capacity: Private individual.

Status: UK citizen by birth. Retired senior software engineer. Active in various capacities within the local community, including work connected with children and young people. Married with two adult offspring and four young grandchildren.

2. SUMMARY

The Marriage Bill seeks to remove unnecessary discrimination towards same-sex partnerships, but its proposed solution creates far more problems and discord than it solves. Its approach is therefore fundamentally flawed. Even at this fairly mature stage the Bill in its present form should be scrapped and a far simpler and less problematic solution adopted, as is proposed in section 8 below.

3. FLAWS OF THE PROPOSED BILL

3.1 *'Equality' by sameness.* The push for this change to the legal definition of Marriage appears to be motivated by the somewhat confused thinking that 'equality' can be achieved only by 'sameness', and so committed partnerships between homosexual couples can be seen as having 'equal' standing with those of heterosexual couples only if they are posed as being fundamentally the same thing. This is false thinking. Equality does not rely on sameness; they are independent entities.

3.2 *Mere re-naming.* One need not doubt that many aspects of heterosexual and homosexual partnerships are the same or very similar, including that of genuine affection, commitment and stability. But biologically and psychologically they are *not* identical, and to try to force them to be viewed as being so by literary and legal categorization is neither accurate nor honest to the facts. In the House of Commons Library Research Paper 13/08, section 3.4 'Response to Consultation', p.32, *Stonewall* lament that the institution of Civil Partnership has not removed "prejudice and discrimination that gay people face", but then go on to argue as if another mere name change to 'marriage' will accomplish such a change in attitude. That is just wishful thinking, having no logical or evidential support. All that such a re-categorization will do is to confuse the long established and stable understanding of marriage as it now is. It will result in destruction with no genuine benefit to anyone.

3.3 *Divisiveness and Litigation.* There is zero probability that if the proposed redefinition of marriage arrives on the statute books it will be universally accepted and operated. This will act as a sharply divisive instrument in society and, despite Government assurance (section 4.1 of the Research Paper) of protection within the Bill of freedom of conscience, any unwillingness to 'marry' homosexual partners, in a religious or any other setting, would attract a legal attack from gay activists who are committed in their own thinking to seeing any view differing from their own as bigotry and prejudice. It is bad governance and irresponsible law-making to build divisive instruments into our legislation.

3.4 *Removal of Choice.* There will be many people who wish to enter into the specifically man-woman marital relationship and who will no longer have that choice if the Bill becomes law. As pointed out in paragraph 20 of the Church of England response to the consultation (Research Paper, 3.4, p.30):

'A man and a woman who wished to enter into the traditional institution of marriage would no longer have the opportunity to do so. Only the new, statutory institution, which defined a "marriage" as the voluntary union of any two persons, would be available.'

The Conservative Government has often posed itself as a Government creating choices for the electorate; this Bill is, in part, pursuing an opposite direction.

4. FALSE ARGUMENTS USED TO PROMOTE THE BILL

4.1 *Half-truths.* An argument posing only part of the facts is always subtly misleading. The current Prime Minister's speech at Party Conference in October 2011 contained the core statement on gay marriage:

"To anyone who has reservations, I say: Yes, it's about equality, but it's also about something else: commitment." (Quoted in Research Paper section 3.1, p.21)

This displays two excellent sentiments—equality, and personal commitment. However, the *equality* argument is a red herring, as argued above; and although the *commitment* argument is fully valid in itself, to stress it in this way strongly implies that it is all there is in the issue, which is a serious shortfall. No doubt such emotional rhetoric earned Mr Cameron an ovation, but intellectually it amounts to little more than an empty smoke-screen. Commitment is essential in all human partnerships, but this common element does *not* make all types of partnership the same, as argued above, and this fact was expressed succinctly by the Catholic Bishops' Conference statement of January 2012, quoted in the Research Paper section 8.2, p.54:

'Marriage has an identity distinct from any other relationship, no matter how much love or commitment may be involved. Marriage is and always has been the union of one man and one woman, for love and mutual support, open to procreation.'

Mr Cameron's contribution to the debate is fundamentally flawed, at least in this instance.

4.2 *Belittling the Issues.* As reported in the Research Paper, Summary, p.1,

'Supporters of the proposals have spoken of extending the right to marry, rather than of redefining marriage.'

An often effective way of circumventing an inconvenient fact is to creatively re-express the issues in order to divert attention from the real problems. The 'extension' of eligibility for marriage would be achieved only by a literary and legal redefinition; so the radical nature of the proposed Bill cannot be dismissed by this circular argument.

4.3 *Belittling the Opponents of Change.* A time-honoured technique of closing people's minds to a debate is by 'name-calling' and emotional belittlement, directed at people of different persuasions to ones-self and at their arguments. Such dismissive comments from *Stonewall* are quoted in the Research Paper section 8.5, p.56:

'Sadly the minority of people who oppose equal marriage consistently use mistruths and smears to argue against it. Supporters of this modest measure mustn't let a vocal minority block equality.'

Although, unfortunately, one can sometimes identify an individual case of bad argument, to apply this accusation to the majority of supporters of the current law is totally unjust and pernicious, as is the assertion that such supporters are merely a vocal minority when the true situation is rather the reverse. Such activity is just psychological picture-painting—*ie* trickery, but unfortunately is sometimes very effective. People with genuinely good arguments do not need to resort to such dubious tactics.

4.4 *Statistics.* The Opinion Poll commissioned by *Stonewall* declared a 71% support for gay marriage, but this high figure was arrived at only by excluding the “don’t know” responses, with the number of these not being declared; if there was, say, a 9% “don’t know” response, then the true support figure would be 65%. By contrast, the Poll commissioned by *Catholic Voices* yielded a 22% support, with 9% “don’t know”. (Quoted in Research Paper section 2.1, p.17) As stated in the Paper, *‘The variation in the results may be explained by differences in the questions.’* I suggest that if an entirely neutral, non-suggestive, question had been posed, then the number of people calling for change would have yielded a much lower percentage. If you hold something in front of people, they want it even if they had no previous desire for it.

A further point arising from Opinion Polls and some newspaper articles (for example, Andrew Pierce in the Daily Mail of June 13th 2012, page 14) is that by no means all homosexual and trans-sexual people support the current move to change the marriage definition. This rather reveals the main promoters of the change to be a fairly small vocal section of society.

5. REASONABLE ARGUMENTS FOR A CHANGE TO THE CURRENT LAWS

5.1 *Privacy of Sexual Orientation.* Although virtually all of the arguments of the pressure groups pushing for the changes proposed in the Bill can be rationally countered, the current definition of Civil Partnership does create a human rights problem that needs addressing. This problem is identified in the Research Paper section 1.6, pp.8–9:

‘For legal purposes, civil partners cannot call themselves married, and married couples cannot call themselves civil partners, and that this means that, when making a declaration of marital status to an employer, public authority or other organisation, an individual who is either married or in a civil partnership will often effectively be declaring their sexual orientation at the same time.’

Although there is no evidence of this being a problem for people in heterosexual relationships it can be for others, and so this is clearly unsatisfactory, as one’s sexual orientation should be a personal, private matter if one so wishes. However, to disrupt the time-honoured and universally accepted institution of man-woman marriage in order to deal with this problem would be a massively disproportionate response. A far simpler, less contentious and less expensive solution will be proposed in section 8 of this submission.

5.2 *Loss of Rights.* As stated in Research Paper section 3.2, ‘Gender recognition’, to officially register a gender change, transsexual people currently have to end their marriage or civil partnership, which may interrupt their contribution records for pensions and benefits and possibly taxation status. Fairness demands that this issue be addressed.

5.3 *Emotional Need.* A reason for redefining marriage that was put forward by the Equalities Minister and treated sympathetically in the Church of England response (Research Paper section 3.4, p.29) is that such a change would meet an emotional need among some people within the LGBT community. This perceived emotional need is a *desire* for a particular legal status, and cannot be put on a par with such basic in-built human needs as the need for love, recognition and stable relationships. Whilst it is desirable to satisfy this desire, it does not justify the disruption of the existing marriage institution, and the solution alluded-to in the previous paragraph would afford people in the LGBT community a legally structured status within society.

6. ARGUMENTS FOR RETAINING THE CURRENT DEFINITION OF MARRIAGE

6.1 *The ‘Ownership’ of Marriage.* The current understanding of marriage as being between a man and a woman predates not only all of today’s societies but even the ancient civilisations known in history. No government or Parliament defined marriage; they merely *enshrined* it in national law. It is therefore highly dubious for any Governmental authority to assume the moral right to *re-define* it; its ‘copyright’ does not belong to any such authority. If other, similar, forms of human partnership are desired to be enshrined in law then so be it, but that desire does not confer on the legislature the right to alter what it never created in the first place.

6.2 *The Uniqueness of Marriage.* Following on from the previous paragraph, the essence of marriage is well expressed by the Catholic Bishops’ Conference statement:

‘The social and procreative understanding of the institution of marriage predates all the cultures and societies of today. The institution of marriage has never prevented the development of other forms of friendship or human relationship within those cultures and societies but they have never been given the name of ‘marriage’. Marriage is therefore unique and distinct from all other human relationships.’
‘Marriage is essentially conjugal and social, and derives its meaning from its function as the foundation of the family. Marriage joins husband and wife in a life-long bond that is ordered essentially, if not in every instance, to their roles as father and mother and recognises their responsibilities related to procreation and generational care-giving. If the institution of marriage is significantly diminished, so

will be the well-being of children, the family and of society.' (Quoted in Research Paper section 3.4, p.31, paras. 13 & 11.)

A same-gender partnership can never have quite this essence, however loving, committed and stable, and so should not be passed off as being exactly the same entity. It therefore should not be defined as 'marriage'.

6.3 *Negative Effects of a Redefinition.* In addition to the positive reasons above for retaining the current definitions of marriage, one can identify several negative effects of such a change. These are listed below as dangers involved in the proposed redefinition.

7. DANGERS OF THE BILL

7.1 *Freedom of Speech and Conscience.* The Government have stated that various safeguards have been built into the Bill to protect peaceful expression of belief. The actual effectiveness of such provisions can be doubted in the light of punitive actions taken against various individuals who have expressed misgivings of sex orientation-related legislation already passed, and also of the forcing out of existence by such legislation of some erstwhile socially beneficial services such as adoption charities. Section 1.10 of the Research Paper lists some such personal cases, under the heading 'Recent Cases'. If the Marriage Bill is passed, such social and legal pressures to conform to the opinions of others will be considerably increased. The legal opinion of Aiden O'Neill QC on the consequent vulnerability of NHS, Armed Forces or University chaplains, school teachers, foster parents, and churches is reported in section 3.3 of the Research Paper, under 'Legal Opinions'. Also quoted there is the view of Neil Addison, specialist in discrimination law, concerning the likely trumping of religious freedoms by same-sex marriage legislation whatever intentions are expressed now by the Government:

'Once same-sex marriage has been legalised then the partners to such a marriage are entitled to exactly the same rights as partners in a heterosexual marriage. This means that if same-sex marriage is legalised in the UK it will be illegal for the Government to prevent such marriages happening in religious premises.'

In the light of such educated opinions, Government assurance such as those expressed in their document *Myths about Equal Marriages—Setting Out the Truth* (Department for Culture, Media and Sport) can be seriously doubted.

7.2 *Impact on Future Legislation.* Once the time-honoured definition of marriage has been tampered with to accommodate one pressure group's demands, the door will have been unlocked for other such demands to be made and met. The experience of other nations that have gone down this path is instructive: in Canada, legalising same-sex marriage has led to supporters of polygamy demanding that their unions be legally recognised; and in Mexico same-sex marriage was followed by the introduction of two year fixed-term marriages. If modifications are made to satisfy one perceived need, similar satisfaction of all other perceived needs can be argued-for on the basis of fairness and diversity. The most stable social building block is the nuclear family based on man-woman marriage; once that institution is broken open a social jungle is free to develop.

7.3 *Enormous Cost for Little or No Return.* The word 'marriage' appears around 3,000 times in UK legislation (-the figure of 3,258 has been quoted). Each reference and dependent text will have to be amended, and other legal terms such 'husband and wife', 'consummation', 'adultery', *etc.* will have to be removed or expanded. Hundreds of pieces of legislation will have to be changed and re-published at enormous cost, inevitably running to many millions of pounds, and all for no appreciable benefit to society; indeed, as expressed above, to its probable detriment. And all this at a time when valuable service providers are having their funding cut back as part of national austerity measures.

7.4 *Imposition of Minority Views.* Despite the wide variety of public opinions elicited, if not blatantly manipulated, by Opinion Polls, the driving force for the proposed redefinition of marriage is a minority pressure group. I am not calling into question the good intention of this group—the establishment of fairness for all, nor do I fail to support the principle that all minorities be sensitively and fairly accommodated within our society. But to tamper with a long-established and tried-and-tested foundational societal structure such as marriage puts the cohesiveness and stability of our society at even more risk than is already the case, and amounts to the imposition upon the whole of society of a minority interest.

8. A BETTER SOLUTION

8.1 A less disruptive way of meeting the problems identified in section 5 above is readily available. Since 2004 there have in law been two forms of personal partnership: Marriage, dating back to pre-history and not created by Government legislation, and Civil Partnership currently dating back just over eight years and created by Parliament (and which the Government of the day assured us was not an intermediate step towards changing the legal definition of marriage). Civil Partnership was, perhaps rather narrowly, defined for only same-gender couples, presumably as a mirror image of the existing opposite-gender Marriage.

8.2 For some rather obscure reason, the pressure groups and Government have chosen to apply the proposed changes to Marriage rather than to their own creation, Civil Partnership. To apply the proposed changes to the latter would attract virtually no opposition and involve relatively little work and disruption, and would lay the basis for dealing with the problems discussed in section 5, with the widening of Civil Partnership to include heterosexual as well as homosexual partnerships, and with the same economic rights (*eg* pension, benefits, *etc.*)

and legal rights (*eg inheritance, etc.*) conferred on them as exist for Marriage partnerships. Peter Tatchell is right in his criticism of David Cameron's irrational determination to deny Civil Partnership to opposite-sex couples (quoted in section 8.6 of the Research Paper). Indeed, under the proposed Bill it is difficult to see any purpose in retaining the category of Civil Partnership.

8.3 The current restriction against converting from Marriage to Civil Partnership (upon, for instance, legal gender change) has no obvious justification, and should be removed. This, along with an equal status in economic and legal rights for Marriage and Civil Partnership, would mean that anyone changing their legal gender-status would not lose their partnership-union or other rights.

8.4 The current problem of forced identification of homosexual orientation by being in a Civil Partnership would be removed, as Civil Partnership would no longer have that inevitability. And with Civil Partnership being a broadened institution with economic and legal rights, there would be no justification for anyone claiming that their emotional needs were not being met by being in such a partnership.

8.5 This arrangement would, in fact, provide a choice for heterosexual couples between traditional Marriage and Civil Partnership. It is quite reasonably conceivable that many who currently opt for a Civil Marriage ceremony rather than a Church ceremony would opt for Civil Partnership rather than Marriage with its historical religious associations.

8.6 The legislative disruption and financial cost of this solution is a small fraction of that involved in changing the definition of Marriage.

9. Conclusion

For the Government to commit vast amounts of time, energy and financial expense in pursuing the divisive ideas presented in the current Marriage Bill seems worse than irresponsible in a time of severe economic constraints, and when there are other genuine social problems that urgently require attention, such as the pollution of children and young people by internet pornography, and the public danger posed by irresponsible keeping of vicious dogs, *etc.* That the issues raised in this debate be dealt with in legislation is perfectly reasonable, but let them be dealt with in the least divisive and disruptive manner, as suggested above, and not by following irrational dogma or employing uncritical acceptance of minority pressure group demands.

March 2013

Memorandum submitted by Mark Jones (MB 125)

I am grateful to the committee for allowing me the opportunity to give oral evidence to the Public Bill Committee.

During my oral evidence I referred to a legal opinion by employment law specialist John Bowers QC. From the reaction it appeared that my assumption that the Committee would have seen the opinion was incorrect, for which I apologise. Mr Bowers is someone I have worked with and greatly respect. I therefore attach a copy of the opinion and trust it will be useful in your scrutiny of the Marriage (Same Sex Couples) Bill.

In view of time constraints, there are two particular aspects I would draw your attention to:

- (a) His opinion about the position of public sector teachers. Mr Bowers argues that the Bill, when combined with existing law relating to sex and relationships education, would create a duty to promote or endorse—not just explain—the new definition of marriage in Sex and Relationships Education.
- (b) His opinion that the effect of the Public Sector Equality Duty in the Equality Act 2010 would make it difficult for schools which teach about marriage in other lessons to do so without teaching similarly with regard to same sex marriage.

This could cause significant issues of conscience for those teachers (of various faiths and no faith) who sincerely hold the belief that marriage is the union of one man and one woman.

I feel I should add that this concern is not simply theoretical. Following my giving of evidence I have been approached by more individuals in the teaching profession who have confirmed the fear they have of others in the workplace who are hostile to their views and that my representation to the Committee that they would resign as a matter of conscience is correct.

I have been given permission to share the opinion, but wish to make clear that I am not the solicitor for those who sought the opinion and I had no hand in its being sought or its drafting.

Annex

THE MARRIAGE (SAME SEX COUPLES) BILL ADVICE

1. I am instructed on behalf of Coalition for Marriage Limited (“C4M”), a not for profit company committed to defending the current legal definition of marriage as between a man and a woman. I am asked to provide a written legal advice regarding the impact of redefining marriage on what would be taught in schools. In this regard, I have been provided with the following documents in order to inform my advice:

- (i) The Government's 'Myth Buster' document issued alongside the Bill on 25 January 2013;
- (ii) Transcript of an interview with the Culture Secretary on the Today Programme, 25 January 2013;
- (iii) A previous advice of Aidan O'Neill Q.C. commissioned by those instructing me;
- (iv) An email from Jane Williams of the Department for Education dated 29 January 2013 in response to an email expressing concerns about the impact of the new Bill on education.

