

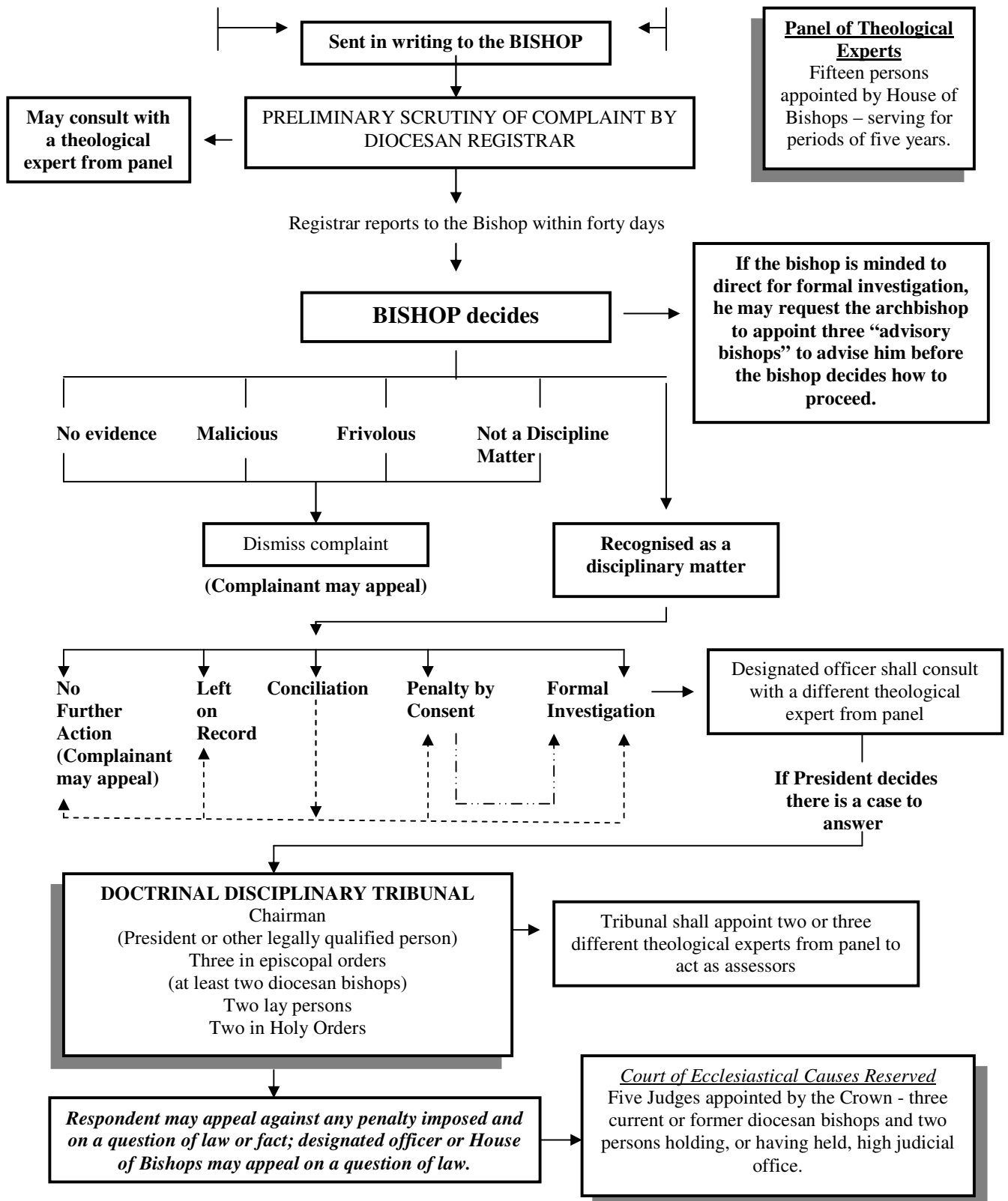
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**COMPLAINT against a deacon or priest**

A CHURCHWARDEN OR PERSON  
NOMINATED BY PCC WITH PROPER  
INTEREST, 2/3<sup>RDS</sup> OF LAY PCC MEMBERS  
PRESENT AND VOTING IN SUPPORT

A PERSON ACTING ON BEHALF OF  
TEN PERCENT OF HOUSE OF CLERGY  
AND TEN PERCENT OF HOUSE OF LAITY  
OF DIOCESAN SYNOD



**Panel of Theological Experts**

Fifteen persons appointed by House of Bishops – serving for periods of five years.

