

## Divorce and Remarriage

Perhaps the closest analogue in thinking about pastoral accommodation in relation to same-sex unions can be found in relation to further marriage during the lifetime of a former spouse. Here again it is important to understand both the current situation and the recent history which led to it.

The 1888 rigorist stance against polygamy was also applied by that Lambeth Conference to divorce and further marriage while recognition was given to the Matthean exception: “the Christian Church cannot recognise divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life of the other party”. Lambeth Conferences in the first half of the twentieth century, faced with the rise in divorce, continued to reaffirm this and in 1920 introduced the language of indissolubility. The issue of accommodation was focused on whether or not an innocent party could still receive communion and in 1930 the Conference stated that “where an innocent person has remarried under civil sanction and desires to receive the Holy Communion, it recommends that the case should be referred for consideration to the bishop, subject to provincial regulations”.

The 1948 Conference gave detailed attention to the subject of divorce and remarriage and, in the light of decisions in the CofE in 1938 (see below) and post-war developments in the US Church enabling a form of annulment, became slightly more accommodating when it stated in Resolution 94 that “The Conference affirms that the marriage of one whose former partner is still living may not be celebrated according to the rites of the Church, *unless it has been established that there exists no marriage bond recognised by the Church*” (italics added). In the words of the encyclical this meant, “The Church will not marry anyone who has been previously married save where no marriage bond as recognized by the Church still exists”. While expressing pastoral concern the Report to the Conference was clear that “if the Church is to be true to its doctrine and to re-establish its discipline with regard to marriage, it must make it plain that its members who enter upon marriage not recognized by the Church forfeit by so doing their right of admission to Holy Communion” although it proposed and Resolution 96 accepted that episcopal discretion could be used to admit remarried divorcees. The 1958 Conference had a major report on marriage but this did not address divorce in detail other than to reaffirm the 1948 decisions. This would prove to be the last detailed discussion of divorce and further marriage at a Lambeth Conference with the matter subsequently left largely to provincial discernment.

The Church of England’s stance was set out in the 1957 Act of Convocation by Canterbury Province. This, in line with these wider Anglican statements and using language approved in 1938, stated that “According to God’s will, declared by our Lord, marriage is in its true principle a personal union...indissoluble save by death;...as a consequence, remarriage after divorce during the lifetime of a former partner always involves a departure from the principles of true marriage...”. It stated that this principle of lifelong obligation “is expressed in the plainest terms in the Marriage Service” and concluded that the practical consequences of this were that “the Church should not allow the use of that Service in the case of anyone who has a partner still living”. It then proceeded to require explicit written permission of the bishop before baptizing, confirming, or admitting to communion anyone who in civil law was in a marriage where a former partner was still living and to make clear that “No public Service shall be held for those who have contracted a civil marriage after divorce”. However, it also stated that “It is not held within the competence of the Convocations to lay down what private prayers the curate in the exercise of his pastoral Ministry may say with the persons concerned, or to issue regulations as to where or when these prayers shall be said”.

Over three decades from 1971 to 2002 this stance was the subject of several reports and much debate in the context of some clergy ignoring the church’s official stance and exercising their right as

registrars to marry anyone who could marry in civil law. This offers a potentially illuminating example of how the CofE has moved to greater pastoral accommodation especially given the areas of dispute have so much overlap. Each can be taken in turn

### *Admission to Baptism, Confirmation and Communion*

Following the recommendation of the 1978 Lichfield Report, in 1982 Synod removed the rule requiring the bishop's permission for remarried divorcees to be admitted to communion which was set out in the 1957 Act of Convocation.

### *Remarriage in Church*

The Root Report of 1971 unanimously concluded that it was compatible with reason, the Word of God in Scripture, and theological tradition to, in certain circumstances, allow marriage in church of divorced persons and – a sign that this was nevertheless a form of pastoral accommodation - proposed that penitential material should be introduced for such marriages. However, after three debates in Synod (Feb 72-Nov 74) this proposal was rejected. The Lichfield Report of 1978 expressed a majority view that divorced persons should with the permission of bishop be allowed to marry in church but this was then rejected by General Synod in July 1978 (221-215) although a narrow majority of dioceses expressed support for “remarriage in church in certain circumstances”.