BACKGROUND

2. On 25 January 2013, the UK Government published and introduced into Parliament the *Marriage (Same Sex Couples) Bill*. The Bill, if enacted in its present form, would redefine the law of marriage to allow for same sex marriage. It would remove the gender requirements to marriage and provide for two sets of marriage rules within a new, wider definition of marriage—most notably the law relating to consummation and adultery will not be extended to same sex marriage. The Bill would keep the current legal definition of marriage only to a limited degree in that it would still subsist within Anglican canon law. Under the Bill, the Church of England will continue to marry parishioners according to the current legal definition of marriage.

3. The issue of marriage can arise across the school curriculum and in the ordinary discussions which take place in the classroom. I am instructed that some schools already seek to promote same sex unions in primary schools. Story books such as "Tango Makes Three", "Daddy's Room Mate" and "King and King" are already found in British primary schools and some titles have already been the subject of litigation brought by concerned parents in the United States. I am also instructed that Stonewall's Education for All campaign is already promoting such resources in UK primary schools.

4. My Instructing Solicitor has had cause to advise a teacher who faced discipline because she declined to read such books to her class. Some schools have also endorsed the idea of LGBT History Month.

5. Teachers who conscientiously believe that marriage can only be between a man and a woman are supported in their beliefs by the current legal definition of marriage. However, those instructing me are concerned that the position will change if the *Marriage (Same Sex Couples) Bill* (**'the Marriage Bill'**) is enacted, such that 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.

6. In addition, there is the very specific and troubling issue of sex and relationships education. This is more of an issue for secondary schools (where it is compulsory, unlike primary schools where it is not). The law currently provides for guidance so that children learn about the nature of marriage and its importance for family life and bringing up children.

THE MARRIAGE BILL

7. The *Marriage Bill* which applies to England and Wales but in its key provisions not Scotland or Northern Ireland³⁹³, contains the following provisions relevant to this advice:

- (i) Section ('s') 1(1) provides that marriage of same sex couples is lawful;
- (ii) S.2(5) amends the Equality Act 2010 to the effect that a person will not contravene s.29 (prohibiting discrimination in the provision of services) if they refuse to conduct, be present at, carry out or otherwise participate in a relevant, ie same sex, marriage.
- (iii) Paragraph 1 of Schedule 3 provides that in existing legislation of England and Wales, a reference to "*marriage*" will be read as including a reference to the marriage of a same sex couple. Equivalent provision, redefining marriage terms to include the marriage of same sex couples, is made for reference to "*married couple*", "*a person who is married*" and a "*marriage that has ended*" in existing legislation.
- (iv) Similarly, in new (but presumably not existing) England and Wales legislation, "*husband*" is to include a man married to another man, "*wife*" is to include a woman who is married to another woman and "*widower*" is to include a man whose marriage to another man ended with the other man's death.
- (v) Paragraph 1 of Schedule 4 provides that s.11 does not alter the effect of any private legal instrument made before that section comes into force.

HUMAN RIGHTS ACT 1998

8. The Human Rights Act 1998 ('HRA 1998') provides that a public authority cannot act in a way which is incompatible with a Convention Right (s.6)³⁹⁴. The relevant Convention rights for the purpose of this advice are Article 8 (protecting family and private life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 12 (the right to marry), Article 14 (prohibition on discrimination) and Article 2 of the First Protocol (right to education).

³⁹³ Marriage is a devolved matter for Northern Ireland and Scotland and as such is a matter for the Northern Ireland Assembly and Scottish Parliament. It should be noted that some limited provisions of the Marriage Bill will affect Northern Ireland and Scotland: see the Explanatory Notes, §§16–22 (<http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0126/en/2013126en.htm>)

³⁹⁴ The 'Convention Rights' are defined by s.1; specifically, Articles 2 to 12 and 14 of the European Convention on Human Rights, articles 1 to 3 of the First Protocol and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

9. Section 2 of the HRA 1998 provides, amongst other things, that a court or tribunal determining a question which has arisen in connection with a Convention Right must “*take into account*” a judgment, decision or declaration or advisory opinion of the European Court of Human Rights.

10. Section 3 provides that so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights. In relation to primary (eg an act of Parliament) or subordinate (eg a statutory instrument) legislation, a court can make a ‘declaration of incompatibility’ (s.4).

Relevant statutory provisions

11. Currently, section 403 of the Education Act 1996 gives a privilege to marriage in the school curriculum. The *Marriage Bill*, if it becomes an Act, would clearly widen the scope of the current legal duty on schools to promote marriage. Section 403(1A) provides that

(1A) The Secretary of State must issue guidance designed to secure that when sex education is given to registered pupils at maintained schools—

- (a) they *learn the nature of marriage*³⁹⁵ and its importance for family life and the bringing up of children, and
- (b) they are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned.

(1B) In discharging their functions under subsection (1) governing bodies and head teachers *must have regard to the Secretary of State’s guidance*.

(1C) Guidance under subsection (1A) must include guidance about any material which may be produced by NHS bodies for use for the purposes of sex education in schools.

12. This provides no exception for conscientious beliefs. Unless this were amended I envisage that there would be a duty on the teacher to promote marriage as newly defined. This is further the case given that the issue of redefinition could not be avoided by any suggestion that such teaching might be said to be, in terms of 403(1A)(b), “*inappropriate having regard to the age and the religious and cultural background of the pupils concerned*”.

13. 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 (s84(2) Employment Rights Act 1996; *Post Office v Foley* [2000] IRLR 827).

14. The code of conduct for teachers in England (“Teachers’ Standards”, May 2012 published by the DfE and which replaces the General Teaching Council for England’s Code of Conduct and Practice for Registered Teachers) gives teachers some freedom in expressing personal beliefs but within very clear limits. Under the heading “personal and professional conduct” this is found:

“Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by...ensuring that personal beliefs are not expressed in ways which exploit pupils’ vulnerability or might lead them to break the law”. Further they must not undermine fundamental British values, including democracy, the rule of law, individual liberty **and mutual respect, and tolerance of those with different faiths and beliefs**

15. There are also two parts of the Equality Act 2010 (‘**EQA 2010**’) which fall to be considered. Chapter 6 Equality Act 2010 generally applies equality law to education.

16. Schools are prohibited from discriminating, harassing³⁹⁶ or victimising in relation to the protected characteristics except for (a) age and (b) marriage and civil partnership. So, for example, a school is not prohibited from allowing greater privileges to older pupils, or those who are married/in a civil partnership. A school is also prohibited from victimising for the conduct of parents or siblings (s.86).

17. Nothing in Chapter 1 of Part 6 (ie the rules relating to schools) applies to “*anything done in connection with the content of the curriculum*” (s.89(2)). The Explanatory Notes³⁹⁷ to EQA 2010 explain this provision as follows:

This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination.

[...]

³⁹⁵ My emphasis.

³⁹⁶ For the purposes of the prohibition of harassment, the Act excludes gender reassignment, sexual orientation or religion or belief (s.85(10)).

³⁹⁷ Although admissible as an aid to construction, Explanatory Notes have not been endorsed by Parliament and cannot be decisive of the correct interpretation of the Act: see eg *R (S) v. Chief Constable of South Yorkshire* [2004] UKHL 39, *per* Lord Steyn at §4

Examples

- A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism. [...]

18. On the other hand, Section 85(2)(a) of EQA 2010 provides that discrimination law does apply to the way education is provided. This extends to the protected characteristic of marriage which will of course be redefined (see section 84(b)).

19. As a public authority, the school (ie state schools) and the Local Education Authority are subject to the duties in Section 149 of EQA 2010—amongst other things to provide equality of opportunity between persons who share and do not share a relevant protected characteristic. This means that the public authority, or a person who is not a public authority but exercises public functions must, in the exercise of its functions, have “*due regard*” to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

20. There is no requirement to conform with (b) and (c) above in relation to the protected characteristic of marriage and civil partnership. However, it is relevant to the other protected characteristics mentioned above.

21. Having “*due regard*” to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

22. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding.

23. The following example is provided in the Explanatory Notes to EQA 2010 in relation to a school:

The duty could lead a school to review its anti-bullying strategy to ensure that it addresses the issue of homophobic bullying, with the aim of fostering good relations, and in particular tackling prejudice against gay and lesbian people.

24. This statutory background is hard to reconcile with the email from Jane Williams of the DfE which includes this “*no teacher can or should be compelled to promote views that go against their conscience*” or the Government’s ‘Myth Busting’ document, which states that “*No teacher will be required to promote or endorse views which go against their beliefs*”. The stark position in my view is that 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.

Obligations on teachers

25. This statutory position would in my view make it more difficult for those schools which currently seek to teach about marriage between different sexes (or present it in a positive way) to continue doing so without teaching similarly with regard to same sex marriage. Teachers as with every employee must carry out the reasonable instructions of their employers. This is however underpinned or overlaid in the case of education with the guidance from the Secretary of State to which I have already referred. A teacher could well be disciplined for his/her stance on the subject.

26. The Secretary of State’s guidance on sex education³⁹⁸ makes 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 must also 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 Marriage Bill is enacted, this would apply equally to same sex couples.

27. Secondly, elevating one kind of marriage over another is likely to amount to indirect or direct discrimination. For example, a pupil who is gay or whose parents are in a same sex union would arguably

³⁹⁸ DfEE 0116/2000, issued July 2000.

be treated less favourably if same sex marriage were denigrated explicitly or implicitly as part of a lesson. It is correct to say that the prohibition on discrimination does not apply to “*anything done in connection with the content of the curriculum*”. However, it does apply as already stated to “*the way it provides education for the pupil*”. This is a difficult distinction to draw.

28. It is therefore relatively clear from the above that a school would be entitled to teach that there is a wide range of views in relation to marriage, for example as expressed by different religions and religious denominations. But by teaching the topic “*in a way*” which subjects pupils to direct or indirect discrimination, which would in my view clearly include stating that one form of marriage³⁹⁹ is *better* than another, it is likely to amount to unlawful direct or indirect discrimination. The Equality and Human Rights Commission provide the following example⁴⁰⁰ which supports this interpretation:

During a PSHE (personal, social, health and economic education) lesson, a teacher describes homosexuality as ‘unnatural’ and ‘depraved’ and states he will only be covering heterosexual relationships in the lesson. A bisexual pupil in the class is upset and offended by these comments. This may be unlawful direct discrimination on the grounds of sexual orientation.

29. Clearly, there will be grey areas. What in practice amounts to teaching in a discriminatory way will be a matter of fact and degree. For example, in a Christian or Orthodox Jewish faith school it would (one assumes) be reasonable to teach the fact that the school’s religious denomination does not support and in fact rejects the principle of same sex marriage. But despite the best intentions of a teacher, merely teaching that there is a range of views and that *in the view of the school’s religious denomination*, same sex marriage is wrong, 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 EQA 2010, schools will be under a duty to ensure that the subject is taught sensitively and leave little room for misunderstandings of the type described above.¹⁰

30. I note that a comparable issue arose in relation to ‘homophobic’ booklets distributed at Roman Catholic schools in Lancashire in February of last year. The Education Secretary explained the issue in similar terms as I have above in a letter in response to a complaint from the TUC, stating inter alia: “*If a school conveyed its beliefs in a way that involved haranguing, harassing or berating gay or lesbian pupil or group of pupils then this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination*”.⁴⁰¹

31. Thirdly, schools are under a positive duty to advance equality of opportunity and foster good relations between people with different protected characteristics (EQA 2010 s.149). If a school curriculum explicitly presented marriage between people of the opposite sex as positive and marriage between people of the same sex as less positive or negative, there would be a strong case that the school was breaching the duty under s.149. Although ‘marriage and civil partnership’ is not a protected characteristic for the purpose of s.149, sexual orientation is, and there would be a strong argument that by presenting same sex marriage in a less positive light, the school would be failing, for example, to foster good relations between persons who share a relevant protected characteristic and those who do not share it.

32. Fourthly, for similar reasons as in relation to discrimination under the EQA 2010, a state school has a duty under the HRA 1998 not to act in a way which is incompatible with the Convention rights. This would include not discriminating because of sexual orientation under Article 14 with reference to Article 8. Moreover, in the light of the recent case law described below, it is highly unlikely that a domestic or indeed the European Court of Human Rights would accept that discrimination was justified with reference to the right to freedom of expression or freedom of thought, conscience and religion.

33. The position of such a teacher may be linked with the notion that not to promote same sex marriage may itself be offensive to gay people. This has been considered (albeit on more extreme facts) in two recent European Human Rights case. The European Court of Human Rights in *Vejdeland v. Sweden* [2012] ECHR 1813/07 (Fifth Section, 9 February 2012) upheld the criminal conviction of the applicants who had entered a secondary school and distributed approximately a hundred leaflets in and on pupils’ lockers which contained offensive statements about homosexuals. A school may thus feel under a duty to counter what it regards as homophobic attitudes within its school and within the wider society. At paragraph 55 the Court said

55. Moreover, the Court reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner (see *Féret v. Belgium*, no. 15615/07, § 73, 16 July 2009). *In this regard, the Court stresses that discrimination based on sexual orientation is as serious as discrimination based on “race, origin or colour”* (see, *inter alia*, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 97, ECHR 1999-VI).

³⁹⁹ Arguably, if the Marriage Bill becomes law, it will be incorrect to state there is more than one ‘form’ of marriage.

⁴⁰⁰ *Education providers: Schools Guidance*: <http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/>

⁴⁰¹ <http://ukhumanrightsblog.com/2012/02/22/michael-goves-full-letter-on-homophobic-teaching-materials-in-schools/>

34. Further in *International Centre for the Protection of Human Rights (INTERIGHTS) v. Croatia* the European Committee of Social Rights upheld a complaint that Croatian schools did not provide comprehensive or adequate sexual and reproductive health education for children and young people and the Committee held there to be a violation of Article 11(2) of the (revised 1996) European Social Charter⁴⁰² as read in the light of the non-discrimination preamble to the European Social Charter⁴⁰³ in Croatia's provision of certain educational matters distributed to State schools, noting as follows:

These statements stigmatise homosexuals and are based upon negative, distorted, reprehensible and degrading stereotypes about the sexual behaviour of all homosexuals. Although the Government maintains that all curricula are taught in compliance with domestic law as well as international standards, it does not dispute the existence of the abovementioned statements. The Committee holds that such statements serve to attack human dignity and have no place in sexual and reproductive health education: as such, their inclusion in standard educational materials constitutes a violation of art.11(2) in the light of the non-discrimination clause of the Preamble to the Charter.

Promotion of equality

35. Section 403(1A) of the Education Act 1996 would also in my view provide a legitimate basis for schools or LEAs which wish to promote a particular vision of equality to require all teachers to teach materials which endorse same sex marriage. The position of the teacher who manifests a conscientious objection to doing so is not enviable. It would be analogous to the registrar of births, deaths and marriages who refused to engage in civil partnerships which invites consideration of the ECHR decision in *Eweida and Others v UK – 48420/10 36516/10 51671/10 59842/10—HEJUD [2013] ECHR 37*. The London Borough of Islington had a “Dignity for All” equality and diversity policy. In 2005 it designated all existing registrar of births, deaths and marriages as civil partnership registrars.

36. Initially, Ms Ladele was permitted to make informal arrangements with colleagues to exchange work so that she did not have to conduct civil partnership ceremonies. Ms Ladele's refusal to carry out civil partnerships allegedly caused rota difficulties and put a burden on others and there had been complaints from homosexual colleagues that they felt victimised. No doubt similar complaints would be made of the teacher who refused to promote the new definition of marriage. She was told that her refusal to conduct civil partnerships put her in breach of the equality policy. Her claim for discrimination on grounds of religion or belief ultimately failed both domestically and at the ECHR.

37. The lack of protection for the conscientious objector can be seen in the Court of Appeal which stated, at paragraph 52:

“...the fact that Ms Ladele's refusal to perform civil partnerships was based on her religious view of marriage could not justify the conclusion that Islington should not be allowed to implement its aim to the full, namely that all registrars should perform civil partnerships as part of its Dignity for All policy. Ms Ladele was employed in a public job and was working for a public authority; she was being required to perform a purely secular task, which was being treated as part of her job; Ms Ladele's refusal to perform that task involved discriminating against gay people in the course of that job; she was being asked to perform the task because of Islington's Dignity for All policy, whose laudable aim was to avoid, or at least minimise, discrimination both among Islington's employees, and as between Islington (and its employees) and those in the community they served; Ms Ladele's refusal was causing offence to at least two of her gay colleagues; Ms Ladele's objection was based on her view of marriage, which was not a core part of her religion; and Islington's requirement in no way prevented her from worshipping as she wished.”

38. The ECHR gave no more protection. The key features of the recent judgment for present purposes are

82 Even where the [religious] belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a “manifestation” of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9 § 1 (see *Skugar and Others v. Russia* (dec.), no. 40010/04, 3 December 2009, BAILII: [2009] ECHR 2159 and, for example, *Arrowsmith v. the United Kingdom*, Commission's report of 12 October 1978, 3 EHRR 218, Decisions and Reports 19, p. 5; *C. v. the United Kingdom*, Commission

⁴⁰² Article 11(2) of the revised European Social Charter is in the following terms:

Article 11—The right to protection of health

Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:...

2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;...

⁴⁰³ The non-discrimination clause of the Preamble to the Charter reads:

“Preamble

... Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin

....”

decision of 15 December 1983, 6 EHRR CD587, DR 37, p. 142; *Zaoui v. Switzerland* (dec.), no. 41615/98, 18 January 2001). In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question (see *Cha’are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 73–74, ECHR 2000-VII, 9 BHRC 27; *Leyla Şahin*, cited above, §§ 78 and 105; *Bayatyan*, cited above, § 111; *Skugar*, cited above; *Pichon and Sajous v. France* (dec.), no. 49853/99, *Reports of Judgments and Decisions* 2001-X).