May consult with a theological expert from panel

If the bishop is minded to direct for formal investigation, he may request the archbishop to appoint three “advisory bishops” to advise him before the bishop decides how to proceed.

- No evidence
- Malicious
- Frivolous
- Not a Discipline Matter

Dismiss complaint  
(Complainant may appeal)

Recognised as a disciplinary matter

- No Further Action  
(Complainant may appeal)
- Left on Record
- Conciliation
- Penalty by Consent
- Formal Investigation

Designated officer shall consult with a different theological expert from panel

If President decides there is a case to answer

**DOCTRINAL DISCIPLINARY TRIBUNAL**  
Chairman  
(President or other legally qualified person)  
Three in episcopal orders  
(at least two diocesan bishops)  
Two lay persons  
Two in Holy Orders

Tribunal shall appoint two or three different theological experts from panel to act as assessors

*Respondent may appeal against any penalty imposed and on a question of law or fact; designated officer or House of Bishops may appeal on a question of law.*

*Court of Ecclesiastical Causes Reserved*  
Five Judges appointed by the Crown - three current or former diocesan bishops and two persons holding, or having held, high judicial office.

## PREFACE

It is now more than forty years since the Ecclesiastical Jurisdiction Measure 1963 passed into law. The revision of the disciplinary procedures for clergy in matters of 'conduct' has now been agreed. The present report sets out how disciplinary procedures in matters of 'doctrine, ritual and ceremonial' have been handled in the past, and makes proposals for a new Measure for the adjudication of such matters. Where possible the proposals follow those that have been agreed for cases relating to 'conduct', but with appropriate modifications to take account of the particular issues which arise in relation to 'doctrine, ritual and ceremonial'.

Throughout its work, the Group has kept in mind the limited role which formal ecclesiastical courts and tribunals should play in maintaining doctrinal and liturgical standards in the Church. It is much better that controversies are addressed through theological discussion and debate, sympathetic enquiry and persuasion. Controversial formulations of Christian doctrine often embrace both elements of truth and falsehood, which require a patient and careful process of assessment. The delineation of truth and falsehood in theological statements often calls for subtle scholarly and pastoral discernment, rather than stark categories of affirmation and denial. Indeed, unsound doctrine which makes use of orthodox phrases but robs them of their true meaning may be more dangerous than verbal denials of accepted doctrine.

Nevertheless, at the end of the day a place remains for a formal process of assessment and adjudication. The Ecclesiastical Jurisdiction Measure 1963 no longer commands the necessary confidence of the Church, for reasons which are set out in our report. If it is judged necessary to address a given controversy through a formal judicial process, it is essential that such a process should command the confidence of the Church, and satisfy the proper requirements of modern judicial process. The absence of a workable procedure has arguably encouraged various types of protest, and fuelled public controversy, in a way which has not been helpful to the Church's mission.

In the past forty years, no case involving doctrine, ritual and ceremonial has been brought, other than in a faculty case. In offering this report to the Church we have no desire to see extensive use made of the proposed tribunals. Perhaps the same experience awaits the next forty years, but we offer this report in the belief that the revised procedures which we propose will contribute towards a healthy and responsible attitude to matters of doctrine and worship in the Church.

**+Peter Cestr**

## SUMMARY OF PRINCIPAL RECOMMENDATIONS

The Group's principal recommendations can be summarised as follows:

- (a) That reliance should no longer be placed upon the procedures contained in the Ecclesiastical Jurisdiction Measure 1963 for dealing with complaints against clergy relating to matters of doctrine, ritual and ceremonial and that new procedures should accordingly be put in place (paragraph 55).
- (b) That the new procedures should:
  - (i) correspond to those contained in the Clergy Discipline Measure 2003 save where adaptations are required to reflect the fact that the complaint relates to a matter of doctrine, ritual or ceremonial (paragraph 53);
  - (ii) take the form for which provision is made in the draft Measure in Appendix III to this Report for illustrative purposes only (paragraph 53) and should in particular:
    - make provision for dealing with complaints relating to matters of ritual and ceremonial as well as to matters of doctrine (paragraph 58);
    - establish a new ecclesiastical 'offence' relating to the promotion of doctrine incompatible with the doctrine of the Church of England (paragraph 60).
- (c) That, where it remains possible for clergy to make the Declaration of Assent otherwise than in public, wherever practically possible it should in practice be made publicly before a congregation in the context of a public act of worship (paragraph 107).
- (d) That greater prominence be given to education in the requirements of the Canons and that (subject to funding being made available for the purpose) a copy of the Canons be provided to each new student on entering ministerial training (paragraph 108).

