

## LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD

### HOLY COMMUNION: ADMINISTRATION OF THE SACRAMENT

1. There are two aspects to be considered in relation to the administration of the Sacrament of Holy Communion in the Church of England in the light of both statute and general canon law. These are (i) the general rule, and (ii) the exceptions to that general rule in cases of ‘necessity’.
2. **General rule:** Section 8 of the Sacrament Act 1547 is still in force and is mandatory. This states:

“ ... the said most blessed Sacrament be hereafter ... commonly delivered and ministered unto the people within the Church of England ... under both kinds, that is to say, of bread and wine except necessity otherwise require ... ” (spelling modernised: emphasis supplied)

(Here the word ‘commonly’ is used to mean ‘in a way common to all’ or ‘universally’, as is shown by its context: see the Oxford English Dictionary.)

3. Various questions arise in relation to this statutory requirement to deliver and minister the sacrament in both kinds:

(a) Chalice:

(i) It is in accordance with the Book of Common Prayer that the norm for the giving of the ‘cup’ should mean the use of a single chalice although it has long been accepted that where there are large numbers of people present an additional minister or ministers may ‘deliver the cup’ by way of consecrated additional chalices. Lyndwood recognised in his *Provinciale Angliae* (2<sup>nd</sup> ed.) at 252 that more than one chalice might be provided where required: “*si Ecclesia pluribus indigeat*”. (According to Lewis & Short *A Latin Dictionary* ‘indigeo’ means: “*to need, want, to stand in need or want of anything.*” This is, therefore, not an example of an appeal to the doctrine of legal necessity (as to which see below.)) The same view is repeated in Phillimore *Ecclesiastical Law* (2nd ed.) at 726. Indeed, the rubric during the Prayer of Consecration in the *Book of Common Prayer* 1662 seems specifically to recognise the possible use of more than one cup or chalice:

“And here to lay his hand upon every vessel (be it chalice or Flagon) in which there is any Wine to be consecrated”.

It follows that the use of more than one chalice with a number of communicants receiving from each chalice, is lawful if the number of communicants is sufficiently large to justify it. A chalice may also be replenished from a flagon in which wine has been consecrated.

(ii) The rubric in the Book of Common Prayer at the ministration of the wine states:

“And the Minister that delivereth the Cup to any one shall say ...”.

The use of the definite article in relation to the Cup suggests that individual cups are not envisaged and this is confirmed by the rubric concerning further consecration which states:

“If the consecrated ... Wine be all spent before all have communicated, the Priest is to consecrate more ....”

It is, therefore, clear that the same cup/chalice is to be shared by a number of communicants. Moreover, Canon F 3 of the *Revised Canons Ecclesiastical* states:

“In every church and chapel there shall be provided, for the celebration of the Holy Communion, a chalice for the wine and a paten or other vessel for the bread, of gold, silver, or other suitable metal. There shall also be provided a basin for the reception of the alms and other devotions of the people, and a convenient cruet or flagon for bringing the wine to the communion table.”

This Canon merely states the bare minimum of that which is to be supplied and therefore is not entirely definitive. However, it is most likely that, if individual cups had been envisaged, it would have specifically referred to them.

(iii) It follows that it is contrary to law for individual cups to be used for each communicant, or for an individual communicant, even if such cups were to be individually consecrated by the president and delivered individually by the minister (including a lay person duly authorised by the bishop under Canon B 12, para. 3) to the communicant.

(iv) In all these circumstances it is the opinion of the Legal Advisory Commission that Canon B 5, para 1, which permits the minister in his discretion to “make and use variations which are not of substantial importance” in any authorised form of service, does not allow the minister to authorise the use of individual cups.

(b) Bread:

(i) In the first prayer book of Edward VI the rubrics stated:

“For avoiding of all matters and occasion of dissension, it is meet that the bread prepared for the communion be made, through all this realm, after one sort and fashion, that is to say, unleavened and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be aptly divided in divers pieces; and every one shall be divided in two pieces at the least, or more, by the discretion of the minister, and so distributed. And men must not think less to be received in part than in the whole, but in each of them the whole body of our Saviour Jesus Christ.”

It follows that the possibility of there being more than one baked piece of bread was clearly in mind. However, the rubric at the end of the Holy Communion service in the *Book of Common Prayer* 1662 does not advert to this possibility and merely states:

“And to take away all occasion of dissension, and superstition, which any person hath or might have concerning the Bread and Wine, it shall suffice that the Bread be such as is usual to be eaten; but the best and purest Wheat Bread that conveniently may be gotten.”

Nonetheless, such a possibility does seem to have been embraced by Canon 20 of the *Revised Canons Ecclesiastical* 1603 (now repealed) when it spoke of “a sufficient quantity”:

“The Churchwardens of every parish, against the time of every Communion, shall, at the charge of the parish, with the advice and direction of the Minister, provide a sufficient quantity of fine white Bread, and of good and wholesome

Wine, for the number of Communicants that shall from time to time receive there: which Wine we require to be brought to the Communion-table in a clean and sweet standing pot or stoop of pewter, if not of purer metal.”