105. The Court of Appeal held in this case that the aim pursued by the local authority was to provide a service which was not merely effective in terms of practicality and efficiency, but also one which complied with the overarching policy of being “an employer and a public authority wholly committed to the promotion of equal opportunities and to requiring all its employees to act in a way which does not discriminate against others”. The Court recalls that in its case-law under Article 14 it has held that differences in treatment based on sexual orientation require particularly serious reasons by way of justification (see, for example, *Karner v. Austria*, no. 40016/98, § 37, ECHR 2003-IX, 38 EHRR 24; *Smith and Grady*, cited above, § 90; *Schalk and Kopf v. Austria*, no. 30141/04, § 97, ECHR 2010, BAILII: [2010] ECHR 1996). It has also held that same-sex couples are in a relevantly similar situation to different-sex couples as regards their need for legal recognition and protection of their relationship, although since practice in this regard is still evolving across Europe, the Contracting States enjoy a wide margin of appreciation as to the way in which this is achieved within the domestic legal order (*Schalk and Kopf*, cited above, §§ 99–108). *Against this background, it is evident that the aim pursued by the local authority was legitimate.*⁴⁰⁴

106. It remains to be determined whether the means used to pursue this aim were proportionate. The Court takes into account that the consequences for the applicant were serious: given the strength of her religious conviction, she considered that she had no choice but to face disciplinary action rather than be designated a civil partnership registrar and, ultimately, she lost her job. Furthermore, it cannot be said that, when she entered into her contract of employment, the applicant specifically waived her right to manifest her religious belief by objecting to participating in the creation of civil partnerships, since this requirement was introduced by her employer at a later date. On the other hand, however, the local authority’s policy aimed to secure the rights of others which are also protected under the Convention. The Court generally allows the national authorities a wide margin of appreciation when it comes to striking a balance between competing Convention rights (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I, 46 EHRR 34). In all the circumstances, the Court does not consider that the national authorities, that is the local authority employer which brought the disciplinary proceedings and also the domestic courts which rejected the applicant’s discrimination claim, exceeded the margin of appreciation available to them. It cannot, therefore, be said that there has been a violation of Article 14 taken in conjunction with Article 9 in respect of the third applicant.

39. 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.

40. As to schools not providing sex education (I am instructed that primary schools are not obliged to do so), the position is less clear as there is no explicit duty under the Education Act 1996 to teach about the importance of marriage. However, in my view the Public Sector Equality Duty imposed under EQA 2010⁴⁰⁵ would provide a legitimate basis for including not just the *fact* of same sex marriage but also an *endorsement* of it as part of the curriculum. For example, a school may discover that pupils are being bullied as their same sex parents are married under the new definition of marriage, ie because of their parents’ sexual orientation. The school would arguably be under a duty to explore ways to address this by way of the curriculum, for example by teaching materials which endorse or at the least seek to normalise same sex marriage. Indeed, this example mirrors one of the examples provided in the Equality and Human Rights Commission’s *Public sector equality duty guidance for schools in England*.⁴⁰⁶

A primary school becomes aware that there may be an issue with homophobic bullying when a boy in reception is bullied for having same-sex parents. As a result, the head teacher asks all teachers to report incidents of homophobic bullying and name-calling. Information gathered shows that homophobic name-calling is focused in years 4, 5 and 6. **The head teacher asks pastoral staff to**

⁴⁰⁴ My emphasis.

⁴⁰⁵ Nb. From 6 April 2012 schools have been required to publish information showing how they comply with the equality duty and setting equality objectives.

⁴⁰⁶ See page 7, http://www.equalityhumanrights.com/uploaded_files/pdfs/public_sector_equality_duty_guidance_for_schools_in_england_final.pdf

research curriculum resources and classroom strategies to tackle this issue... Once pastoral staff have reported back to the head teacher, new measures are introduced to tackle bullying throughout the school.

41. Given that Parliament has decided explicitly to require secondary schools to promote marriage as part of sex education lessons, it seems eminently reasonable for schools or LEAs to decide to do this in other contexts. That being said, it would not be open to a school or an LEA to teach that same sex marriage was *better* than other types of marriage as this would amount to discrimination for the reasons stated above in relation to the opposite scenario.

Discipline of teachers

42. 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.

43. 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.

44. As already indicated above, the domestic (ie English and Welsh) courts have considered a number of recent cases involving employees who have for reasons of religious belief refused to perform certain duties at work, and were dismissed as a result. Generally, the domestic courts have been unsympathetic to employees and service providers whose have refused to provide services to homosexuals due to their religious beliefs. Of the four cases which were recently considered by the European Court of Human Rights in *Eweida* the case of Gary McFarlane is relevant in addition to that of Ms Ladele already dealt with.

45. Mr McFarlane, also a Christian, believed that homosexuality was sinful and as a result was unwilling to counsel gay and lesbian couples in his job at Relate, a counselling service. He was summarily dismissed for gross misconduct and lodged a claim alleging direct and indirect discrimination. His claim was rejected by the Employment Tribunal and the Employment Appeal Tribunal upheld the decision. He was refused permission to appeal to the Court of Appeal in the light of the decision in *Ladele*.

46. The Strasbourg court rejected Mr McFarlane's complaint. It stated:

108. The Court accepts that Mr McFarlane's objection was directly motivated by his orthodox Christian beliefs about marriage and sexual relationships, and holds that his refusal to undertake to counsel homosexual couples constituted a manifestation of his religion and belief. The State's positive obligation under Article 9 required it to secure his rights under Article 9.

109. It remains to be determined whether the State complied with this positive obligation and in particular whether a fair balance was struck between the competing interests at stake (see paragraph 84 above). In making this assessment, the Court takes into account that the loss of his job was a severe sanction with grave consequences for the applicant. On the other hand, the applicant voluntarily enrolled on Relate's post-graduate training programme in psycho-sexual counselling, knowing that Relate operated an Equal Opportunities Policy and that filtering of clients on the ground of sexual orientation would not be possible (see paragraphs 32–34 above). While the Court does not consider that an individual's decision to enter into a contract of employment and to undertake responsibilities which he knows will have an impact on his freedom to manifest his religious belief is determinative of the question whether or not there been an interference with Article 9 rights, this is a matter to be weighed in the balance when assessing whether a fair balance was struck (see paragraph 83 above). However, for the Court the most important factor to be taken into account is that the employer's action was intended to secure the implementation of its policy of providing a service without discrimination. The State authorities therefore benefitted from a wide margin of appreciation in deciding where to strike the balance between Mr McFarlane's right to manifest his religious belief and the employer's interest in securing the rights of others. In all the circumstances, the Court does not consider that this margin of appreciation was exceeded in the present case.

47. As in Ms Ladele's case, the Court ruled that the employer's anti-discrimination policy was paramount in the balancing exercise, and that states had a wide margin of appreciation in deciding how to secure the rights of others even at the expense of religious belief. There is no reason in principle why this would not apply equally to a teacher refusing to teach about the importance of marriage between gays and lesbians, an instruction which would be underpinned by EQA 2010 and more generally attempts to minimise discrimination.

48. It should be noted that none of the recent cases on the refusal of services to homosexuals has yet reached the Supreme Court. However, the court is due⁴⁰⁷ to hear an appeal against *Bull & Bull v Hall & Preddy* [2012] EWCA Civ 83, in which the Court of Appeal upheld a ruling that Christian hotel owners had discriminated against a gay couple by refusing to provide them a double room in their hotel. The Court of Appeal followed the reasoning in *Ladele* and *McFarlane*, albeit before the European Court of Human Rights had ruled on the cases. Following the decision in *Eweida*, it seems unlikely that the Supreme Court will decide any differently than the Court of Appeal.

Summary

49. In summary my answers to the questions posed are:

1. *In relation to teaching in general, would the enactment of the Marriage (Same Sex Couples) Bill*
 - (a) *Make it more difficult for those schools which currently seek to teach about marriage or present it in a positive way to continue doing so without teaching similarly with regard to same sex marriage?*

Yes. This can be seen from a number of sources.

- (b) *Provide a legitimate basis for schools or LEAs which wish to promote a particular vision of equality to require **all** teachers to teach materials which endorse same sex marriage?*

Yes. For the reasons stated above in relation to the duties under the Education Act 1996.

- (c) *Make it more difficult for a teacher with a conscientious objection to same sex marriage to express his or her views in the classroom?*

In short, yes. Although teachers have a qualified right to express their personal views, a teacher who expressed their own view would have to be very careful not to do so in a way which potentially led to discrimination against pupils on grounds of sexual orientation.

2. *If the Marriage (Same Sex Couples) Bill becomes law, would schools be within their rights to discipline a teacher who refused to teach materials endorsing same sex marriage?*

Yes, probably, although much will depend on the particular facts of the case.

3. *Specifically in relation to sex and relationships education, would the enactment of the Marriage (Same Sex Couples) Bill create a legal duty on schools to positively promote same sex marriage within SRE?*

Yes.

4. *Would an SRE teacher have the right to refuse to teach about the ‘importance’ of same sex marriage?*

This would depend on the particular circumstances. However, if this were part of an SRE lesson about the importance of marriage generally, schools and teachers have a legal duty to promote marriage and this would include same sex marriage.

JOHN BOWERS QC

Littleton Chambers
 3 Kings Bench Walk North
 Temple
 London EC4Y 7HR.
 1 February 2013.

March 2013

Memorandum submitted by Vince Llewelyn (MB 126)

HAVE YOUR SAY ON THE MARRIAGE (SAME SEX COUPLES) BILL

CIVIL PARTNERSHIPS AND MARRIAGES AND RECOGNITION ABROAD (EG FRANCE).

I currently live in Australia with my partner. We are both British and we have done a British civil partnership.

When we lived in the UK we bought a holiday home in France. In 2008/2009 there was a lot of talk in the ex-pat community in France that the British civil partnership was not recognised in France despite the fact that France had their own version of the CP called PACS.

Some people who had moved to France with their same sex partner and whose partner had died in France were being issued with a huge inheritance bill on their dead partner’s estate (up to 60% of their estate with only a few thousand euro exemption band). PACSed couples and married couples were totally exempt from inheritance tax.

⁴⁰⁷ <http://www.bbc.co.uk/news/uk-england-cornwall-19263265>

The French government (minister of justice) had replied to two earlier parliamentary questions on whether a Dutch same sex married couple would be recognised in France in the same way (for tax purposes in particular) as married couples. The reply was YES , providing both nationals were not French nationals. If either party was French then that marriage would not be recognised in France.

1. My first point is that although France has now changed it's law (April 2009) to recognise British civil partnerships as equivalent to a French PACS it would have helped many people living in France if the UK had originally brought in marriages since France gave full recognition to foreign gay marriages. It took a lot of hard work for many of us to convince the French government to change it's law.

2. My second point is that France (although it too is bringing in same sex marriages) will not recognise gay marriages between French nationals and British nationals. French nationals who have done CPs with their British partners , either in the British embassy in France or in the UK, can not get married if they want recognition in France. It is therefore important for these bi-national same sex couples to still be allowed to retain their civil partner status to get recognition in the UK and France.

3. My third point is that France recognise marriages NOT gay marriages, same sex marriages or any other form of marriage. If gay people want to have their marriage certificate recognised in France then it must be the same as a straight marriage. It must be called marriage.

4. My fourth point is that I read that there were concerns about submissions from abroad to the consultation on equal marriage. It is important for the UK to recognise that British people do live abroad and many of us are in a British civil partnership. The UK embassies allow us to perform CPs outside of the UK and the UK must provide us with a process to convert our CPs to a marriage whilst living outside of the UK.

RECOGNITION OF OVERSEAS OPPOSITE SEX CIVIL UNIONS/PENSION RIGHTS FOR SAME SEX COUPLES/COST OF CIVIL PARTNERSHIP AND MARRIAGE LICENCES

1. Recognition of Overseas Opposite Sex Civil Unions—Many countries in the world offer civil unions to opposite sex couples, eg France, Holland, New Zealand, Belgium and Australia.

The current civil partnership bill, as far as I am aware, only recognises same sex overseas registered partnerships. Many couples who perform a PACS in France (the French equivalent of the British civil partnership) are of the opposite sex. A PACS is open to all nationals and many that perform a French PACS are British citizens. The French PACS confers the same major rights to a couple as a marriage. There are of course some differences. Both PACS couples and married couples are for example exempt from inheritance tax. Will the UK consider recognising British and foreign opposite sex couples who have returned or moved to the UK from overseas.

2. Pension Rights for Same Sex Couples—The was a recent article on the inequalities around pension rights for same sex couples (<http://www.professionalpensions.com/professional-pensions/news/2242879/marriage-bill-will-not-equalise-benefits-for-samesex-spouses>) where it states the following:

“Currently, the Equality Act 2010 dictates schemes must treat all members equally, but also gives schemes a get-out clause whereby they can base the survivor’s benefit for civil partners only on service from 2005, when civil partnerships were created, if they wish.

Schemes usually provide married couples with a survivors’ pension based on the whole of the deceased’s pensionable service, regardless of the date of their marriage”

Please can consider remedying this inequality in accordance with the recommendation of the recent court case brought by Liberty:

“This comes after a successful legal challenge to the treatment of surviving civil partners, brought by human rights organization Liberty on behalf of a scheme member

An employment tribunal decided that Innospec scheme member John Walker, who entered a civil partnership in 2006, should have access to a survivor’s benefit for his partner equal to that offered to a married member.”

3. Cost of Civil Partnerships and Marriage Licences—The recent legislation to allow the registration of CPs in religious buildings shows that the cost to the religious organisations to obtain a licence to perform these are much more expensive that obtaining a marriage licence. A recent article in the Guardian has data showing this (<http://www.guardian.co.uk/news/datablog/2013/feb/08/civil-partnership-licences-local-councils-charging>). Please could you ensure that the burden of the licence registration cost for those religious organisations wishing to perform same sex marriage does not exceed their current cost. Indeed I’m not quite sure that any additional costs should be added on to these organisations for performing same sex marriages.

LEGAL PROTECTION TO PEOPLE WHO BELIEVE IN SAME SEX MARRIAGE

1. I read today that an Ohio Catholic school administrator was sacked by the Catholic church from working in a Catholic school for supporting gay marriage on his personal blog (<http://abcnews.go.com/US/catholic-school-administrator-fired-supporting-gay-marriage/story?id=18477646>).

2. I don't know believe that a teacher who gives his own personal opinion on same sex marriage should be forced to be sacked by a Catholic run school nor should any other religious school sack a person for giving their own personal opinion on marriage. If teachers wish to believe in gay marriage ,and say so, they should be free to do so. They can promote marriage as their school wishes them to do but I still believe their personal opinion on the issue shouldn't be a cause for dismissal.

3. I am equally concerned that children or children of parents who believe in same sex marriage will be refused entry to local schools simply because they believe in an alternative view of the religion of that school.

4. I am aware that Edward Leigh MP is calling for changes to the Equality Act to protect Christians and those from other religions who support the current definition of marriage and I must also point out that if this happens then similar protections should be given to those people with alternative views on marriage as well.

5. Others cases included a UKIP parliamentary candidate 'forced to quit' over support for gay marriage <http://www.chesterfirst.co.uk/news/118932/ukip-candidate-forced-to-quit-over-support-for-gay-marriage.aspx> and another where an elected Chairman of the UKIP party Ollie Neville was sacked for giving his personal views on gay marriage.

March 2013

Memorandum submitted by Miss Celia Macleod FRCOG (MB 127)

SUMMARY

1. This memorandum is addressed mainly to Schedule 4—Part 6—Occupational Pension Schemes and survivor benefits. I fully support the comments in memoranda submitted by GIRES (MB29), Janet and Sarah Woods (MB69) and Dr Carla Skinner (MB104). My comments aim to give a clear picture of the magnitude of loss from survivor benefits from occupational pension schemes that may result from the Bill in its present form.

INTRODUCTION

2. I am a 67 year old retired Consultant Gynaecologist who underwent Gender Reassignment in 2006 and who has only recently learned from colleagues in the Gender Identity Research and Education Society (GIRES) of the threat from the above Bill to widow's benefits from public sector Occupational Pension Schemes. I qualified as a doctor (as Dr Colin Bone) in 1969 and contributed to the NHS Superannuation Scheme from then until my partial retirement in 2006. After many years as a junior hospital doctor I served as Consultant at the Queen Elizabeth Hospital King's Lynn from 1982 until my final retirement in 2010. My wife Gloria and I were married in 1970 and remain so to this day with both of us drawing great strength from our relationship. Over the years the gender incongruity that had puzzled me from childhood became an increasing problem for me and after seeking professional help I eventually underwent gender transition. I have not been able to obtain legal recognition of my gender by applying for a Gender Recognition Certificate (GRC) as this would have required annulment of our marriage—something that neither of us would contemplate. We have therefore welcomed the current Bill which has among its stated aims to: "enable married transsexual people to gain legal recognition in their acquired gender without having to end their marriage". It now appears that our hopes may be ill founded.

THE PENSION ISSUE

3. From the minister's previous comments it appears to be purely a matter of administrative convenience to lump together married couples like ourselves where one of them has transitioned (whose pension rights may date back many years) with Gay and Lesbian couples (whose pension rights only date back to 1988). Having lumped together these disparate groups, pensionable years of service prior to 1988 are then eliminated in calculating widow's survivor benefits. In our case the granting of a GRC within our marriage would, we calculate, if I were to pre-decease Gloria, reduce her pension by about 48%—or well in excess of £ 18,000.00 per annum at today's values. This would be poor reward for her constancy and support during the most difficult years of our lives and would imply a poor value assigned by government to our marriage. Clearly this severe financial impediment would make it impossible for me to conceive of applying for a GRC. The real outcome of this situation would be that the Bill would give me the right to gender recognition with one hand only to take it away with the other. I do know of several other couples in similar circumstances although our numbers are small. Because this matter only concerns people who were contributing to pension schemes before 1988, the numbers affected will inevitably reduce further with time. One important consequence is that, in the event that this injustice were enacted, there would be a diminishing likelihood of any move to correct it at a later date.