## HOUSE OF BISHOPS

### REPORT OF THE CLERGY DISCIPLINE (DOCTRINE) GROUP

- Chairman:** The Bishop of Chester (the Right Reverend Dr Peter Forster)+
- Members:** The Bishop of Gibraltar in Europe (the Right Reverend Dr Geoffrey Rowell)\*  
The Bishop of Swindon (the Right Reverend Michael Doe)#  
  
The Archdeacon of Surrey (the Venerable Robert Reiss)  
The Reverend Prebendary Gillian Sumner (Hereford)^  
The Reverend Canon Frank Dexter (Newcastle)  
  
Mrs Margaret Brown (Chichester)  
Canon Peter Bruinvels (Guildford)  
Mrs Christine McMullen (Derby)
- Consultants:** The Right Reverend Alec Graham (formerly Bishop of Newcastle)  
The Reverend Canon Professor Anthony Thiselton

- + The Bishop of Chester was appointed Chairman in January 2002 in succession to the then Bishop of Birmingham (the Right Reverend Mark Santer).
- \* The then Bishop of Basingstoke (the Right Reverend Dr Geoffrey Rowell) was appointed in March 2000 to replace the late Bishop of Ebbsfleet (the Right Reverend Michael Houghton).
- # Appointed a member in January 2002 to replace the then Bishop of Birmingham.
- ^ Appointed a member in October 2002 to replace the late Reverend Canon Ray Adams (Worcester) who died in August 2002.

### BACKGROUND

1. When the *Under Authority* Report<sup>1</sup> was debated by the General Synod in November 1996, an amendment was carried to the effect that clergy discipline in relation to matters of doctrine, ritual and ceremonial should not be included in a new Measure but should be left to be dealt with under the existing procedures of the Ecclesiastical Jurisdiction Measure 1963 (“the 1963 Measure”). The Clergy Discipline Measure (“the CDM”), as given Final Approval by the Synod in November 2000, reflects that decision.

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<sup>1</sup> GS 1217

2. In June 1999, prior to the General Approval debate on the CDM<sup>2</sup>, the House of Bishops reported to the Synod<sup>3</sup> that it shared the view of the Implementation Group (which had worked since 1996 on bringing what became the CDM to the Synod), that the procedures for dealing with doctrinal offences in the 1963 Measure were unsatisfactory, being widely regarded as inflexible and slow moving.
3. However, the House was of the view that further investigation into the history of doctrinal discipline and, in particular, the reasoning that led to the procedures in the 1963 Measure being adopted, was needed before proposals for its amendment were brought to the House and subsequently to the Synod. Furthermore, the House was anxious that this process should not delay the progress of the CDM in introducing new procedures for non-doctrinal cases.
4. Consequently, the House considered that (given its leading role in relation to doctrinal matters) bishops, in discussion with clergy and lay representatives, should examine the way forward in relation to alleged offences involving doctrine, ritual and ceremonial. In the meantime, the House asked members of Synod not to hold up the passage of the CDM by proposing amendments relating to doctrine, ritual and ceremonial.
5. The Group appointed to carry out this work was set up in the autumn of 1999 by the Appointments Committee and consisted of three members from each House. The first meeting of the Group was held in February 2000 and it has met on fifteen subsequent occasions.
6. The terms of reference for the Group were expressed to be:
  - (a) to examine the history of disciplinary proceedings in the Church on matters of doctrine, ritual and ceremonial and, specifically, the working of the provisions relating to these matters in the 1963 Measure;
  - (b) to seek the views of members of the General Synod and other individuals and bodies (as the Group considers appropriate) on these matters; and
  - (c) in the light of the new procedures in the CDM, now before Synod, to recommend (if thought appropriate by the Group) new procedures for dealing with disciplinary proceedings in cases involving doctrine, ritual and ceremonial.