In July 1981, in an important statement of principle relating remarriage to the church's teaching about permanence, it was agreed by Synod that while “marriage should always be undertaken as a lifelong commitment...there are circumstances in which a divorced person may be married in church during the lifetime of a former partner”. Synod asked Standing Committee to “prepare a report setting out a range of procedures for cases where it is appropriate for a divorced person to marry in church in a former partner's lifetime, for consideration by the Synod before any action is taken to repeal or modify the relevant existing regulations and resolutions of the Convocations”. When the Standing Committee's 1983 report ran into the ground the 1957 Convocation resolutions remained and decisions on who to remarry effectively remained the sole discretion of any incumbent willing to remarry despite the earlier Convocation resolutions, although bishops gave advice to their clergy and in 1985 a liturgy for prayer after a civil marriage was authorized (see below).

In 1994 the Synod returned to the question of using the marriage service during the lifetime of a former spouse and a motion inviting the bishops to “consider the present practice of marriage in church after divorce, and to report” was carried with considerable support. The bishops set up a working party under the Bishop of Winchester whose report, *Marriage in Church After Divorce*, finally appeared in 2000, preceded by a 1999 teaching document on marriage. This led to the House of Bishops issuing a report in 2002 with the same title ([GS 1449](#)) which included guidance for clergy on when to allow remarriage in church. [In July 2002](#) General Synod passed the following motion by 269 votes to 83:

“That this Synod

- a) Affirm in accordance with the doctrine of the Church of England as set out in Canon B30, that marriage should always be undertaken as a “solemn, public and life-long covenant between a man and a woman”;
- b) Recognise –

- i) That some marriages regrettably do fail and that the Church's care for couples in that situation should be of paramount importance; and
  - ii) That there are exceptional circumstances in which a divorced person may be married in church during the lifetime of a former spouse;
- c) Recognise that the decision as to whether or not to solemnise such a marriage in church after divorce rests with the minister (or officiating cleric if the minister is prepared to allow his/her church or chapel to be used for the marriage) and;
- d) Invite the House of Bishops to issue the advice contained in Annex 1 of GS 1449."

This again is clearly a form of pastoral accommodation. It makes clear that the Church of England has a doctrine of marriage and that this includes it being life-long so any marriage must be undertaken with that intention. It is also clear that the circumstances in which remarriage in church should happen are "exceptional" and the bishops' advice to clergy opens by clearly stating that such decisions are to be based on church teaching: "It is not...a light matter to solemnise a marriage in which one partner has a previous partner still living. It is important that the decision you take as to whether to solemnise such a marriage should be on the basis of clear principles that are consistent with the church's teaching". There is also no requirement for clergy to marry anyone who has a surviving spouse. Finally, in November 2002, all 3 Houses of Synod decided by large majorities to rescind the marriage resolutions of the Canterbury and York Convocations which had exhorted clergy not to use the marriage service in the case of anyone who had a former partner still living.

#### *Services of Prayer and Dedication after Civil Marriage*

In the long period of over two decades between Synod agreeing that "there are circumstances in which a divorced person may be married in church during the lifetime of a former partner" and a process for allowing this being agreed, another form of pastoral accommodation was agreed. In 1985, Synod, while maintaining the 1957 call not to use the marriage service, removed the 1957 prohibition on any service where someone had a surviving spouse and the bishops commended a Service of Prayer and Dedication after a Civil Marriage. This was, it should be noted, a direct reversal of the unanimous decision of the 1978 Lichfield Report which had stated "we are therefore of one mind in rejecting the suggestion of a public service of prayer and dedication. *We recommend that the present use of such services be brought to an end*" (para 232, italics original). Their discussion of this proposal is illuminating as a consideration of pastoral accommodation and given the current calls for some form of service, distinct from the marriage service, for same-sex couples.