A FAST TRACK PROCEDURE

4. This matter will only become relevant if the pension situation is resolved. We are keen to see a simplified "Fast Track" procedure for legal gender recognition for those like ourselves who have deferred applying for a GRC for years because of the determination to preserve our marriages.

CONCLUSION

5. The lack of protection of survivor pension benefits in this Bill is perverse and negates the stated aim of the Bill in respect of transsexual people. It also offends against our Human Rights.

March 2013

Memorandum submitted by Rev Dr Donald M MacDonald (MB 128)

SUMMARY

I oppose this Bill, because, without evidence of overwhelming public demand and without adequate research on potential benefits and problems following such legislation, it radically redefines marriage. This is unjust for the vast majority of the population who are already married and now will find their marriage redefined. Civil partnership is already available for same sex couples and this gives essentially the same civil rights as marriage. I fear that the civil right to conscientious objection for public employees will be trampled upon. Once marriage is redefined in this way, there may well be demand for further changes, such as to introduce polygamy.

1. **Personal** I worked as a medical practitioner and surgeon for 21 years and then as a minister of religion for a further 20 years. I have also lectured in Practical Theology, including Christian Ethics for 15 years.

2. I am opposed to the redefinition of marriage to include same sex unions. I have already commented in detail on the equivalent Bill in Scotland, the innocuous sounding Marriage and Civil Partnership (Scotland) Bill. At least the Westminster Bill openly states its purpose in the title and is clearer to follow, but I still find similar defects both in the procedure leading up to it and in the provisions of the Bill itself.

3. **Poor procedure** This legislation was not contained in the manifestos of the major parties. There is an astonishing lack of evidence brought forward to support the need for such a radical change in the marriage law—no evidence of a huge public demand, no evidence of any benefit to society. There has not been adequate research done on the possible harmful effects of such legislation on marriage, the family and society. It gives the impression of a hastily prepared Bill in response to a small, but vociferous lobby, without adequate preparation and little thought to the consequences.

4. **Equality and human rights** This legislation has been portrayed as being about equality and human rights. This is misleading. Human rights declarations about marriage have always assumed that marriage is heterosexual in nature. Civil Partnership is already available for same sex couples and gives equivalent rights to marriage. If there are a few matters, such as pension rights, that are different, this can easily be put right by amending other legislation. That would not be controversial. Opposition to same sex 'marriage' is not due to homophobia, but due to a concern to protect the importance and stability of marriage for the vast majority of the population and therefore for society as a whole.

5.1 **Redefinition of marriage** This legislation involves a radical redefinition of marriage, the results of which have not been properly thought out by the framers of the Bill. Marriage has, for centuries, been the voluntary, life-long, exclusive union of a man and a woman, with the intention of reproducing and bringing up children in a family. Family, both nuclear and extended, based on ties of kinship, has been the bedrock of human society. Research consistently shows that stable heterosexual marriage, with both father and mother present, is the best environment to bring up children. Of course, everything must be done to support one parent, and other, families, but support for the institution of opposite sex marriage should be the priority. Successive Governments have pledged support for the family. This legislation will do nothing in this direction.

5.2 There appears to be no definition of marriage in any of the documents. The nearest thing to it appears to be:

11 Effect of extension of marriage

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

This appears to mean that marriage is being redefined retrospectively, so that all marriages previously contracted will be arbitrarily redefined to make them equivalent to same sex unions. This is unjust and undemocratic. However the statement in 11 (1) is nonsensical and easily refuted from some of the provisions in the Bill itself. Same sex union is not the exact equivalent of heterosexual marriage. There is no possibility of reproduction without the intervention of a third party. As is clear from the Bill, differences exist in the matters of consummation, adultery and impotency. These are not minor matters.

5.3 Redefining marriage will have a knock on effect on such time-honoured terms as husband and wife, father and mother and on the nature of family relationships and thus on society.

6.1 **Other effects of the legislation** In some legislatures where same sex marriage has been introduced, already there has been a deleterious effect on the marriage rate.

6.2 **Human rights** I am extremely concerned about the effect of this legislation on the human rights of public employees who have conscientious objections to promoting or participating in same sex ‘marriage’. For instance, public registrars are having their conditions of employment changed without consultation by the redefinition of marriage. Glib assurances on this are meaningless, as has been shown by some recent ECHR decisions. There should be legal protection of individual rights of conscientious objection. Teachers in state schools who have conscientious objections to promoting same sex ‘marriage’ as equal to opposite sex marriage also should have legal protection.

6.3 **Possibility of further change** Once marriage has been radically redefined for the benefit of a tiny minority, what is to prevent it from being redefined further to include polygamous or polyamorous unions?

6.4 **Effect on churches and religious groups** Despite the opt-in system, I fear that pressure may be brought to bear on those churches and religious groups who oppose same sex ‘marriage’. Freedom of belief and of speech must be protected.

March 2013

Memorandum submitted by Basingstoke Community Churches (MB 129)

1. I am writing on behalf of the six churches which constitute Basingstoke Community Churches. Membership of these congregations, which meet and operate in and around Basingstoke, is approximately 1000 people. In addition to regular church meetings, members are involved in a variety of community projects, many of which are church-run. These include Street Pastors, Basingstoke Foodbank, debt advice, counselling, youth and children’s work, work with the elderly, vulnerable and homeless etc. Church leaders regularly conduct weddings, funerals, baptisms and children’s dedications. Please understand that we do not seek to denigrate those who experience same-sex attraction, nor do we believe that we should tell people who do not share our faith how to live their lives. As Christians we respect all people, whatever their faith, beliefs, orientation or life-styles. However, we have serious concerns about the introduction of this legislation and its implications.

2. The fundamental fault with the proposed legislation is that it seeks to “pretend” that two very different concepts are in fact the same. At present the clear distinction between marriage and civil partnerships is understood and accepted. There is no need to try to change what works well.

3. The fact that this legislation has been proposed with no warning and no mandate is a serious concern in terms of democracy. It is understood that mention was made of this proposal in a document three days prior to the election—this is inadequate and cannot be termed a manifesto undertaking. The “consultation” did not seek views on *whether* the legislation should be introduced, only the details of *how* this would happen. This is unacceptable and undemocratic.

4. The Christian faith, whilst it fully believes in respect and care for all people, does not believe that the practice of same sex physical relationships is God’s ideal for people. The term “marriage” and related terms appear consistently throughout the Bible in both physical and spiritual terms and always in relationship to heterosexual unions. Heterosexual marriage is therefore a fundamental institution in the Christian faith, and indeed in the British tradition.

5. The nature of consummation is at present clearly and intuitively understood. Redefinition of marriage would necessitate a redefinition—or even invalidation—of consummation, making marriage a much looser union and therefore a weaker commitment.

6. A foreseeable result of redefinition would be further disciplining and dismissal of people involved in various occupations who might feel that homosexual union is not their area of expertise. Counsellors, teachers, registrars and other people in serving or caring professions may be forced to advise, teach and counsel in ways that are fundamentally against their beliefs. This would seriously compromise their own freedoms.

7. Churches that believe in traditional marriage can never be sure that they are legally protected. Door-opening legislation such as that proposed invariably leads to broadening of its effects (for instance, the Abortion Act of 1967). Government cannot predict the course of future legislation, whether national or European. Already the European Court of Human Rights has found many violations in our own judgements.

8. In conclusion, we believe that the proposed legislation is unnecessary and will create serious problems in our society. A fundamental and historic concept such as marriage should not be subject to precipitate political redefinition. Marriage should remain as the traditional building block of society and as the basis for families and procreation.

SUMMARY

- The Bill would draw into one definition two fundamentally different concepts. This is not necessary.
- The manner of the introduction of the legislation is undemocratic.
- One of our basic beliefs is that marriage is the life-long faithful union of a man and woman, and this forms the most secure basis for the raising of children.
- This Bill would disrupt the notion of consummation.

- People in various professions would lose their freedom to stay true to their beliefs.
- Church ministers will eventually and inevitably be compelled to perform same-sex marriage ceremonies against their sincerely-held beliefs.
- A concept as fundamental and historic as traditional marriage should not be interfered with by any government except at the express request of the majority.

March 2013

Memorandum submitted by Adrian Nance (MB 130)

Letter to the Parliamentary Committee considering the Marriage (Same Sex Couples) Bill 2012–13

1. I write most respectfully to assist in your deliberations on the Marriage (Same Sex Couples) Bill 2012–2013. This submission has not been previously published or circulated elsewhere.

2. You ask for a brief introduction. I write as a married person and as committed Christian who is a member of a parish of the Church of England and as a result I have a special interests. However, I write as a private individual. I am a retired member of the military forces of the Crown and holder of an award for operational service from Her Majesty. I am not a homophobe.

SUMMARY

3. The purpose of this submission is to ensure that religious and civic marriages retain their established and respected distinctions in the current Bill, in particular to propose:

- (1) That the definitions in the Bill make clear the already established differences between civic and religious marriage; and that the words ‘civic marriage’ and ‘religious marriage’ are used in the Bill when referring solely to marriages of one sort (trusting that all marriages should be ‘civil’);
- (2) That religious marriage is subject to spiritual guidance and should be subject *inter alia* to Parliament’s agreed governance of the Church of England (in 1919 and the agreed amendment in 1969 that has received Royal Assent). Parliament should not override these mechanisms but use them to encourage religious debate on religious marriage;
- (3) That it is made clear that in agreeing civic marriage for same sex couples the restrictions on marriage between parents and their children or siblings should be maintained;
- (4) That the Bill highlights other Acts of Parliament that need amendment if it is enacted.

For easy reference, the remainder of this submission is in Sections numbered as the sub paragraphs above.

DETAIL

SECTION ONE—PRECEDENT

4. In the detail, Parliament has established a precedent for marriages by allowing them to be conducted in places of religious worship or in the registry offices. So there is an identity for religious marriage and an identity for civic marriage; identities that are respected by all. I am not anti-gay or anti gay civic marriage: This submission is about this current Bill’s impact on religious marriage, and specifically Christian marriage, so the Bill needs to be very clear.

Conclusion One—It should be very clear where the Bill encompasses all marriage, and where it refers just to civic marriage or to religious marriage

SECTION TWO—RELIGIOUS MARRIAGE HAS SIGNIFICANCE AND REVIEW SHOULD USE RELIGIOUS GOVERNANCE IN THE UK

5. On religious marriage our Christian Bible makes multiple references to marriage. Two are perhaps most pertinent:

- (a) Jesus in a reading in his synagogue quoted from Isaiah Chapter 61 and He said that *today this Scripture has been fulfilled in your hearing* (as quoted in the Gospel of St Luke). Later in that key Chapter for His ministry it says this:

For He has clothed me with the garments of salvation, He has covered me with the robe of righteousness, As a bridegroom decks himself with ornaments, And as a bride adorns herself with her jewels. Isaiah 61:10. This passage indicates that Christian marriages are solely between a male bridegroom and a female bride, and the passage was seen as important by our Saviour, who encouraged us *to love our neighbour*.

- (b) Later and from a solely Christian perspective religious marriage was considered of sufficient importance for St Paul to legislate that in 1st century culture *a bishop then must be blameless, the husband of one wife*, 1 Timothy 3:2. So the Holy Scriptures make strong points about marriage. Consequently, to me (and perhaps many others) marriage is a spiritual issue.

6. Also my own tradition, the Form of Solemnisation of Matrimony makes the following points:

- *That marriage signifies the mystic union between Christ and His Church*—endowing the marriage ceremony with huge spiritual significance in accordance with the Holy Scriptures;
- *That marriage was not intended to satisfy men's carnal lusts and appetites*—pointing to the restraint of men from seeing marriage as just a licence for sex, unlike some press statements, and
- *That First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.* Pointing to marriage being between a man and a woman.

7. Parliament approved the governance of the Church of England in *the Church of England Assembly (Powers) Act of 1919*, which has since been amended by the General Synod which was set up under the *Synodical Government Measure (CAM No 2 1969)* which received Royal Assent on 25 July 1969. Under these arrangements it seems that oversight of the spiritual aspects of the Church of England has been passed to the General Synod over whose Measures Parliament exercises oversight and the Sovereign has final authority.

8. Whilst we as a church community may wrestle with current issues, these debates are not held in Parliament but in the General Synod, where the Scriptures, reason and the traditions of the Church imply the governance of Christian marriage in the Church of England should also be conducted.

9. I also ask the Committee to consider the reported comment of a senior Roman Catholic Cleric that Christian marriage involves 3 people, the two taking vows and God, and God gets a vote.

Conclusion Two—Parliament should use methods it established for reviewing religious marriage

SECTION THREE—BOTH CIVIC AND RELIGIOUS MARRIAGE HAVE LIMITATIONS IMPOSED UPON THEM

10. In order to avoid being stylised as a bigot for disagreeing with the media, I perhaps need to state that I fully accept the rights of Parliament to legislate and to establish laws that remove discrimination against people of any race colour creed or sexual orientation, and I am delighted when Members of my Parliament act in the spirit of Christ's injunction *to love your neighbour as yourself*.

11. However, Parliament has established limits on marriage of both sorts—religious and civic. For example, mothers may not marry their sons, daughters may not marry their uncles etc and polygamy is not allowed; all such marriages are considered unlawful by Parliament. It seems to me that the whole UK community agrees with this.

12. I submit religious marriage between consenting homosexuals should be subject to similar exclusions, such as not being allowed between parent and child, or between siblings and perhaps other combinations, to avoid creating pressures on religious marriage that have significant genetic consequences.

Conclusion Three—current marriage has limitations on its participants and same sex marriage should have similar restrictions

SECTION FOUR—IMPACT ON OTHER LAWS

13. I also submit that the Bill should identify such amendments that will be needed to other Acts of Parliament so that the full impact of what is being proposed may be seen by us your electorate.

Conclusion Four—that the Bill should highlight its impact on other laws

IN CLOSING

14. I write as a voter in this country, and not as a constitutional scholar or ecclesiastical expert. I am a believer in the principle of government 'by the people for the people'. As individual members of the Committee, you have already made judgments as to whether the Bill under discussion exceeds any mandate granted you as our Parliamentarians, in that this proposal did not appear in a manifesto, nor in the Coalition agreement nor in the Queen's Speech of this Parliament. Thus the next stages of the Bill attract great interest not just in how our society is made inclusive but also in showing how Members of this Parliament intend relate to their electorates in the future.

March 2013

Memorandum submitted by LGB&T Anglican Coalition (MB 131)

SUMMARY:

The LGB&T Anglican Coalition is a coalition of all the groups working to encourage the Church of England to be more inclusive of LGB&T people. A clear majority of our organisations strongly support the proposed legislation, in particular we welcome the provision that religious bodies are allowed to opt in voluntarily; no religious body or individual is compelled to act against conscience; married transgender people who apply for full gender recognition will no longer have to dissolve their marriages. We have highlighted several specific issues, including matters that will need to be addressed when the Church of England considers whether or not to opt in, and in relation to religious employment.

1.0 INTRODUCTION:

1.1 The LGB&T Anglican Coalition is a coalition of all the groups working to encourage the Church of England to be more inclusive of LGB&T people. The membership of the Coalition is attached. The member groups represent a wide diversity of lesbian, gay, bisexual and transgender people in the Church of England together with supportive heterosexuals, friends, families, and congregations.

2.0 EQUAL MARRIAGE—GENERAL POINTS:

2.1 A clear majority of our organisations strongly support the proposed legislation and look forward to its implementation. In particular we welcome the provision that:

- religious bodies are allowed to opt in voluntarily
- no religious body or individual is compelled to act against conscience
- married transgender people who apply for full gender recognition will no longer have to dissolve their marriages

2.2 The Church of England's official submission to the consultation on equal marriage does not reflect our own views, and the views of many others within the Church of England, who favour equal marriage in church.

2.3 The Church of England and the Church in Wales should be as free to opt in to the provisions of this legislation as any other religious body

3.0 EQUAL MARRIAGE—SPECIFIC POINTS

3.1 We believe that at the earliest opportunity the Church of England should take steps to accommodate those clergy who wish to officiate at same sex marriages, and those congregations/churches that wish to host them. In addition we would like to highlight the following matters.

3.2 The established nature of the Church of England, and the unique relationship between its General Synod and Parliament, should be taken into account in ways which do not reduce its freedom either to maintain the status quo or to opt in to equal marriage.

3.3 Any legal requirement for the Church of England and Church in Wales to marry all parishioners (with some exceptions), should not be extended to include to a legal requirement to also marry same-sex couples except with the agreement of the respective churches.

3.4 Individual Anglican clergy should not be subject to any greater civil or criminal legal penalties than the clergy of any other religious group which chooses as a group not to opt-in to equal marriage, regardless of whether they refuse or agree to officiate at such a ceremony.

3.5 The Bill enables those who dissolved their marriage to obtain full gender recognition, and then entered into a civil partnership with their former spouse, to convert their civil partnership into a marriage, but the marriage may only be backdated to the start of their civil partnership. We urge the committee to explore ways in which such a couple's marriage can be recognised from the date of their original marriage and to introduce a no cost fast track system for the restoration of such marriages.

3.6 We have concerns about Paragraph 41 of the Bill which would amend the Equality Act 2010 'so that where employment is for the purpose of an organised religion, an occupational requirement may allow a restriction that a person may not be married to someone of the same sex. This means, for example, that a church may require that a priest may not be married to a person of the same sex.' It is vital that the definition of employment is specific in such cases, eg ministers of religion only, or, if wider, that the specific roles are named in order to preserve liberty of conscience for laity who may also be employed by a religious organisation. We would also want to urge religious organisations not to opt into these provisions which undermine the freedom of religious employees to marry (someone of the same sex) or undergo gender reassignment.

3.7 As at present, religious organisations will be able, if they so choose, to bless, give thanks for, pray or meditate with couples who have been, or are about to be, married, but this will not in itself constitute legally valid marriage

LGB&T ANGLICAN COALITION

Member Groups

The Anglican Coalition provides UK based Christian LGB&T organisations with opportunities to create resources for the Anglican community and to develop a shared voice for the full acceptance of LGB&T people in the Anglican Communion.

