

## **Pastoral freedom to create a new culture within this doctrine and law**

*What is meant by “maximum freedom”?*

A key phrase in the report is “to permit maximum freedom” (22) but this is never unpacked. Given the complexities of what we mean by “freedom”, its tendency to be used in various ways, and its moral significance (which makes it a term few will oppose when inserted into a proposal) this is likely to create problems. The only other use of “freedom” in the whole document is as part of the theological rationale in the crucial paragraph 65:

That balance of a clear framework for doctrine and practice that does not prescribe more than is necessary, with trust in those who place themselves within it to make decisions with prayerful responsibility, applies to the life of the Church of England as a whole, and not just to clergy. Moreover, it is arguably a defining feature of Anglicanism from the later sixteenth century onwards and the way it has enabled space for legitimate diversity. To maintain an unambiguous position on doctrine in this matter while enabling a generous freedom for pastoral practice that does not directly and publicly undermine it is entirely consistent with our traditions and is a perfectly coherent approach to take.

Freedom here is differently qualified – “generous” not “maximum” – and focussed on “pastoral practice” (though it is never clear how far this extends). It is also clearly stated that this freedom must “not directly and publicly undermine” our “unambiguous position on doctrine” although those two qualifiers could be interpreted to permit indirect or private undermining.

It seems clear that this is where there is likely to be considerable difficulty in filling out this option in any detail. One person’s “legitimate diversity” and “freedom” in the writing, interpretation and application of guidance could well prove to be a libertine “undermining” of our “unambiguous position on doctrine” for others. Language prominent in earlier discussions and the focus of theological and political controversy – appeals to conscience and pastoral accommodation – is notably missing from this report’s proposals and rationale but the substantial questions those controversies are wrestling with have not gone away.

A crucial question will therefore be the clarity and precision of the guidance to be interpreted. Para 43 notes, “it will be important to set careful boundaries for the protection of clergy and others, and a balance will need to be struck between specifying what may not take place and offering advice about what may” (emphasis original). Clearly some fairly specific prohibitions could be given (eg in any prayers the couple must not be referred to as married, there must be no exchange of vows or rings, there can be a blessing on them as people but not a blessing on a way of life contrary to church teaching) but again there will be really difficult challenges here. Specifying what may not take place will be opposed by those who want greater freedom to act. It will be presented by opponents as perpetuating discrimination, inequality and exclusion and so reinforcing, even amplifying, the very tone and culture the bishops seek to change. On the other hand, whatever is not prohibited or whatever is explicitly permitted risks becoming increasingly expected even required of all clergy. This will place pressure on them to respond positively to requests (or to be viewed as unwelcome and unsupportive) even if they believe the permitted pastoral practice undermines church teaching.

The status and force of any new guidance also needs to be clear. In relation to the conduct of the clergy it is clearly stated that in some areas the guidance, such as that in the 2014 pastoral guidance on same sex marriage, has significant force: “the clergy open themselves to discipline if they contravene the guidance of the bishops on such matters. But...the kind of discipline to which clergy might be subject, follow from the agreed teaching of the Church and the nature of the guidance offered by the bishops” (50). However, it is later stated (64) in relation to the proposed new guidance that while “those who are given the responsibility and the authority of ordained ministry should have access to consistent, clear guidance regarding how to respond to the concrete situations in which they make choices about how to act”, nevertheless “they will make judgments in particular circumstances that cannot simply be ‘read off’ from a set of instructions”. Both statements are true but this illustrates the wide scope and varied forms of “guidance” and the need for clarity as to where failure to follow it becomes a disciplinary offence and the possible forms of such discipline. The looser form of guidance which gives considerable freedom of interpretation particularly requires trust as is recognised: “there needs to be a fundamental trust in the clergy to know and be faithful to the teaching of the Church, in their own lives and in their ministry to others” (64).

#### *What is meant by staying within the law?*

It is clear that a key factor in putting the teaching into pastoral practice, and in the bishops proposing this framework as the best way forward, is the church’s legal framework. The legal advice in the annexe, though only “an extract”, is therefore particularly important and illuminating. It makes clear that, given the rejection of commended or authorised services and the reaffirmation of the church’s doctrine, clergy cannot lawfully use a form of service which

- “either explicitly or implicitly treated or recognised the civil marriage of two persons of the same sex as equivalent to holy matrimony” (legal advice, 7) or
- “implicitly or explicitly” conveyed “the idea that the Church was sanctioning or condoning a sexual relationship between” two people whose non-marital relationship was being celebrated (legal advice, 8.c.ii and 9).

Indeed the advice is clear (in its para 9) that without a change in teaching – which, having seen this advice, the bishops have agreed will not happen – a service which did the latter would not meet the canonical requirement that a service must “edify the people” (a fundamental requirement of Canon B 1.2). It “would probably also be contrary to, or indicative of a departure from, the doctrine of the Church of England in an essential matter”.

This latter legal judgment is very important. It places a very clear legal limit (based on the wording of canon B 5.3) to the sort of services the Pilling Report was proposing to give clergy discretion to use (presumably under canon B 5.2). The judgment also, significantly, does so on the basis that not only does the church have a teaching but that this teaching is part of “the doctrine of the Church of England in an essential matter”, which is basically equivalent to saying that this teaching is not a matter of *adiaphora*.