Canon 20 was the subject of a number of disciplinary cases. In the case of *Elphinstone v Purchas* (1870) LR 3 A & E 66 Sir Robert Phillimore understood the word “wafer” to refer to “bread in the shape of a wafer” (see page 102) and held that the use of such a wafer was legal. On appeal, however, under the name of *Hebbert v Purchas* (but confusingly also sometimes called *Elphinstone v Purchas*) (1870) LR 3 PC 605 the Judicial Committee of the Privy Council understood the word “wafer” to refer to its composition rather than to its form and held that the use of such wafers (not being made from “pure wheat bread”) was illegal (see page 656). In *Clifton v Ridsdale* (1876) 1 PD 316 the matter was not argued (see page 339). However, on appeal in *Clifton v Ridsdale* (1876) 2 PD 276 the Privy Council accepted the legality of the use of bread in the form of a wafer (see page 346) although at the same time stating that in their view the word “wafer” was usually employed to denote composition (see page 346). In reliance on these cases Phillimore *Ecclesiastical Law* (2<sup>nd</sup> ed., 1895) at 771-772 regarded the use of wafers as legal in so far as their form is concerned, whereas *Cripps on Church and Clergy* (8<sup>th</sup> ed., 1937) at 528 suggested that wafers are illegal as to their shape. However, as is clear from his reference note, Cripps ignored both the fact that in *Clifton v Ridsdale* at first instance the matter was reserved for argument and that on appeal the contrary argument was upheld.

(ii) Therefore the use of wafers instead of loaves is lawful. Indeed, this seems to be accepted by the reference in the Revised Canons Ecclesiastical, Canon B 17, para 3, to the provision of a “convenient box”:

“The bread shall be brought to the communion table in a paten or convenient box and the wine in a convenient cruet or flagon.”

4. The exceptional practice of intinction, as an alternative to the normal distribution of bread and wine, was recognised in a statement on *Hygiene and the Chalice* issued by the Archbishops of Canterbury and York in June 1969. In recent times the practice has been used in the Anglican Communion, especially in response to fears about the spread of HIV. Indeed, in (at least) male prisons intinction is now standard practice and intinction by the president, rather than by the communicant, is recommended; this, too, seems to be a response to the fear of catching highly infectious diseases. These examples of intinction are legal if the intinction is from wine consecrated in a single cup or chalice.
5. The same is true in relation to intinction in the circumstances of a pandemic such as may be caused by swine flu’, although in this case it should also be borne in mind that, dependent on medical advice, the contagion may also be spread by intinction itself. (Indeed this may also be true during the exchange of the Peace or in general greeting of the congregation.)
6. **Necessity:** The doctrine of necessity is recognised both within canon law (see, for example, the *Dictionnaire de Droit Canonique* (under the word *necessité*) and *The Oxford History of the Laws of England*, volume I, *passim*) and within English common law (see, for example, Granville Williams *Textbook of Criminal Law* (2<sup>nd</sup> ed, 1983) at 597 *et seq.*). Without defining them section 8 of the Sacrament Act 1547 explicitly recognises that there may be circumstances when the requirement for delivery of both bread and wine need not be complied with. Delivery in one or other kind alone is lawful provided that a true necessity can in law be demonstrated. In the first instance, the responsibility for deciding whether such a ‘necessity’ exists rests within the discretion of the president but s/he should not deviate from the general law except in a case of genuine necessity. Relevant examples are

where an alcoholic is unable to drink the wine however small the quantity, or where no gluten free wafer is available for a communicant suffering from coeliac disease. That such instances of necessity may occur is recognised in *Common Worship: Pastoral Services* where the note headed *Reception of the Consecrated Bread and Wine during a Celebration of Holy Communion at Home or in Hospital* (see page 73) states:

“Communion should normally be received in both kinds separately, but where necessary may be received in one kind whether of bread or, where the communicant cannot receive solid food, wine.”

Legal necessity, however, does not cover such eventualities as where no or insufficient wine or bread has been provided for the celebration of the Holy Communion: see *Beddoe v Hawkes* (1888) 4 TLR 315.

7. ‘Necessity’ in the legal sense is not confined to individual cases and can also cover large numbers of communicants if there is a reasonable fear of contagion from use of a common cup or chalice. In such instances the president should take account of any advice received from the diocesan bishop (see Canon C 18) and in turn from the relevant archbishop (see Canon C 17).
8. However, the doctrine of necessity cannot be appealed to in order to justify the use of individual cups even in circumstances where there is a fear of contagion from the use of a common cup. As explained above, the Sacrament Act 1547 makes provision for cases where a necessity not to deliver a common cup arises: in such a case the normal requirement that the sacrament be delivered in both kinds is disapplied by statute. Even if a shared cup cannot be used for medical reasons, the use of individual cups remains contrary to law and there is no legal basis for a minister to make alternative provision of his or her own that is itself contrary to law. In such cases reception should be in one kind only.
9. **The Communicant and Celebrant:** It is the duty of all lay persons who have been confirmed to receive Holy Communion regularly (see Canon B 15). However, in the first instance it is the duty of the president to decide whether a legal necessity in relation to reception in only one kind has arisen. This decision must, of course, be taken in the light of any appropriate advice. However, an individual is unlikely to be criticised if in the circumstances of a pandemic s/he decides to receive in only one kind in spite of the contrary decision of the minister.
10. Of course, as a matter both of neighbourliness and morality, if a person knows he or she is suffering, or may be suffering, from a contagious disease, s/he would not come forward to receive the Sacrament in circumstances where others might be infected.
11. A priest is under a canonical duty to celebrate, or be present at, Holy Communion every Sunday and major Feast Days (see Canon C 26). The priest who is celebrating must under the general law receive the Sacrament: see the rubric following the Prayer of Consecration in the Book of Common Prayer and *Common Worship: Services and Prayers for the Church of England* at 225. Nonetheless, if there is a real danger that the priest may pass on a contagious disease from which s/he is, or may be, suffering to other communicants, an appeal to the doctrine of necessity would permit the priest to receive the Sacrament in one kind, or not at all, in appropriate circumstances. Furthermore, if a priest is aware that s/he is or may be suffering from a disease which can be passed by hand contact then the appropriate course would be not to administer the Sacrament on the occasion in question.