The Group Members are as follows:

Accepting Evangelicals is an open network of Evangelical Christians who believe the time has come to move towards the acceptance of faithful, loving same-sex partnerships at every level of church life. <http://www.acceptingevangelicals.org>

Changing Attitude is a campaigning group drawn by God's love to work for the full inclusion of lesbian, gay, bisexual and transgender people in the Anglican Communion. <http://www.changingattitude.org.uk>

The Evangelical Fellowship for Lesbian and Gay Christians (EFLGC), formed in 1979, is a group of women and men, most of whom are lesbian, gay or bisexual and come from an evangelical Christian background. <http://www.eflge.org.uk>

Inclusive Church is a network of individuals and organisations working to break down the barriers to full inclusion at all levels of the Church of England. <http://www.inclusive-church.org.uk>

The Lesbian and Gay Christian Movement is a UK-based international Charity which challenges homophobia and transphobia, especially within the Church and faith based organisations. <http://lgcm.org.uk>

The Sibyls is a UK-based confidential Christian spirituality group for transgender people, and their supporters. <http://www.sibyls.co.uk>

The Two:23 Network is a new network of Christians, connected by LGBT issues that aims to include and encourage all to discover the love of God for themselves, pursue the call of Christ and live in a way that cherishes others just as God cherishes us. It has developed from the LGBT-affirming ministry of Courage. <http://two23.net/>

General Synod Human Sexuality Group works in General Synod for deeper understanding on issues of sexuality.

March 2013

Memorandum submitted by Mr Graham Leng (MB 132)

SUMMARY:

A submission of moral, legal and practical reasons why the current definition of marriage should not be amended. It is not an objection to same-sex couples living together or having sexual relations which is a personal choice in which we are not entitled to interfere.

We are both practising Christians with much experience of dealing with people of all ages, but particularly children and young people, with whom we have seen the negative results of the eroding of our traditional Christian values in our laws, and believe the same-sex marriage bill will also prove to be to the disadvantage of our society for the reasons given in the submission below.

TO THE HOUSE OF COMMONS PUBLIC BILL COMMITTEE.

1. I am writing on behalf of my wife and myself to express our concerns and objections to the Marriage (Same-sex couples) Bill. We believe it is a totally unnecessary and wrong intention to try and make same sex marriage the same as heterosexual marriage. They are not the same; there are clear physical differences and people should be able to know when they hear of a married couple which situation is which, whether a man and a woman, a man and a man or a woman and a woman. In each case the format of the sexual activity is different, and whether you believe in special creation or evolution our bodies are clearly designed or have evolved for heterosexual relationships to continue the species. We are not objecting to same sex couples living together and having sexual relationships, that is their choice and they are free to do so. As Christians however we believe sexual relationships between people of the same sex is against God's laws but we cannot and are not wishing to force our beliefs on those who do not share them. Breaking any one of God's laws is a sin as far as we are concerned, but homosexual activity is no more or less a sin in God's sight than any other sin, be it adultery, fornication, stealing, lying or anything else no matter how minor, and we are all guilty of some of them anyway, so none of us are in a position to judge others.

2. The problem that can be clearly seen in western society is that as we move away from our Judeo-Christian (and also Muslim) moral base, society starts to break down, and we now have far more broken families and single parent families than ever before. Both my wife and I deal a lot with children from broken homes, and it is so tragic in many circumstances. This is a result of years of sex education which very subtly but very strongly promotes sex outside marriage, and now costs the country a tremendous financial amount in social security payments, but far more important than that, a huge number of children are brought up in unstable families, often with siblings having different but totally absent fathers, with a mum struggling to bring the children up. Also AIDS and Sexually Transmitted Diseases would be almost non-existent if it were not for the widespread practice of sex outside marriage.

3. You may well say that this has nothing to do with same-sex marriage, but it all comes back to the fact that we need a common standard to which we all have to adhere, and I would challenge you to find one which is more proven and effective for stable society than God's laws as given in the Judeo-Christian Bible. Whether you believe the Biblical laws are from God or just common sense and good practice, history and statistics demonstrate that they are very effective in building and protecting strong societies. We believe in democracy, but by its very nature it has to serve the majority while protecting minorities, and when there are differences of opinion, it is wrong that the minority can force changes on the majority unless they really are in danger or

severely disadvantaged. This minority pressure seems to happen all the time with the homosexual lobby where anyone who disagrees is branded as homophobic and bigoted, and many who have expressed their beliefs in this area have been the target of hate mail and threats, and in some cases have lost their jobs just for standing by what they believe in. We supposedly enshrine freedom of religion in our constitution as a basic human right, but if a religion says something is wrong, then its followers should have the right to express their beliefs without persecution, but this is frequently not the case with homosexuality. Christians and Jews (and I believe Muslims) must condemn adultery because their religion teaches that this is against God's laws, and people accept this, but it doesn't stop people committing adultery if they wish to do so. Why does the homosexual lobby have such power that some government departments and local authorities do not also accept this right as regards homosexual activity and think they have the right to discipline anyone who speaks out against it? This has happened in a considerable number of cases and is a severe and serious restriction of free speech, and is therefore very worrying. Religious people objecting does not prohibit others carrying out what the laws of the land allow, so why should they be persecuted by some authorities and groups for expressing their opinion? Although this may seem to be a separate issue from same-sex marriage it does have a considerable bearing on it, as some people who have concerns can feel under pressure to keep quiet as they may be vilified as intolerant bigots.

4. Far more worrying however is where acceptance of homosexuality as a norm may lead to. I accept that men and women with homosexual tendencies may well have a genuine desire for what is not a normal function according to how our bodies are made, but surely the same applies to paedophiles. I can't imagine anyone really wanting to be a paedophile and being happy with it, but they clearly have something within them which gives them what we would describe as an unnatural desire. We are incredibly complex beings and this applies to our sexuality, so if homosexuality is normal because it is a genuine desire, then presumably the same can apply to paedophilia. Obviously the big difference is because children are involved, and we currently cannot see that paedophilia could ever be acceptable, but this is where we do not learn from history. Any deviation from Judeo-Christian standards can quickly lead to all kinds of perverse or wicked activities, even in a supposedly Christian society. Although we still cannot say that life begins at a particular point after conception, millions of perfectly healthy babies have been killed in the womb in Great Britain, on a whole pretence of reasons where the baby's life and well being was in no way previously threatened, and in most cases the same with the mother. Yet we were told in 1967 when the Abortion Act was passed that it would only be applied to a few severe examples. Look at Germany, a civilised and supposedly Christian country where the Reformation originated, and yet the genocide of millions of Jews, Gypsies, disabled people and other minorities took place during Hitler's reign, and these acts were carried out by 'normal, respectable' German citizens. Paedophilia has and does occur in many societies today without Judeo-Christian heritage and laws, and as we ourselves chip away at what seem minor and unimportant ordinances of these laws, the whole of our beliefs and standards become questionable rather than absolute, and eventually become eroded leading to wicked practices, and history demonstrates this time and time again. How long before polygamy is legalised, I wonder?

5. Democracy does not always protect against bad and even wrong laws being passed where strong lobbying is employed, and it seems to me that this is the case with the Re-definition of Marriage proposals. Whenever we go against the tried and proven Biblical standards on which our western society is founded, we weaken our social structure and this can be clearly seen as the rich get richer, the poor get poorer, families break down and corruption increases at all levels of society. Yes, these things have always been there to some degree, and always will be, but now they are slowly becoming accepted as unfortunate but normal rather than unacceptable (especially regarding adultery), despite some of them remaining as unacceptable from a legal standpoint. As I have inferred above we cannot and should not legislate against homosexual activity, adults have to be free to believe what they like, but it should not be promoted and encouraged (but often is so in sex education) by Government and authorities as normal activity. None of us are in a position to condemn homosexual men and women personally; we would have to be free of all wrongdoings ourselves. We must have respect and compassion for those who are in this situation, but it still does not make it natural or right, or good for society.

6. Finally, being pragmatic, in our western societies and throughout most of the world marriage has been defined as an exclusive union between one man and one woman, and this can be shown statistically and otherwise to be the most stable basis for society because of the strong family structure, and we believe it is wrong for any government to try and fix what is not broken. Because of the increase in unfaithfulness, violence and the ease of divorce, couples increasingly do not stay together but this does not mean that traditional marriage is not working; it is still the best and strongest human relationship. If homosexual couples wish to live together they are free to do so with all the legal and financial protections of marriage through Civil Partnerships. To re-define marriage will be a costly and complex legal exercise to re-write many statutes involving husband and wife for instance, but what will it give homosexual couples that they don't already have available? It will certainly be a basis for confusion to the rest of us, if as I said at the beginning of this submission, we don't know if we are dealing with men and/or women when a married couple is referred to. Homosexual marriage if legalised is still different from heterosexual marriage and should have a different name so that current marriage laws do not have to be re-written at great cost, but also so we all know who and what we are dealing with. Same-sex marriage is political correctness gone mad and will prove counter-productive. Because we can't foresee consequences does not mean that serious ones will not occur, and we are dealing with a massive change in societal understanding even though some may not think that is the case.

7. Summarising, our fundamental objection to same sex marriage is that we believe it is a dangerous road to be going down from a moral and hence social perspective, but also that it is an unnecessary and costly politically

correct exercise which will achieve nothing good, but will be confusing as to who is who in a partnership and what sex they are. We trust these relevant matters will be given due consideration and not dismissed as bigoted which often occurs when any concerns about homosexuality are raised.

March 2013

Memorandum submitted by LGBT Consortium (MB 133)

LGBT Consortium is the largest UK membership body of LGBT groups, organisations and projects. We focus on providing an infrastructure to enable the development and support of LGBT groups, projects and organisations; so they can deliver direct services and campaign for individual rights.

Last year we were approached by Government Equality Office to run a series of consultation events specifically for LGBT people to have their say on the proposed same sex marriage bill. These events were well attended and gave us as an organisation an excellent insight into the general feeling and expectations of a variety of LGBT people and communities as well as our member groups and organisations.

As such we wish to submit the following information and feedback to the Committee to evidence that our Members are in favour of this Bill and of same sex marriage:

- A large proportion of those attending the same sex marriage consultation events across England expressed concerns about how adultery and consummation would be addressed and practically dealt with in relation to the Bill. The general consensus reflected that marriage should be equal for all who could access it and that if certain elements will not applicable to all then they should be applicable to none.
- Most attendees felt strongly that Civil Partnerships should remain available to same sex couples (and also be extended to opposite sex couple too, although we are aware this is not in the Bill)
- Most, if not all, were keen to see same sex marriage being conducted in religious establishments. All those attending could see no reason for selecting which faiths could and could not conduct same sex marriage. It was further agreed that all faith's right to abstain from conducting same sex marriages without consequence should be protected.
- We would like to highlight that all attendees who voiced their opinions at the consultations agreed that marriage should be equalised to include same sex couples—even if they themselves did not believe they would access the institution.
- There was clear agreement that LGBT people should not face a fee to convert from civil partnerships to marriage if marriage was not available to them at the time of formalising their partnership.

We hope that you will consider our evidence in relation to amending the bill to reflect the needs of the LGBT sector, communities and individuals.

Consortium of Lesbian, Gay, Bisexual and Transgendered Voluntary and Community Organisations.

March 2013

Memorandum submitted by Lana Murphy (MB 134)

Dear Lords, Members of Parliament, and members of the public.

1. I am writing to you to express my passionate feelings on the topic of the debate of 'Marriage (same sex couples) Bill'. My opinions are based mainly around equality meaning equality, and also stem into my individual interpretations of my Christian beliefs.

2. Firstly, and in my opinion, most importantly, being able to marry is a human right; the Universal Declaration of Human Rights states that "*Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." I read this to mean men and women can enter a marriage, not strictly meaning only 'a' man and 'a' woman; therefore it is surely a human right for LGBT to enter same sex marriages if they so desire?

3. We live in a country that is proud to call its self one of Equality—passing acts such as Equality Act 2006, Equality Act (Sexual Orientation) Regulations and Equality Act 2010. However I put to you that this is disingenuous front; our society accepts that it is wrong, unlawful in fact, to discriminate against gender, age, race, religious beliefs, disability and sexual orientations; however, should a person express a negative opinion against a person from a different race or religion they are branded 'racist' and prosecuted, a negative opinion against gender and they are branded 'sexist' and prosecuted. Then why is it still acceptable for negative opinions

about sexual orientation, and their lifestyle (including but not limited to, their right to gay marriage), be deemed as 'traditional views' and acceptable? Why don't the acts passed by Parliament protect people with differing sexual orientations like it does for people with other 'protected characteristics'?

4. On the issue of Religion being an argument against same sex Marriage; I would like it to be acknowledged that there are many gay people of faith; myself included. Being a Christian I was saddened that I could not make my vows to my 'wife' (civil partner) in the presence of my God. However, I still intend to raise our daughter in the Christian faith, and we had her Christened on her first birthday, by an accepting village church in front of nearly 90 of our closest family and friends.

A common argument against gay marriage is that it is against Christian Faith, and religious traditions, to this I say that the bible is a collection of very old testaments, and that there are many other sins which are written in the Bible yet clearly lived and accepted in today's society, four of many are included below:

Mark 10:9 reads, "*What therefore God has joined together, let no man separate.*"

Leviticus 19:19 reads "*...nor wear a garment upon you of two kinds of material mixed together.*"

Leviticus 11:10 states that we cannot eat shellfish, pig, camel, rabbit and ostrich.

Leviticus 25:44–46 reads "*However, you may purchase male or female slaves from among the foreigners who live among you. You may also purchase the children of such resident foreigners, including those who have been born in your land. You may treat them as your property, passing them on to your children as a permanent inheritance.*"

My interpretation of the Bible's teachings is for marriage to build a family and a stable upbringing for that family. I believe that God loves all of his children; he gave us free will, and the ability to evolve. I believe that God created me—who are we to say that his creations are wrong?

5. While watching the debate on same sex marriage in the House of Commons, I heard the argument that marriage is for the purpose of creating a family. Is this saying that people who are infertile should not marry? I on the other hand have a daughter, who is listed on her birth certificate as having two mothers—does that mean I now 'qualify' for marriage as my relationship has resulted in a family? Another MP's argument against gay marriage is that no one knew the effects on children who were raised by gay couples; that society knows that children need both male and female role models in their life to grow up a balanced individual. I think that this is a very short-sighted opinion—do people of this view not recognise that even though my daughter has two mothers, she has uncles, grandparents and other male family friends in her life to provide that role model?

6. Regarding the topic of prosecutions for those who are unwilling to perform same sex marriage; I accept that not all priests and other members of the religious clergy will want to perform marriages for same sex couples, and agree that they should have the right not to be prosecuted—I have this opinion as I know that there are ministers who are more than happy to perform these ceremonies of love and dedication, and same sex couples can approach these churches instead. However, I do feel that anyone performing marriages outside of religious establishments should not have the right to refuse a same sex couple the right to marriage, in the same way they would not be allowed to discriminate against any of the other 'protected characteristics'.

7. It is becoming a raising concern that teachers will be sacked for refusing to teach about LGBT families or for sharing their negative views against this topic. To this I say—surely this is only just? We live in a country where our schools teach of other religions, and where acceptance for people's individualisms is encouraged. Therefore I do not understand why anyone who is deemed as a respected member of society, such as MP's, doctors, teachers etc, should have the right to speak negatively of LGBT—surely it should be taught like any other cultural difference we already celebrate in the United Kingdom. Families have already evolved from the traditional 'man and wife with 2.4 children'; in today's society we see multiracial families, blended families, step families, single parent families; these are all accepted as being a 'normal' part of our country's life, and this is why I abhor the idea of a teacher, or anyone else, telling my daughter that her family is wrong in any way; please ensure that she is protected from such ignorance.

8. My answer to people's claims that children from same sex couples will not be well balanced, successful individuals, would be to simply research 'Zach Wahls'. Zach has published a book entitled '*My Two Moms: Lessons of Love, Strength, and What Makes a Family*' and has made very poignant testimony to the Iowa Supreme Court regarding same-sex marriage, both detail how having two mums doesn't hinder a child in any way—because he is a living example of a successful product of a same-sex family.

9. Another frequent statement that is heard when discussing same-sex marriage is that 'Same-sex marriage will destroy the sanctity of marriage'. To me this is laughable. Surely the things that destroy the sanctity of marriage are divorce, adultery, marriages that last as little as two days (such as the celebrity 'marriage' between Britney Spears and Jason Alexander) and multiple divorces and remarriages. According to ONS 42% of marriages end

in divorce⁴⁰⁸, while by the end of 2011 only 2.2% of male and 4.6% of female civil partnerships had ended in dissolution⁴⁰⁹. Take what you wish from these figures.

10. I would like to share some compelling, wise words from the Education Secretary Michael Gove, who has written to the Mail on Sunday saying: “It’s wrong to say that because of how you love and who you love, you are not entitled to the same rights as others. It’s wrong because inequality is wrong...Marriage is not undermined by extending it to gay people—it is reinforced by including everyone equally.”⁴¹⁰

11. I am sure you will receive many letters opposing the legalisation of same-sex marriage, however I hope that the leaders of our modern, non-discriminating country will be able to see this as a positive revolution in our society; being mindful that it was only changes to laws that ended segregations such as apartheid. Change might be daunting at first, but absolutely necessary. At a time when hate and war are rife, let’s promote equal rights to love.

March 2013

Memorandum submitted by Donald Fleming (MB 135)

I respond to this Bill as an individual. Please note the following points:

1. HISTORIC CHANGE TO A SOCIALLY VITAL INSTITUTION

Marriage has been defined as being between a man and a woman since time immemorial. Therefore to redefine this institution is a historic step and requires to be approached in a democratic and thoughtful manner, mindful of implications for the nation as a whole. Sadly, this is not reflected in the way the Marriage (Same Sex Couples) Bill has been introduced.