The Lichfield Report noted that many clergy who adhered to the Convocation regulations forbidding remarriage recognized some such couples "wish for an opportunity to pray together and to dedicate themselves at the beginning of the new marriage". It recognized that "Private services of prayer and dedication frequently take place, either in the couple's home or in church, and the existence of such services is explicitly envisaged, if not formally sanctioned, by the Convocation regulations" (para 225). It acknowledged that a case had been put "that the provision of an officially-approved form of service of prayer and dedication would go far to meet the needs of some of those marrying after divorce while preserving the Church's distinctive witness to the permanence of marriage" (para 226). It then set out the case for this (para 227) in words worth quoting at length as, by replacing their scenario with that of a same-sex couple, they are very similar to the case for providing some form of service for those entering a same-sex union as a pastoral accommodation:

There are Christians who believe that it is right and godly for them to enter into a second marriage after the first has been legally dissolved and while the previous partner is still alive.

Their decision to remarry is their own, made after due reflection and prayer, and made in good conscience. They believe that God is calling them to this second marriage. They are willing to acknowledge that divorce and remarriage falls short of what God intends, and that in an age when many are rejecting the norm of life-long, exclusive monogamy it is prudent and right that the Church should witness to this norm by refusing to remarry anyone who has been divorced and whose partner is still living. Nevertheless, they seek for more than the priest's private prayer said with them either in church or at home. They seek

- (1) A means of grace to encourage them along the path which they have chosen;
- (2) An opportunity for sharing their discovered vocation with their friends and neighbours in humility, wonder and joy;
- (3) An acknowledgement of the mercies of God within the family of Christ and of the continuing fellowship and acceptance of one another in the Church.

The report noted that this "would not be a marriage and would contain no marriage vows" and "the service would express penitence for the past, thanksgiving and joy in the present and dedication for the future". While "in all such expression the Church would, as the Body of Christ, be associated" and any priest using it would be "acting in the name of the Church", the Church "would not be expressing its approval or its disapproval of the marriage" and providing this rather than a marriage service would mean the Church "retaining its witness against divorce and remarriage in general and in the abstract" (para 228). Arguments in its favour included that "it would meet a pastoral need which is difficult legally to meet at present" (para 229) but the report's authors saw "fundamental objections to the suggestion" which again are worth quoting in full:

We believe that there would be a continuing risk of confusion between the service proposed and the marriage service. It has already been noted that some clergy offer a form of service which closely resembles the marriage service (para 225). Even if the minister had carefully explained the difference between a service of dedication and a marriage service to the couple, it is likely that some of those taking part in the service would be unaware of the distinction. This risk would be increased if, as seems likely, elements of the traditional ceremonial associated with a wedding appeared in the service. The appearance of the bride in white, the ringing of bells, the wedding march – all these would convey a powerful though misleading message which the words of the service would be unable to correct (para 230).

In addition, while no minister could be compelled to take such a service, "in practice the clergy would come under considerable pressure to make the service available to all who asked for it, since a couple who were denied the use of an official service of the Church would regard this as a mark of disapproval or rejection. If however the service became widely used, there would be a risk of confusion between this service and the marriage service, and it would be difficult for the Church to dispel the impression that it had begun to remarry all comers" (para 231).

Despite these strong criticisms, in 1985, while formal remarriage in church lacked official sanction, the church accepted a service of prayer and dedication after a civil marriage which, although criticisms of it have continued, remains an authorized liturgy and one which some have seen as a potential model to adapt for use after a civil same-sex marriage

#### *Clergy and marriage after divorce*

It was not until 1990 that another recommendation of the Lichfield report led to a revision of the canons to allow the ordination of those with a surviving spouse or who marry someone with a surviving spouse. This – in another example of how to accomplish pastoral accommodation – was done by maintaining (slightly amended) canon C4 para 3 that "no person shall be admitted into holy

orders who has remarried and, the other party to that marriage being alive, has a former spouse still living; or who is married to a person who has been previously married and whose former spouse is still living” but making this subject to the new para 3A which set out a process by which exceptions to this could be permitted by the Archbishops. This remains the situation today so that although an ordained person can divorce and remarry, nobody can be ordained deacon or priest if they have a surviving spouse or are married to someone with a surviving spouse without formal scrutiny and the issuing of a faculty. In 2010 [the bishops issued a statement](#) which clarified the situation in relation to the episcopate based on [legal](#) and [theological](#) advice and there is now [a process used by those appointing bishops](#).