While some may wish to argue that the legal advice can be stretched to allow something close to the Pilling proposal this is very difficult to see being possible (particularly for a same-sex married couple unless the bishops’ teaching document follows option 13.d in the legal advice). This is because any

guidance in relation to public services is going to have to ensure that “what happens in our services consistently reflects” the teaching (61) about marriage and sexual relationships even if it also seeks to affirm the truth “that stable, faithful, homosexual relationships can ‘embody crucial social virtues’ of fidelity and mutuality” (63). In addition, as that paragraph notes, there are also “stable, faithful heterosexual relationships other than marriage”. Given that there are, statistically, many more examples of these than of stable, faithful homosexual relationships, if a public service is to be permitted for same-sex couples it is hard to see why it cannot also be extended to cohabiting heterosexual couples whose non-marital relationship, though contrary to church teaching, embodies virtues.

It seems that the pastoral guidance will apply primarily to helping clergy “shape” private and informal prayers and the offering of pastoral counsel but it will also have to address the legitimacy and constraints on public services drawn up by the parish priest given the desire of many clergy to offer such services. In both the public and private sphere a particular concern must be that in defining and permitting “maximum freedom” within the law the bishops will also have to consider how they will respond to those who cannot accept their guidance. These will include both those who, in conscience, choose to exercise even greater freedom and those who, in conscience, cannot act in all the ways that the bishops determine the law and doctrine permit (or even require, for example, in relation to sacramental ministry) in terms of the proper response to those living outside the Church’s and Scripture’s teaching.

#### *What about the clergy?*

The element of continued uncertainty as to the detail is also true concerning the third area of further work: expectations on and questions to the clergy and ordinands. The report is here again broadly in line with Pilling (“Whether someone is married, single or in a civil partnership should have no bearing on the nature of the assurances sought from them that they intend to order their lives consistently with the teaching of the Church on sexual conduct. Intrusive questioning should be avoided”, Recommendation 18). It seems clear that any clergy person living in a sexual relationship outside heterosexual marriage is not fulfilling their ordination vows. It is also clear that contravening the guidance of the bishops in this area makes the clergy liable to discipline.

However, despite confusion in some responses to the report due to inaccurate leaks, there is no sign that the bishops will embrace “don’t ask, don’t tell”. They are also rightly applying the same procedure to all as at present applies to those seeking ordination (although no reference is made to the specific reasons given by the bishops in 2005 to justify particularly scrutinising those who enter civil partnerships given their public and quasi-marital character).

What remains unclear is what will be asked and what clergy and ordinands will be expected to tell. The form to which the bishops appear to be inclining (54) is framed in terms of people’s understanding – of Church teaching on sexual relations and the principles of clerical obedience to that teaching – rather than questions directly about their conduct or promises to put that understanding into practice. Even though there is clearly a rejection of intrusively questioning clergy, it seems clear that any clergy who are known to be living in contradiction to church teaching will, as now, remain liable to discipline.

In drawing up guidance it might also be good for bishops to consider their particular responsibilities as pastors of the clergy. Most bishops have some idea and experience in supporting clergy in marriages under strain or struggling with singleness. It is far less clear how many bishops are equipped to encourage and enable gay and lesbian clergy to live in accordance with the church's teaching and in particular with the difficulties of doing so when in a committed, loving, but non-sexual relationship. What if, as well as asking everyone, including openly lesbian and gay, including partnered, clergy about the church's teaching and their clerical obedience to it, bishops also asked if there were any ways in which they could help and support gay and lesbian clergy to live within that discipline and were equipped to provide such help and support?

#### *What about lay people?*

Here there are two areas where the report, which assumes the greater freedom of conscience granted to laity in *Issues* in 1992 and is working to welcome all people, remains silent. First, there is the status of lay people licensed to minister and what is expected of them. This still remains unaddressed as there is no questioning of the flawed clergy/lay distinction in *Issues*. However, the logic appealed to from Scripture and tradition to justify a distinction between clergy and laity should really see those lay people who minister with the bishops' licence closer to the clergy side of the distinction. This is because readers promise (Canon E6) "to conduct myself as becomes a worker for Christ, for the good of his Church, and for the spiritual welfare of all people". Second, while the canons are not binding on the laity, the canon which imposes certain obligations on the clergy does so because they need to be "wholesome examples and patterns to the flock of Christ" (Canon C 26.2). It follows from this that it makes no sense to forbid certain behaviour on the part of the clergy – because it would offer an unwholesome example and pattern - while giving the impression of encouraging or celebrating the same behaviour among the laity. This highlights the importance of internal consistency in how "maximum freedom" is interpreted and applied in relation to both clergy and laity and the impossibility of too sharp a contrast between the church's guidance in relation to clergy and laity.

#### *What about pastoral accommodation?*

Although the language of "pastoral accommodation", so prominent in Pilling and Shared Conversation materials, is not used anywhere in the report it is important to consider how the option favoured by the bishops relates to genuine pastoral accommodation. There is the danger that the confusion which appeared in the Good Disagreement materials between "pastoral accommodation" and respect for conscience remains within this report and its stress on "maximum freedom". The principles of pastoral accommodation (which I discussed in some detail [here](#) and in papers linked to that paper) need to be carefully and consistently brought to bear in the two guidance documents the bishops are planning to prepare and in the related but wider work of creating a culture of welcome and support. In particular, the principle needs to be applied so that when pastoral practice appears paradoxical in relation to teaching this is not justified simply on the basis of "it's a case of interpreting the law to allow maximum freedom" or "we need to change the culture". Rather, the rationale has to be "this pastoral approach recognises the complexities and messiness of human lives as it welcomes all and by encouraging all people into greater conformity to that teaching it shows it is not undermining the life-giving teaching the church has received and offers to all".