2. NO DEMOCRATIC MANDATE

The way that the Bill has been introduced has no regard for the democratic process. There was no manifesto commitment to redefine marriage. The Conservative Contract for Equalities refers to same-sex marriage but does not hold to the idea of introducing it.⁴¹¹ Moreover, the Conservative Contract for Equalities was published well after postal voting had begun and does not amount to a manifesto commitment. Furthermore, the Government’s proposals were not laid down in a Green Paper or a White Paper. Neither were they included in the Queen’s Speech. Thus, even someone who supports the concept of same-sex marriage should vote against this Bill on the grounds that it breaches this nation’s democratic traditions. There is no reason why it could not be included in in one of the main parties’ manifesto at the next General Election.

3. FALSE REASONING THAT SAME SEX MARRIAGE WILL BENEFIT SOCIETY

The reasoning behind redefining marriage is based on two assumptions: 1) Research suggests that marriage benefits both adults and children; and 2) If marriage is redefined to expand the number of married couples, logically, this should increase the benefit to society.

4. The first assumption is true. However, the second is false in that it is based on the reasoning that if the nature of marriage is radically altered, the existing benefits will remain unaltered. This is contradicted by practical experience: In the Netherlands and Spain, since same-sex marriage was introduced, marriage rates across these countries’ populations has fallen.^{412, 413}

5. FALSE REASONING THAT MARRIAGE MUST BE REDEFINED TO ENSURE EQUALITY

In civil partnerships, Gay couples already have, in legal terms, equal rights compared to married couples; therefore, it is completely unnecessary to take risks with a socially vital institution—ie, marriage—by redefining it.

6. SAME-SEX MARRIAGE IS NOT EQUAL-MARRIAGE

The Bill proposes that the law of adultery will apply to different-sex couples but not to same-sex couples. Thus a situation will be created in which the faithfulness and commitment obligations of a marriage between a man and a woman would be greater than in a marriage between a same-sex

couple. It, therefore, follows that if the marriage relationship obligations are different then the relationship is different and must logically be categorised differently. It has been suggested that this is unsustainable and

⁴⁰⁸ <http://www.guardian.co.uk/lifeandstyle/2012/dec/20/divorces-down-2percent-england-wales>

⁴⁰⁹ <http://www.guardian.co.uk/news/datablog/2010/dec/21/marriage-gay-rights-civil-partnerships>

⁴¹⁰ <http://news.sky.com/story/1046883/gay-marriage-tories-call-for-delay-to-vote>

⁴¹¹ http://www.conservatives.com/News/News_stories/2010/05/Our_contract_for_equality.asp

⁴¹² <http://www.marriedebate.com/pdf/iMAPP.May2011-rev.pdf>

⁴¹³ An Introductory Course in MATLAB, published by Universidad Carlos 11 De Madrid, September 2010, Alba, M. Franco—Pereira

that adultery will—in practice—cease to inform marriage for heterosexual couples. This demonstrates how redefining marriage for a few has the effect of redefining it for the many, and crucially, with respect to its central faithfulness and commitment characteristic.⁴¹⁴

7. FINANCIAL IMPLICATIONS DERIVING FROM THE BILL

The Bill proposes that civil partnerships should only be made available to same-sex couples. This is completely unsustainable. Given the recent history of heterosexual couples going to court seeking civil partnerships, this will result in further litigation, which in terms of the concept of equality is likely to be successful—and expensive. In 2010 Stonewall estimated that over a ten year period the financial cost to the tax payer of redefining marriage and civil partnerships would be £5 billion.⁴¹⁵ Although the Government maintains that legislating same-sex marriage will be relatively inexpensive, when legal challenges under equality laws necessitate the introduction of heterosexual civil partnerships, the costs deriving from the Bill will significantly increase. This is important at a time when we all face Government cutbacks.

8. CHURCHES

Aidan O’Neill QC advises that the part of the Bill that ensures that Anglican Churches should not have to marry same sex couples will be challengeable and almost certainly legally unsustainable in light of the fact that the Anglican Church has an obligation to marry any presenting couple. With respect to non-Anglican churches, he suggests that their position in relation to the European Court of Human Rights is a bit more secure now but may not be for much longer if other countries introduce same-sex marriage. He suggests that their more immediate problem is that they are at risk of losing their license to marry, as local authorities conclude that licensing churches to marry that will not marry same-sex couples is not the best way of discharging their Public Sector Duty and Section 149 Equality Act 2010 obligations.⁴¹⁶

9. EMPLOYMENT

The Government has suggested that there are no employment concerns and made much of the fact that Adrian Smith, who was demoted by Trafford Housing Trust for expressing concerns about the redefinition of marriage on a private Facebook page, actually won his case. As the Aidan O’Neill QC legal opinion makes plain, however, the case was based on a ‘common law breach of contract’ claim and Trafford Housing Trust is not a public authority, subject to the Public Sector Duty or Section 149 of the Equality Act. What is actually significant about this case is that it was brought even before the law was changed and that despite the distress caused he was only awarded £100 compensation.⁴¹⁷

Under the Marriage (Same Sex Couples) Bill there is no employment protection for army chaplains and NHS chaplains. If a chaplain was to preach on marriage and say that same sex marriage was contrary to scripture and the public authority employing them discovered this then the public authority, mindful of the public sector duty, could decide to sack them.⁴¹⁸ A similar situation would apply for teachers. The *Daily Telegraph* reports that a senior source in the Department for Education said that the UK Government may be powerless to stop teachers and other staff who hold traditional views on marriage getting sacked for refusing to promote same-sex marriage at work. The source said that the ultimate decision might “inevitably” be taken at the European Court of Human Rights in Strasbourg. He added: “These are all under the control of nine guys in Strasbourg, it is just fundamentally uncertain because Britain isn’t in control of this.”⁴¹⁹

March 2013

Memorandum submitted by Mircea Trandafir, PhD (MB 136)

1. ABOUT THE AUTHOR:

2. Mircea Trandafir is an Assistant Professor (equivalent to lecturer in the UK system) in the Department of Economics at Université de Sherbrooke in Sherbrooke, Québec, Canada. He received his B.A. in Finance from the Academy of Economic Studies (Bucharest, Romania) in 2000, his M.A. in Economics from Central European University (Budapest, Hungary) in 2002, and his Ph.D. in Economics from the University of Maryland, College Park (Maryland, USA) in 2009. Starting in August 2013, he will join the Department of Business and Economics at the University of Southern Denmark (Odense, Denmark) as an Assistant Professor.

3. Dr. Trandafir’s primary research interests are in applied microeconomics, particularly labor and health economics. One line of his research and expertise relates to family formation, and specifically to the potential

⁴¹⁴ <http://www.telegraph.co.uk/news/politics/9827596/Gay-marriage-bill-opens-door-to-abolition-of-adultery.html>

⁴¹⁵ <http://www.pinknews.co.uk/2010/09/24/5-billion-marriage-equality-figure-was-calculated-by-stonewall/>

⁴¹⁶ Aidan O’Neil Legal opinion para 5.

⁴¹⁷ Ibid para 3.7.

⁴¹⁸ Ibid para 3.

⁴¹⁹ <http://www.telegraph.co.uk/news/politics/9825341/Government-powerless-to-protect-teachers-from-sack-over-gay-marriage.html>

effects of the legalization of same-sex marriage on the marriage, divorce and childbearing decisions made by different-sex couples. In a series of papers, he provides causal estimates of the effects of the introduction of same-sex marriage on (different-sex) family formation. The first of these papers was awarded the 2009 Award for Best Comparative Paper presented at the Annual Meetings of the Association for Public Policy and Management.

4. SUMMARY:

5. Same-sex marriage has been a hotly-debated issue in the Western world for several decades. Until today, only a handful of countries legalized marriage for same-sex couples and a few others, the UK included, introduced a separate institution for same-sex couples, similar to marriage (registered partnership or civil union). One argument almost always present in the debate is that the legalization of same-sex marriage would have a negative impact on (different-sex) marriage. In this written testimony, I present the results of my research that aims to answer this question and provide causal estimates of the effects of the introduction of same-sex marriage on (different-sex) family formation.

6. My research relies on the use of advanced econometric techniques to examine the evolution of various indicators of family formation following the legalization of same-sex marriage in the Netherlands (2001), Belgium (2003), Canada (2003) and Spain (2005), while taking into account the long-term trends in marriage, population change, and any other factors that could have an effect on family formation. My results invariably indicate that overall there were no negative effects from the legalization of same-sex marriage on several measures of family formation. After the introduction of same-sex marriage, there was no significant decline in (different-sex) marriage, nor was there a significant increase in the divorce rate or in the fraction of children born outside marriage.

7. However, I do find evidence that legalizing same-sex marriage does not affect all individuals in the same way. In the Netherlands, the first country that legalized same-sex marriage, more conservative couples seem to have married *more* and more liberal couples *less* after same-sex marriage became legal, although it is unclear if the latter is due to the legalization of same-sex marriage or to the availability of “civil unions” to different-sex couples.

8. THE TESTIMONY:

9. One of the most common arguments in the debate on the legalization of same-sex marriage is that opening up marriage to same-sex couples would affect the value of marriage and family formation in general. According to this argument, by reducing the value of marriage, same-sex marriage would encourage other forms of family formation such as cohabitation. As a result, there would be fewer marriages, more extramarital births and possibly more divorces. In the United States, several recent laws were at least partly justified based on this argument, with the most prominent being state constitution amendments such as Proposition 8 in California or the Defense of Marriage Acts, laws preventing federal or state governments from recognizing (same-sex) marriages.

10. However, the effect of same-sex marriage on marriage and family formation is theoretically ambiguous. On the one hand, legalizing same-sex marriage could accelerate what sociologists call the “deinstitutionalization of marriage:” a generalized trend of increased social acceptance of non-traditional family forms such as cohabitation instead of marriage, even after childbirth. Legalizing same-sex marriage could reduce the stigma on these non-traditional family forms, creating an environment where (different-sex) couples could increasingly choose these alternatives over marriage. On the other hand, same-sex marriage could be seen as “institutionalizing” same-sex couples and could then lead to more different-sex marriages if it reignites the interest in marriage. Finally, the legalization of same-sex marriage could reduce the pressure on government and on employers to provide benefits to cohabiting couples, making cohabitation less attractive when compared to marriage.

11. Despite the interest in this topic in the political discourse and in the media, there is very little empirical evidence on the effect of granting marriage rights to same-sex couples on family formation and most of it comes from correlation studies. My research fills this gap by providing the first causal estimates of the impact of same-sex marriage on family formation.

12. In the paper “*The effect of same-sex marriage laws on different-sex marriage: Evidence from the Netherlands*,” I use aggregate data as well as detailed individual-level data from municipal registries in the Netherlands (the first country to legalize same-sex marriage) to study the patterns in marriage behavior after the legalization of same-sex marriage. Using advanced econometric methods and data from the other OECD member countries, I construct a counterfactual for the Dutch marriage rate, ie, what the marriage rate would have been in the Netherlands in the absence of the same-sex marriage law. I then examine whether there were significant deviations in the evolution of the Dutch marriage rate from this counterfactual. My analysis shows that the same-sex marriage law had no significant effects on either the overall or the different-sex marriage rate. Using detailed individual-level data, I next analyze the marriage decision of various demographic groups. Interestingly, I find that the effects of the law are heterogeneous, with presumably more liberal individuals marrying less after the enactment of the law, while potentially more conservative individuals married more after the law.⁴²⁰ However, it is impossible to distinguish if more liberal individuals marry less due to the same-sex marriage law or due to

⁴²⁰ I classify individuals as “potentially conservative” and “potentially liberal” based on voting patterns in their region of residence or based on their ethnicity.

the availability of a marriage-like contract (registered partnership) to different-sex couples.⁴²¹ This paper is the first to estimate the causal effect of a same-sex marriage law on different-sex marriage and it was awarded the 2009 Award for Best Comparative Paper presented at the Annual Meetings of the Association for Public Policy and Management.

13. In a second paper, “*Same-sex partnership, same-sex marriage and family formation*,” I use aggregate data for the period 1980–2009 on 28 OECD member countries, 14 of which introduced same-sex registered partnership or civil unions and 4 same-sex marriage during this period. I extend my previous analysis by studying three indicators of family formation: the marriage rate (both overall and separately for different-sex couples where appropriate), the divorce rate, and the extramarital birth rate (the fraction of births to unmarried mothers among live births). I rely on several strategies that eliminate the spurious effect of other factors that can influence family formation: long-term trends in attitudes toward marriage, changing population structure (aging, racial and ethnic composition, educational composition etc.), macroeconomic conditions etc. My results suggest that same-sex marriage laws had no negative effects on family formation. Indeed, the estimated effects generally point to slightly more marriages, fewer divorces and lower rates of extramarital births. I confirm the validity of these results by subjecting them to several econometric checks.

14. In conclusion, my research shows that legalizing same-sex marriage did not have negative effects on different-sex family formation in other developed countries. Given that these countries are similar to the UK in terms of their population structure and attitudes toward marriage, these results pertain directly to the current policy debate in the UK regarding the legalization of same-sex marriage.

March 2013

Memorandum submitted by Marriage, Sex and Culture Group, Anglican Mainstream (MB 137)

INTRODUCTION

1. Lisa S Nolland, MA MCS PhD (Bristol), is a sex-culture historian who has worked with kids and their families as a primary and secondary school teacher, youth worker, mentor and chaplain for many years. She convenes the Marriage, Sex and Culture Group (MSC) of Anglican Mainstream, which researches and raises awareness on these issues. This submission is made on behalf of the MSC.

SUMMARY

2. Though arguably well-meaning in its conception, same-sex ‘marriage’ (SSM) has serious short- and long-term ramifications which few appear aware of: it is a game-changer. Once sexual differentiation is removed from marriage, there is no area of life where we can in principle insist upon it, as seen in current developments in states with SSM.

3. This submission concentrates upon SSM’s impact on children and young people via the instruction and formation of kids, in schools, ‘health’ and community groups. The influence of the LGBT agenda on our young--publicly presented in positive terms like ‘equalities’---is already problematic. Because gay has become the ‘new black’ being ‘anti-gay’ is considered racist, and critical comments in relation to how gays choose to do life is increasingly considered hate crime. It can be professionally suicidal to be critical in public of those with ‘protected characteristics’ now; gay ‘marriage’ will push this tendency further.

4. With SSM schools and other groups will, legally, have to promote gay relationships and sexuality and be constrained by a rather whitewashed version of the facts. This is evident in countries that already have SSM. Those who will pay the most are our young, while all of us will have forfeited our freedom of speech, conscience and religion, or risk fines, law suits and loss of employment. In countries with SSM, incidents of this nature are happening now.

I. EQUALITIES AND INCLUSION

5. Because of the ideological power of and concerns for ‘equalities and inclusion’ and anti-bullying and homophobia, we begin here. Though couched in terms of justice, respect and tolerance---deeply treasured English/British values!----the LGBT campaign has successfully hijacked these terms by radically altering their original meanings. To dissent in public now is often counter-productive, because what is *heard* is bigotry, discrimination and hatred.

6. Schools must promote LGBT rights (and will, by extension, SSM) because of ‘equalities and inclusion’, so that every child can feel good about her/his family. This argument gives Stonewall’s ‘Education for All’ the moral high ground.⁴²²

7. However, Stonewall’s ‘all’ still excludes vulnerable children and families from politically-incorrect polygamous and polyamorous family structures, among others.

⁴²¹ The result that presumably more conservative individuals marry more after the same-sex marriage law is not subject to the same limitation.

⁴²² http://www.stonewall.org.uk/at_school/education_for_all/default.asp.

8. There are 1000 or so polygamous families (mostly Muslim) here now (with polygamist Kody Brown challenging consensual adult polygamy in the US court).⁴²³

9. Similarly, Stonewall excludes polyamorous (literally, 'plural loves') gay, straight or bisexual families. Polys 'came out' on *ITV* August 2011, and the *Independent* and *Mail* recently ran poly features. The *Scientific American* (February 2013), claims 4–5% of the US population is experimenting with polyamory while Australian Greensparty leaders are campaigning for poly marriage.⁴²⁴

10. If SSM is legalised, there will be no way to halt the embedding and tacit or open promotion of these (and other even more extreme) alternative family forms and sexualities across the education system over time.

II. ANTI-BULLYING AND HOMOPHOBIA

11. All bullying is sickening---whether for reasons of obesity, race, sexuality, etc. and must not be tolerated. However, we find here a similar hijacking of important values which have been sabotaged to legitimise and promote the LGBT agenda, and at the expense of other forms of serious bullying.

12. For instance, bullying on the basis of sexuality received the lion's share of attention in last year's Ofsted report on 'Bullying': 14 (out of 70) pages. Oddly, though, it admits students' 'most common experience of more serious bullying' is appearance-related and only 'a very small number of pupils reported being bullied directly about their sexuality' (p 29). What has happened here?⁴²⁵

13. More fundamentally, 'being gay' is being sold to kids like 'being black'. This is pure (and relatively recent but highly successful) myth launched by PR specialists, Kirk and Madsen: 'We argue that, for all practical purposes, gays should be considered to have been *born gay* [emphasis theirs]'.⁴²⁶

14. Identical twin studies disprove the 'born gay' theory (if one twin is gay the other most often is not) as does Frisch et al's 2006 marriage study of two million Danes: 'Childhood family experiences are important determinants' of future heterosexual or homosexual marriage decisions.⁴²⁷

15. Another myth sold to kids now is that 'once gay always gay'. Not so! Research by Savin-Williams and Ream (2007) found that three quarters of young people who identified as gay at 17 realised by age 22 that they were heterosexual.⁴²⁸

III. THE FULL AGENDA

16. In fact, 'Equalities and bullying' concerns are far more about stealth social engineering than meeting the needs of children in school. Otherwise, why include only certain family forms and sexualities? And contra Stonewall, in our pluralist society children may be taught to respect others and schools can target all forms of bullying without automatically endorsing LGBT practices. A primary end game of the 'Equalities and bullying' agenda is a free approach to sexual activity, with a sole focus on the autonomous individual. Instrumental to this, is the recruiting of kids to become 'social justice' activists and champions of certain human, especially LGBT, rights and sexualities and who experience those with contrary views as 'haters'.