#### *Relevance to pastoral accommodation for same-sex unions*

It looks like the question of remarriage after divorce offers the best example to illuminate how we might offer pastoral accommodation in response to those in same-sex unions although a case can be made that in practice it has led to too easy an acceptance of divorce and further marriage and that the history of the church’s response shows it has been unable to maintain a witness to the lifelong nature of marriage. If that is so then clearly it is not an example to follow. However, even if a more positive assessment is made of this experiment, there are a number of important dis-similarities or concerns which highlight why we cannot simply take the responses here and allow for same-sex couples what we already allow for couples marrying after divorce.

First, of course, there are important biblical and theological distinctions, not least that Scripture does permit remarriage after divorce (certainly in the OT, most believe in some circumstances in the NT) but nowhere validates same-sex unions. In addition, many parts of the church have for centuries permitted further marriages after divorce.

Second, the ability to accommodate relied on offering an understanding of the church’s teaching about marriage’s permanence that was compatible with allowing further marriage during the lifetime of a former spouse and not a repudiation of that teaching. So when asked if there was a need to amend the canon defining marriage [the legal advice given](#) was unanimous that the “canon did not clearly prohibit further marriage but was ambiguous, being capable of being understood as allowing it” and that although the BCP service “makes it plain that marriage must be intended, when entered into, to be lifelong, it would not seem to preclude the possibility of further marriage where an earlier marriage has ended in divorce”. It is hard to see how a similar argument for compatibility with the church’s current teaching on marriage could be made in relation to accommodating a same-sex union or treating it as a marriage.

Third, before moving to authorizing liturgies or revising the canon relating to those being ordained the church had clearly agreed to this understanding of the church’s teaching and affirmed (in Synod in 1981) that there are circumstances in which a divorced person may be married in church during the lifetime of a former partner. This was not understood as a revising of the teaching or a change of doctrine but a clarification of it in relation to a particular situation. So, if this pattern of moving towards accommodation were to be followed for same-sex unions, there would presumably need to be a similar decision by Synod such as that although the church continued to hold that marriage was between a man and a woman there are circumstances in which two people of the same sex who are legally married or in a civil partnership may have their union celebrated in church.

Fourth, a liturgy for prayer and dedication was only approved once it had been agreed in principle that remarriage in church after divorce could be permitted and because agreeing a way to do this was proving difficult. The parallel would therefore be agreeing that same-sex marriage was, in principle,

acceptable but before moving to authorizing the solemnization of such marriages offering a form of service for those who had already entered a civil same-sex marriage.

Fifth, those who remarried after divorce were clearly entering the same pattern of life – a lifelong exclusive union of one man and one woman – as any couple who married. Thus the service of prayer and dedication after a civil ceremony included the following:

N and N , you have committed yourselves to each other in marriage,  
and your marriage is recognized by law.

The Church of Christ understands marriage to be,

in the will of God,

the union of a man and a woman,

for better, for worse,

for richer, for poorer,

in sickness and in health,

to love and to cherish,

till parted by death.

Is this your understanding of the covenant and promise that you have made?

Husband

and wife

It is.

It is impossible for a similar witness to the church's teaching of marriage to be used in a liturgy in relation to a same-sex marriage.

Sixth, the claim in relation to remarriage was never that all further marriages were legitimate and could receive the church's blessing. The debate related to how to distinguish between different examples of marriage after divorce based largely on the complex characteristics of the personal histories of each couple. Some remarriages could be pastorally accommodated, others (such as a relationship which had been the cause of the marriage breakdown) could not. This is different from the question of same-sex unions where the question would appear to be offering accommodation to all unions recognized in law and not to be specific to the couple.

Seventh, in distinguishing and determining whether or not to accommodate a particular instance of remarriage (both for services of blessing or marriage and for ordination) the principles for reaching a decision were found within the church's teaching on marriage and there was no expectation that accommodation would be offered without reference to this teaching. This again is difficult to apply in relation accommodation for same-sex unions without revising the teaching.

Eighth, there was a recognition that the context of the further marriage and the circumstances which led to it were a sign of sin and failure and the world's brokenness. There was an expectation that there would therefore be a recognition of a certain ambiguity about the situation and some evidence of regret and repentance for the past. Once again it is hard to see how this would be part of any pastoral accommodation for a same-sex union.