IV. SOME CONSEQUENCES IN STATES WITH SSM

17. In Hamilton, Ontario (Canada legalised SSM in 2005) in February 2012, primary-aged children married a same-sex friend in a mock gay 'marriage' rite in the classroom.⁴²⁹

18. An Ontario school board---increasingly acting as 'co-parent'---insists primary school children be taught about SSM and that parental requests for notification (even) are invalid.⁴³⁰

19. A Toronto District School Board's [TDSB] campaign on 'Love' for 11+s promotes the equal validity of straight, LG or bisexual trio 'couples' (Autumn 2012).⁴³¹

⁴²³ <http://www.dailymail.co.uk/news/article-2180942/Polygamous-immigrant-families-paid-benefits-Government-blunder.html>;
http://www.huffingtonpost.com/2012/07/25/sister-wives-lawsuit-kody-brown-utah-bigamy-law_n_1701450.html

⁴²⁴ <http://www.youtube.com/watch?v=aJxdl4MZj88>;
<http://www.independent.co.uk/life-style/love-sex/romance-passion/modern-lovers-the-sexual-body-warriors-and-pioneers-transforming-21st-century-relationships-6700186.html>; <http://www.dailymail.co.uk/news/article-2070634/Polyamorous-woman-Jaiya-Ma-baby-lover-living-boyfriend.html?ito=feeds-newsxml>;
<http://www.scientificamerican.com/article.cfm?id=new-sexual-revolution-polyamory>;
<http://www.vexnews.com/2013/03/big-love-greensparty-polyamorists-push-for-equality-in-marriage-act/>

⁴²⁵ <http://www.ofsted.gov.uk/resources/no-place-for-bullying>

⁴²⁶ Kirk and Madsen, *After the Ball* (1989), 184.

⁴²⁷ Bailey, 'Genetic', *J of Person*, (2000); Frisch, 'Childhood Family', *Arch Sex Behav* (2006).

⁴²⁸ Savin-Williams and Ream, 'Prevalence and Stability', *Arch Sex Behav* (2009).

⁴²⁹ Personal communication, P Lees, 09 Nov 2012, to LSN.

⁴³⁰ <http://www.lifesitenews.com/blog/great-video-of-dad-fighting-school-board-in-court-over-forced-sex-ed-classes/>

⁴³¹ <http://news.nationalpost.com/2012/09/26/threesomes-on-toronto-school-board-posters-not-polygamous-spokesman/>; in fact, the trios represent bisexuality

20. The TDSB's K-12 resource, *Challenging Homophobia and Heterosexism*, encourages artistic contributions from early primary-aged children for the TDSB/school bus float in Toronto's Annual Gay Pride Parade (though 'family friendly', nudity and overtly sexual behaviours are allowed/celebrated).⁴³²

21. Pink Project 2012 involved 1,500 kids (kindergarteners through 18s) from just under a dozen schools dancing to Lady Gaga's 'Born This Way' ('born gay'), to promote gay 'acceptance'.⁴³³

22. Gay teacher Ms Allen admits she has explained lesbian sex techniques to 13 year-olds in her Massachusetts classroom after SSM passed (National Public Radio, September 2004).⁴³⁴

23. Planned Parenthood, Toronto [PPT], active in many Toronto secondary schools, is developing its 'queer sex ed' curriculum. PPT's official website for 13s+ commends 'Fisting' etc to kids of all sexualities as 'low risk' for STIs and potentially 'very enjoyable'.⁴³⁵

24. MyGSA.ca (My Gay Straight Alliance)---Canada's national LGBTQ-inclusive and safer schools website and the education arm of the Human Rights group, Egale (like Stonewall)---has hundreds of GSA clubs and affiliated school and community groups across the country.

25. MyGSA.ca commends Outland's *Coming Out* (2000) to schools as 'a comprehensive road map for navigating this exciting, complicated period of life'.⁴³⁶ Readers (14 years+) are told:

A bottom on crystal meth can get fucked for hours on end, experiencing a continuous state of physical ecstasy. After the fog clears, however, he may suddenly think, Oh my God, I can't believe I even did it with him... If you are going to use hard drugs and have sex, be prepared for this experience. (p 58)

26. For Canadian educator and activist, Phil Lees, 'Experience shows that whenever homosexual marriage becomes law, children will be exposed to an increasingly sexualized curriculum and school environment at an early age, as early as kindergarten'.⁴³⁷

27. Once you remove biological difference from marriage, it is much harder to withstand the demands to strip biological sex from all realms. This 'gender-neutral' approach is now being adopted across the board in states like Massachusetts, with particular impact on school locker rooms, sports teams etc. 'Trans' individuals' rights to be treated as their preferred sex/gender are trumping the rights of everyone else, with punitive action to be taken against kids who refuse to fall in line.⁴³⁸

V. UK SCHOOLS, MAINSTREAM YOUTH 'HEALTH' AGENCIES AND COMMUNITY ORGANISATIONS LIKE THE SCOUTS

28. SSM includes SS relationships and sex. Very few appear to realise we already have serious problems on this front, both in terms of certain curricula as well as mainstream sexual advice from 'health' agencies and community organisations. That there are varying degrees of helpful advice mixed in with the bad, means kids are more readily deceived by the latter. The approach taken by these agencies combines 'risk reduction' and 'damage control' with tacit acceptance/promotion of recreational sex (for 13s+) for whatever 'orientation', based on an inviolable personal autonomy and agency. 'Gay' 16s+ get additional 'advice' (see below).

29. Some gay (and straight) sexual 'health' sites tacitly promote extreme, potentially dangerous sex acts, experimentation and promiscuity. Sex is seen as being central to the life and identity of gay kids and by extension, all others, though there are caveats to the contrary---'Only do it when you are ready and want to!' Sex is tacitly prioritized in developmentally-inappropriate and damaging ways for *all* kids; in fact it is by 'experimenting' with sex that kids supposedly 'find themselves' (and note the emphasis on the role of the prostate in sex for lads; what is actually being said?). An added pressure is that as the old norms of heterosexuality and sex/gender are being questioned, some kids feel pressure to decide on their 'orientation' and even their gender identity long before adulthood. This is most unwise (see below).

30. SSM will shut down criticism of gay relationship and sexual 'health' sites for youngsters. Even now because it is professionally suicidal to criticize homosexuality, few censure what kids of *whatever* 'orientation' do as long as they are in their teens and the sex is 'safe' and 'consensual'. However, kids doing sex is never 'safe', as we shall see.

31. The popular *CGP Key Stage Four PSHE Curriculum* (2001) for 14s+ says [underlining theirs]:

⁴³² http://www.canadianvalues.ca/SCC/TDSB_Equity%20_%20InclusiveCurriculum_Seepage%2010%20_.pdf; for images of Toronto Pride, use google.

⁴³³ <http://www.youtube.com/watch?v=xQ6IjtakQ>

⁴³⁴ http://www.massresistance.org/docs/a8a/general/NPR_091304.htm

⁴³⁵ http://www.xtra.ca/public/Toronto/Planned_Parenthood_to_bolster_sex_ed-12457.aspx;
<http://teenhealthsource.com/about-us/>;
<http://teenhealthsource.com/sex/fingering-fisting-101/>

⁴³⁶ <http://www.mygsa.ca/educators/books/book?p=184>

⁴³⁷ <http://www.wnd.com/2012/10/mask-off-canadians-now-warning-americans/>

⁴³⁸ <http://www.thepublicdiscourse.com/2013/03/9244/>

Oh My---They do...that? A lot of people are really grossed out by the idea of anal sex. Some people like it, and here's a reason why: men have a gland called the prostate, near the rectum. If they're on the receiving end of anal sex, this gland is stimulated, causing sexual pleasure. (p 6)

32. See also the *Respect Yourself* SRE programme for 13s+ in many Warwickshire secondary schools. Included is tacit acceptance of high frequency sex, multiple partners, anal experimentation, and even a potential openness to human/animal sexual relationships (this sexual minority self-describe as being 'zoo').⁴³⁹

33. *The Sexy Stuff*, the NHS-endorsed sexual 'health' manual for 13s+ which features anal sex ('some do it simply for pleasure') and the benefits of 'rimming' (*analingus*). AOC (Age of Consent) issues are minimised.⁴⁴⁰

34. Brook Advisory Service now partners with the Scouts; a Scout sexual 'health' poster directly links to its site. Brook also works in schools. Brooks' approach and content are similar to the above.

35. The 'GMFA [Gay Men's Fight Against Aids]—The Gay Men's Health Charity', which the NHS presently links kids 16+ to from 'LiveWell'/'Ready to Go All The Way' via its 'Sexual Health for Gay Men', covers similar, also new, aspects. Fisting, 'watersports' (erotic urine 'play') and group sex are discussed; the GMFA handbook even advises on cottaging, sauna and sex club etiquette, and illegal drug use in sex.⁴⁴¹

VI. WHAT CHILDREN AND YOUNG PEOPLE NEED TO KNOW ABOUT SSM AND SEX ISSUES

36. Children are not mini-adults! They are mentally, psychologically, physically and sexually immature. As their critical thinking skills are non-existent (most will still be in the concrete operations stage (Piaget)), they can only evaluate the concept of SSM at a rudimentary level: 'Love and family are good so this must be good too!'

37. Children have vitally important psychological needs of love and bonding with same-sex peers which must be met in order to develop into healthy adults. However, we are hearing of how LGBT teaching is eroticising non-sexual same-sex affection: 'I love my best friend Josh so I must be gay'. For kids who do not consider themselves 'gay', they will retreat from vital intimate same-sex friendship and thus be psychologically deprived.

38. With SSM, schools will have to teach that marriage (now) does not necessarily entail monogamy. Married LB couples can have (non-adulterous!) same-sex sex outside the relationship. Indeed, 'open' marriages may work better: see *Huffpost Gay Voice's* February 2013 "'Monogamish": Two Is Company, but Is Three Really a Crowd?' [Answer: Likely not]. However, though 'open' marriage (N and G O'Neill, *Open Marriage*, 1972) may excite, that few 'open' heterosexual couples remained married years on is telling.⁴⁴²

39. If SSM becomes legal, it will be harder to discuss the negative aspects of kids doing sex, because once gay sex is introduced---and it must be in order not to 'discriminate'---negative comment sounds homophobic! And doing sex is unwise for teens---gay or straight---and contributes to serious health concerns.

- Teenage girls' vulnerable cervixes place them at greater risk of getting an infection; ¼ US teen girls (14–19) have at least one diagnosed STI (CDC, 2008)
- Teens brains are immature: the pre-frontal cortex (which deals with the executive brain function) is unfinished, leading to poorer decision-making
- Teen brains are flooded by sex hormones which also contribute to unwise decision-making, especially increased risk-taking
- Young people's sexuality is only finished developing when they are past their teens⁴⁴³
- The philosophic basis of most 'health' advice, Autonomous Individualism, is limited, even deeply flawed. Given the above, kids are serious disadvantaged (vis-à-vis adults) and thus the basis for their 'choices' compromised, as seen in the Rochdale Report on sexually-exploited 10–17 year-olds females⁴⁴⁴
- In sex, neurochemicals are produced which physiologically and psychologically attach partners: 'No strings' sex is pure myth
- The earlier the sexual debut, the more partners, the higher the frequency, the greater the risk to the health of our kids
- For receptive partners, anal sex is at least 20 times more risky than vaginal sex because of factors involving human anatomy, physiology and histology. Fisting is far riskier still⁴⁴⁵

⁴³⁹ <http://www.respectyourself.info/your-questions/#>

⁴⁴⁰ http://www.rainbowbournemouth.co.uk/pdf/sexy_stuff_guys.pdf

⁴⁴¹ <http://www.gmfa.org.uk/sex/howriskyis/fisting;>
<http://www.gmfa.org.uk/sex/howriskyis/watersports;>
<http://www.gmfa.org.uk/sex/howriskyis/fucking;>
<http://www.gmfa.org.uk/londonservices/booklets-and-postcards/pdfs/cruising-2011.pdf>

⁴⁴² http://www.huffingtonpost.com/zach-stafford/monogamish-two-is-company_b_2664725.html; Reisman, *Sexual Sabotage* (2010), 98

⁴⁴³ <http://www.megmeekerm.com/2013/02/your-teen-daughter-says-shes-gay-what-now/>

⁴⁴⁴ <http://www.megmeekerm.com/2013/02/your-teen-daughter-says-shes-gay-what-now/>

⁴⁴⁵ <http://narh.com/2010/11/health-risks-fisting-and-other-homosexual-practices-2/>

- There used to be two STIs, now there are two dozen viruses, bacteria, fungi etc., some of which are transmitted via the skin
- Condoms can provide some but not complete protection against getting an infection. Studies have shown that continuous condom use reduces risk of HIV heterosexual transmission 85%, while its effectiveness in relation to syphilis, gonorrhoea and chlamydia is significantly lower⁴⁴⁶
- STIs out there include those which are incurable, debilitating or cause infertility while three lead to life-threatening diseases (HIV/AIDS, anal and cervical cancer)
- If the LGBT can ‘come out’ so can more ‘alternative’ sexual minorities, such as the ‘zoos’, as demonstrated by the ‘Respect Yourself’ programme (see above).
- Sexually active kids have higher rates (than non-sexually active kids) of depression and suicide ideation; being sexually victimized; becoming infected by an STI/STD; or having an abortion after failed ‘protection’

40. In relation to gay sex in particular, lads with same-sex attraction deserve to know that SSM may be of little help in terms of health issues, as admitted in “‘Monogamish’” (see above):

‘Our findings suggest that certain types of non-monogamous relationships—especially “monogamish” ones—are actually beneficial to gay men, contrary to assumptions that monogamous relationships are always somehow inherently better.’ So being in a ‘monogamish’ relationship seems to mean that you may do more illicit drugs and take more sexual health risks, but you may actually be happier as a person.

(The sole caveat is that being ‘monogamish’ entails deeper commitment to communication and negotiation than is the norm for many couples—and here the author repeats a frequently-heard caution)⁴⁴⁷

41. MSMs (men who have sex with men) are 50 times or so more likely to get HIV/AIDS, which shortens life spans of about 20 years.⁴⁴⁸

- 44% of those with HIV were MSMs (2010). HIV/AIDS costs between ca £280,000-£360,000/lifetime of care and kills between 400–600/year⁴⁴⁹
- In cases where ‘orientation’ was recorded, MSMs accounted for 75% of syphilis diagnoses, 50% of gonorrhoea diagnoses (which is becoming increasingly drug-resistant), and 15% of chlamydia diagnosis.⁴⁵⁰
- A January 2013 *Lancet* article, ‘High risk drug practices tighten grip on London gay scene’ worried about the prevalence of barebacking (condom-‘free’ sex), group sex and crystal meth in London gayworld. ARVs (antiretroviral drugs) for all with HIV is the solution(!)⁴⁵¹

42. Gay life is a high-risk lifestyle and people, especially lads, should be discouraged from engaging in it, even as they now are discouraged from smoking. No one is ‘born gay’ and people can and do develop their heterosexual potential. With SSM it will be even harder to tell kids the actual risks of especially gay sex.

March 2013

Memorandum submitted by Alliance Defending Freedom (MB 138)

Summary

1. This submission makes three points regarding the religious liberty concerns associated with re-defining marriage. First, there is a threat to religious liberty in the United Kingdom before marriage has even been redefined, therefore any re-definition will certainly lead to a further loss of religious liberty. Secondly, if marriage is re-defined there will be new threats to religious liberty. Thirdly, the Government’s claim that religious organizations will be protected by the Marriage (Same Sex Couples) Bill is an empty promise.

I. CURRENT THREATS TO RELIGIOUS LIBERTY

2. Any concerns for religious liberty caused by the redefinition of marriage are compounded when the context surrounding the Marriage (Same Sex Couples) Bill is considered. Those who have voiced support for marriage

⁴⁴⁶ <https://www.medinstitute.org/resources/faqs/>

⁴⁴⁷ Also note Savage on ‘monogamish’: http://www.nytimes.com/2011/07/03/magazine/infidelity-will-keep-us-together.html?pagewanted=all&_r=0

⁴⁴⁸ Contact me for workings of the 50X statistic; for life expectancy:
<http://www.pinknews.co.uk/2009/11/02/comment-the-way-forward-for-hiv-prevention/>; cp
[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(08\)61113-7/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(08)61113-7/abstract)

⁴⁴⁹ [http://www.tht.org.uk/myhiv/HIV-and-you/Simple-science/Facts-and-figures](http://www.tht.org.uk/myhiv/HIV-and-you/Simple-science/Facts-and-figures;);
http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1259151891830;
<http://www.avert.org/uk-statistics.htm>

⁴⁵⁰ <http://www.hpa.org.uk/hpr/archives/2012/hpr2212.pdf>
<http://www.medicalnewstoday.com/articles/235759.php>

⁴⁵¹ [http://www.lancet.com/journals/lancet/article/PIIS0140-6736\(13\)60032-x/fulltext](http://www.lancet.com/journals/lancet/article/PIIS0140-6736(13)60032-x/fulltext)

or upheld a traditional or religious view on sexual morality have been penalized in a number of different ways despite the legal definition of marriage currently being “the voluntary union for life of one man and one woman to the exclusion of all others.”⁴⁵² Parliament does not legislate in a vacuum and if marriage is re-defined, the number of cases listed below would increase considerably.

Marriage defenders abused

3. In 2011 Christian hoteliers Peter and Hazelmary Bull received hate mail and abusive phone calls after refusing to let double bedded rooms to unmarried couples. The couple reported the information to the police to investigate.⁴⁵³

4. In 2012 Archbishop of York John Sentamu received a number of abusive and threatening emails of a racist nature after stating that marriage must remain between a man and a woman.⁴⁵⁴

5. In 2012 newlywed couple Rhys and Esther Curnow were bombarded with hate mail after submitting a petition in favour of marriage to 10 Downing Street. The couple received over 100 hate messages and were forced to contact the police.⁴⁵⁵

6. In 2013 it was David Burrowes MP revealed that he has received hate mail and death threats for supporting marriage in parliament. The MP also said that his children have faced bullying at school because of his stance.⁴⁵⁶

Speech muzzled

7. In 2002 Harry Hammond was convicted of a criminal offence for displaying a sign bearing the words “Jesus Gives Peace, Jesus is alive, Stop Immorality, Stop Lesbianism, Jesus is Lord” in his local city centre.⁴⁵⁷

8. In 2008 Anthony Rollins was arrested for preaching on the streets of Birmingham. He expressed his Christian belief that homosexual conduct is morally wrong and was called a homophobic bigot by a passerby who then phoned the police. Officers arrived and arrested him on the spot, charging him three hours later.⁴⁵⁸

9. In 2010 Dale McAlpine was arrested and lead away in a riot van for preaching in his local town square. McAlpine had told one officer that “the bible says homosexuality is a sin,” although this had not formed part of his public preaching.⁴⁵⁹

10. In 2010 Shawn Holes was arrested and fined £1,000 for answering a question on homosexual behaviour from a member of the crowd as he preached on the streets of Glasgow. He responded by stating that all who commit sins without repenting “are going to a place called hell.”⁴⁶⁰

11. In 2011 Mike Overd was charged with using threatening words or behaviour for street preaching in Taunton on a Bible passage concerning homosexual behaviour.⁴⁶¹

Workers penalized and dismissed

12. In 2006 Andrew McClintock was forced to resign as a Justice of the Peace because his belief that adoption by same-sex couples was not in the best interest of the child was not accommodated by his employer.⁴⁶²

13. In 2007 Lillian Ladele was forced to leave her job as a civil registrar because her religious belief on marriage was not accommodated by her employer.⁴⁶³

14. In 2007 Gary McFarlane was dismissed for gross misconduct because, as a Christian marriage counsellor, he had a conscientious objection to providing same-sex couples with ‘Psycho-Sexual Therapy’.⁴⁶⁴

⁴⁵² *Hyde v Hyde and Woodmansee* [1866] LR 1 P & D 130.

⁴⁵³ *The Daily Mail*, 21 January 2011. Available at <<http://www.dailymail.co.uk/news/article-1348207/Christian-hotel-owners-Peter-Hazelmary-Bull-penalised-turning-away-gays.html>>.

⁴⁵⁴ *BBC News*, 6 February 2012. Available at <<http://www.bbc.co.uk/news/uk-england-york-north-yorkshire-16908955>>.

⁴⁵⁵ *The Daily Telegraph*, 22 June 2012. Available at <<http://www.telegraph.co.uk/news/politics/9349353/Gay-marriage-newlywed-couple-bombarded-with-internet-hate-mail.html>>.

⁴⁵⁶ *The Daily Telegraph*, 3 February 2013. Available at <<http://www.telegraph.co.uk/news/religion/9845185/Tory-MP-gets-death-threats-over-gay-marriage-opposition.html>>.

⁴⁵⁷ *The Guardian*, 18 January 2012. Available at <<http://www.guardian.co.uk/commentisfree/libertycentral/2012/jan/18/crime-insult-public-order-act>>.

⁴⁵⁸ *The Daily Mail*, 10 December 2010. Available at <<http://www.dailymail.co.uk/news/article-1337292/Payout-anti-gay-preacher-Anthony-Rollins-Landmark-ruling-free-speech-battle.html>>.

⁴⁵⁹ *The Daily Telegraph*, 2 May 2010. Available at <<http://www.telegraph.co.uk/news/religion/7668448/Christian-preacher-arrested-for-saying-homosexuality-is-a-sin.html>>.

⁴⁶⁰ *Mail Online*, 30 March 2010. Available at <<http://www.dailymail.co.uk/news/article-1262310/Gay-rights-campaigner-condemns-1-000-fine-preacher-said-homosexuality-sin.html>>.

⁴⁶¹ *BBC News*, 10 February 2012. Available at <<http://www.bbc.co.uk/news/uk-england-somerset-16984133>>.

⁴⁶² *McClintock v. Department of Constitutional Affairs* UKEAT/0223/07/CEA, 31 October 2007.

⁴⁶³ *Ladele v London Borough of Islington* [2009] EWCA Civ 1357.

⁴⁶⁴ *McFarlane v Relate Avon Limited* [2010] EWCA Civ 880.

15. In 2007 Dr. Sheila Matthews was removed from her position on an adoption panel because she believed that placing children in a household with same-sex parents was not the best option available for the child.⁴⁶⁵

16. In 2007 Eunice and Owen Johns applied to act as short-term foster carers, having previously been approved as foster carers by Derbyshire County Council between 1992 and 1995. Their application was denied because of their Christian views on homosexual behaviour.⁴⁶⁶ Other foster carers have also had difficulty fostering children because of their Christian beliefs on homosexuality.

17. In 2011 Adrian Smith, a housing manager in Manchester, was demoted and had his salary reduced by 40% because he stated his views on marriage on his personal *Facebook* page.⁴⁶⁷

18. In 2011 former SNP leader Gordon Wilson was voted off the board of Dundee's Citizens Advice Bureau because he supported the legal definition of marriage. Wilson is chairman of a Dundee-based Christian group that is calling for a referendum on same-sex marriage.⁴⁶⁸

19. In 2012 bus driver Arthur McGeorge was threatened with disciplinary action after distributing a petition supporting the legal definition of marriage during his work break.⁴⁶⁹

20. In 2012 Christina Summers was expelled as a Green Party Councillor after she voted against a motion supporting same-sex marriage.⁴⁷⁰

Service-providers sued, closed and had funding removed

21. In 2008 a Christian care home had a £13,000 per year grant removed for refusing to promote homosexual behaviour to its elderly residents. After more than a year of internal appeals—amounting to £21,000 in legal fees—and after the case was made public, the council eventually backed down but did not offer to pay any of the legal fees.⁴⁷¹

22. In 2008 the Earl of Devon, a devout Christian, refused to allow a same-sex couple to hold a civil partnership ceremony at his family home at Powderham Castle.⁴⁷² The local Council then revoked his licence for hosting civil ceremonies, meaning that marriages could no longer take place at the castle either. The lost revenue equated to around £200,000 per year and as a result, the Earl had to sell off family items to make up the deficit.⁴⁷³

23. In 2008 Catholic adoption agencies that refused to place children with homosexual couples were forced to close down or remove their religious ethos.⁴⁷⁴ This was despite Catholic adoption agencies being widely recognised as being among the best in the country.

24. In 2009 guesthouse owners Peter and Hazelmary Bull were sued £3,600 for refusing to offer double-bedded accommodation to unmarried couples.⁴⁷⁵ Their guesthouse now faces closure. Other Christian guesthouses have also been successfully sued.⁴⁷⁶

Access to services denied

25. In 2012 several organizations attempted to host a conference on the legal definition of marriage at the Law Society in London. The Law Society cancelled the booking, claiming that the conference breached its diversity policy. The conference was then due to take place at the Queen Elizabeth II Conference Centre, but the Government-run venue also cancelled the booking citing similar reasons.⁴⁷⁷

II. NEW THREATS TO RELIGIOUS LIBERTY

26. As well as a substantial increase in the types of cases listed above, any redefinition of marriage would also bring new threats to religious liberty.

⁴⁶⁵ *Matthews v. Northamptonshire County Council*, ET (Case No. 1901629/2009), 26 November 2010.

⁴⁶⁶ *R (Johns) v. Derby City Council* [2011] EWHC 375 (Admin).

⁴⁶⁷ *The Daily Mail*, 23 October 2011. Available at <<http://www.dailymail.co.uk/news/article-2052319/Adrian-Smith-demoted-backing-gay-marriage-criticising-new-law-Facebook.html>>.

⁴⁶⁸ *BBC News*, 28 October 2011. Available at <<http://www.bbc.co.uk/news/uk-scotland-tayside-central-15494577>>.

⁴⁶⁹ *Christian Concern*, 14 March 2012. Available at <<http://www.christianconcern.com/our-concerns/social/bus-driver-faces-disciplinary-action-over-marriage-petition>>.

⁴⁷⁰ *The Huffington Post*, 11 September 2012. Available at <http://www.huffingtonpost.co.uk/2012/09/11/green-party-expels-brighton-christina-summers-gay-marriage_n_1873791.html>.

⁴⁷¹ 'Care home suffers under 'equality' laws: How traditional Christian beliefs cost an elderly care home a £13,000 grant,' *The Christian Institute*, May 2009.

⁴⁷² *The Daily Mail*, 20 May 2008. Available at <<http://www.dailymail.co.uk/news/article-1023037/Earl-banned-holding-weddings-600-year-old-castle-refusing-allow-gay-marriage.html>>.

⁴⁷³ *The Daily Telegraph*, 2 July 2009. Available at <<http://www.telegraph.co.uk/news/uknews/theroyalfamily/5711424/Earl-of-Devon-sells-family-silver-after-civil-partnership-ban.html>>.

⁴⁷⁴ See 'Adoption agencies shut under 'equality' laws', *The Christian Institute*, April 2009.

⁴⁷⁵ *Bull and Bull v. Hall and Preddy and Hall* [2012] EWCA Civ 83.

⁴⁷⁶ *Black and Morgan v Wilkinson*, Claim, no. 0UD02282, 18 October 2012.

⁴⁷⁷ *The Daily Telegraph*, 11 May 2012. Available at <<http://www.telegraph.co.uk/news/uknews/law-and-order/9260335/Storm-as-Law-Society-bans-conference-debating-gay-marriage.html>>.

27. The Bill does not include any protections for individuals who may have a conscientious objection to supporting, condoning, facilitating or promoting same-sex marriage. Therefore, private sector employees could be dismissed for not supporting their employer's policies on same-sex marriage and those who currently provide marriage-related services, such as wedding photographers, could be sued for not providing their services to same-sex marriage ceremonies.

28. Public sector employees are particularly at risk under the Government's proposals.⁴⁷⁸ In January 2013 Education Minister, Michael Gove, admitted that the Government would be powerless to prevent schools dismissing teachers who did not promote same-sex marriage in the classroom.⁴⁷⁹ Recently 40,000 teachers were identified as facing the sack if the Government Bill becomes law.⁴⁸⁰ Military chaplains have also been identified by former Defence Minister, Sir Gerald Howarth, as being vulnerable under any changes to the law,⁴⁸¹ as well as chaplains in other contexts such as hospitals and prisons.

29. Moreover, the European Court of Human Rights has recently made it clear that it will not protect individuals who are dismissed because of a conscientious objection to same-sex relationships.⁴⁸² Therefore, if the Government does not provide statutory protections for individual conscience, the examples listed above and the jurisprudence of the British and European courts make it clear that a redefinition of marriage will lead to many professional and competent employees being dismissed because of their sincere beliefs on marriage.

III. THE GOVERNMENT'S EMPTY PROMISE

30. Although the Bill makes no attempt to protect the thousands of individuals whose jobs and businesses will become threatened as a result of any marriage redefinition, there is at least an attempt to protect religious communities that do not wish to conduct same-sex marriages. However, any Government promises that faith communities will be protected by the Bill cannot be relied upon.

The lack of authority over ECtHR decisions

31. The Government's inability to control or resist decisions made by the European Court of Human Rights (ECtHR) has been well documented in recent years regarding the issue of deportation.

32. On 17 January 2012 the ECtHR handed down its judgment in *Othman (Abu Qatada) v the United Kingdom*.⁴⁸³ In a unanimous ruling the Court overturned the decision of the House of Lords,⁴⁸⁴ which had unanimously held that Abu Qatada could be deported to Jordan. In November 2012 Prime Minister David Cameron remarked:

I am completely fed up with the fact this man is still at large in our country, he has no right to be there, we believe he's a threat to our country. We have moved heaven and earth to try and comply with every single dot and comma of every single convention to get him out of this country. It is extremely frustrating and I share the British people's frustration with the situation we find ourselves in.⁴⁸⁵

33. Other Government Ministers have also spoken of their frustration and helplessness at the hands of the ECtHR. Home Secretary, Theresa May, told parliament that, "It is also deeply unsatisfactory that the European Court of Human Rights continues to move the goalposts for governments trying to deport dangerous foreign nationals."⁴⁸⁶

The ECtHR's evolutive approach to the Convention

34. The reason that Theresa May claims that the ECtHR has changed its position is because the Court is at liberty to do so. Unlike the UK and other common law countries, the ECtHR does not operate a strict system of precedent but instead takes an "evolutive approach" to the meaning of the European Convention on Human Rights. As Jean-Paul Costa, former President of the Court, recently put it, the Court has "taken the view that the text should be interpreted, and applied, by adapting it to the changes that have taken place over time—to changes in society, in morals, in mentalities, in laws."⁴⁸⁷

⁴⁷⁸ According to Section 149, Equality Act 2010, the Public Sector Equality Duty requires public authorities to have "due regard" to the need to eliminate discrimination when exercising their function as well as "advancing equality of opportunity".

⁴⁷⁹ *The Daily Mail*, 25 January 2013. Available at <<http://www.dailymail.co.uk/news/article-2268056/Registrars-sued-defy-gay-marriage-law-teachers-hospital-chaplains-facing-claims.html>>.

⁴⁸⁰ *The Christian Institute*, 4 February 2013. Available at <<http://www.christian.org.uk/news/over-40000-teachers-face-sack-over-gay-marriage/>>.

⁴⁸¹ *The Daily Telegraph*, 13 November 2012. Available at <<http://www.telegraph.co.uk/news/religion/9673488/Military-chaplains-could-be-sacked-for-opposing-gay-marriage-says-former-minister.html>>.

⁴⁸² *Eweida and ors v United Kingdom* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10), 15 January 2013.

⁴⁸³ Application no. 8139/09.

⁴⁸⁴ *RB (Algeria) v Secretary of State for the Home Department* [2009] UKHL 10, [2010] 2 AC 110.

⁴⁸⁵ *BBC News*, 13 November 2012. Available at <<http://www.bbc.co.uk/news/uk-20315479>>.

⁴⁸⁶ *The Guardian*, 12 November 2012. Available at <<http://www.guardian.co.uk/politics/blog/2012/nov/12/starbucks-tax-avoidance-controversy-live-blog>>.

⁴⁸⁷ Jean-Paul Costa, "What are the limits to the evolutive interpretation of the Convention?", *Dialogues between Judges* (European Court of Human Rights, Strasbourg, 2011), p. 5.

35. At the heart of the evolutive approach is “European consensus”—a principle that allows the Court to apply evolutive principles when the responding state’s actions are considered to be out of step with other European states.

36. Such an approach was first developed in the 1970s. In *Tyrer v. United Kingdom*⁴⁸⁸ the Court held that “the Convention is a living instrument which... must be interpreted in the light of present-day conditions.”

37. A few months after *Tyrer*, the Court invoked European consensus to help decide *Marckx v. Belgium*.⁴⁸⁹ In *Marckx*, an unwed mother challenged a Belgian law that denied automatic recognition of maternal affiliation of illegitimate children as violating Articles 8 and 14 of the Convention. In deciding in favour of the claimant, the Court admitted that discrimination between legitimate and illegitimate family was “permissible and normal” at the time of the Convention’s drafting, but citing *Tyrer*, wrote:

The Court cannot but be struck by the fact that the domestic law of the great majority of the member States of the Council of Europe has evolved and is continuing to evolve, in company with the relevant international instruments, towards full juridical recognition of the maxim ‘*mater semper certa est*’.⁴⁹⁰

38. In support of its claim of evolving consensus, the Court cited two treaties, both of which had been ratified by only four members of the Council of Europe.⁴⁹¹ The Court attempted to buttress this weak evidence by arguing that “both the relevant Conventions are in force and there is no reason to attribute the currently small number [of parties] to a refusal to admit equality between ‘illegitimate’ and ‘legitimate’ children.”⁴⁹² The mere existence of the treaties “denotes that there is a clear measure of common ground in this area.”⁴⁹³ Hence, the concept of European consensus does not even require consensus.

Same-sex marriage and the ECtHR

39. With regard to the issue of redefining marriage, the ECtHR has stated that there is no right to same-sex marriage under the Convention.⁴⁹⁴ Notably, its decision was based in part on the fact that there is currently no European consensus on the issue.⁴⁹⁵

40. The Government therefore believes that because there is no right to same-sex marriage under the Convention, faith communities will not be penalized for refusing to conduct same-sex marriage ceremonies.

41. However, if the UK opens the door to same-sex marriage, there is a real danger that the ECtHR could find violations of the Convention even though there is no Convention right to same-sex marriage. By way of comparison, the Court has held that there is no right to abortion under the Convention. However, once states allow abortion in certain circumstances, the Court has been at liberty to find violations of the Convention based on procedural grounds. Thus, in *Tysic v Poland*⁴⁹⁶ the Court held that although abortion was not a right, the mechanisms in place to obtain a legal abortion in Poland were in violation of the Convention.

42. Therefore, given the ECtHR’s fluid approach to the Convention and the Government’s lack of power over the Court’s decisions, if the door is opened to same-sex marriage in the UK, the protections currently being offered to faith communities could become worthless if challenged at a later date in Strasbourg.

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⁴⁸⁸ *Tyrer v. United Kingdom*, Application no. 5856/72, 1978.

⁴⁸⁹ *Marckx v. Belgium*, Application no. 6833/74, 1979.

⁴⁹⁰ *Id.* at para. 41.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Schalk and Kopf v Austria*, Application no, 30141/04, 24 June 2010.

⁴⁹⁵ Paragraph 58: “Although ... the institution of marriage has undergone major social changes since the adoption of the Convention, the Court notes that there is no European consensus regarding same-sex marriage. At present no more than six out of forty-seven Convention States allow same-sex marriage.”

⁴⁹⁶ (Application no. 5410/03) 20 March 2007.