### **Initial work of the Group**

7. The Group started its work by undertaking two consultation exercises. The first took place in early 2000, when a wide range of interested parties were asked to send in their views on any matters within the Group's terms of reference. Responses were received from Synod members, diocesan chancellors and

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<sup>2</sup> Then named the draft Ecclesiastical Jurisdiction (Discipline) Measure

<sup>3</sup> GS Misc. 570

registrars, academics, judges of the Court of Ecclesiastical Causes Reserved, other Churches of the Anglican Communion and in the British Isles and others with an interest in the matter. A table of those who made submissions is contained in Appendix I. A further consultation with Synod members took place in early 2001, in order to provide new members with the opportunity to make submissions. A table of those who made submissions in the second consultation is contained in Appendix II.

8. The Group also considered a number of papers that were either submitted to it as part of its consultation exercises or commissioned by the Group to address particular issues. These included: “*What can and ought the law to deliver?*” by Chancellor Mark Hill, “*Bishops and Doctrine*” by the Right Reverend Alec Graham, “*The Historical Background*” by the Right Reverend Dr Geoffrey Rowell, and “*Ritual and Ceremonial*” by the Reverend Chancellor Rupert Bursell QC. In addition, Chancellors Hill and Bursell came to separate meetings of the Group and spoke to their papers and the Reverend Canon John Rees (Joint Provincial Registrar of Canterbury) attended a meeting of the Group at which the application of certain provisions of the draft Measure were assessed in the context of a number of hypothetical case studies. The Group also made wide use of previously published reports of the Doctrine Commission and other published material as well as the Judgment of the Court of Ecclesiastical Causes Reserved in the case of *Re St Stephen’s, Walbrook*.

### **The Group’s report**

9. The Group made an interim report to the House of Bishops in January 2003, having first consulted the Theological Group of the House of Bishops.
10. Having raised a number of issues on the interim report for the Group to consider, the House agreed to await the Group’s final report before deciding whether to endorse its proposals.
11. The Group presented this Report, as its final report, to the House in January 2004. The House endorsed the Group’s proposals and agreed that this Report should be debated by the General Synod.

### **Progress of the Clergy Discipline Measure**

12. After the House had considered the Group’s interim report the CDM received the Royal Assent. The Group noted that the Ecclesiastical Committee raised no fundamental points of substance on the Measure, which was found expedient by the Committee by a majority of ten to two. The Measure was subsequently approved by both Houses of Parliament without further points of substance being raised. The Group agreed therefore that no amendment to the draft Measure being prepared by the Group was required in response to parliamentary scrutiny of the CDM.

13. The Group noted as being of particular relevance to its proposals for a draft Measure broadly corresponding to the CDM the last sentence of paragraph 10 of the Ecclesiastical Committee's report: "*In the most serious cases, it [the civil standard of proof] should be virtually indistinguishable from the criminal standard and applied as such*".
14. At the Final Approval stage of the CDM in November 2000, the Synod was provided with a Financial Statement (GS 1347C) on the likely costs arising out of the operation of the CDM. In order to assess the cost of the disciplinary proceedings it is recommending, the Group has highlighted the need for the provisional figures in this Statement to be replaced by the actual costs of operating the CDM, or more accurate estimates, as they become known. The Group is reassured to know that the Clergy Discipline Commission will be closely monitoring the operating costs of the CDM and will be reporting these costs to the House and the Synod in its annual reports.

### **GUIDING PRINCIPLES**

15. In the course of its meetings, the Group established the following general principles in relation to Christian doctrine, where it is to be found and possible disciplinary procedures:

- (a) Canon A5 states that

*"The Doctrine of the Church of England is grounded in the Holy Scriptures, and in such teachings of the ancient Fathers and Councils of the Church as are agreeable to the said Scriptures.*

*In particular such doctrine is to be found in the Thirty-nine Articles of Religion, the Book of Common Prayer, and the Ordinal."*

Canon A5 is used to define the doctrine of the Church of England by section 5(1) of the Church of England (Worship and Doctrine) Measure 1974. This is amplified in the Preface to the Declaration of Assent, to which all clergy, readers and licensed lay workers of the Church of England must give public assent before being licensed or instituted to any office. This Preface was last revised in 1975. It is set out in Canon C15:

*"The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim*



*afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-Nine Articles of Religion, the Book of Common Prayer and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make, will you affirm your loyalty to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making Him known to those in your care?"*

The minister declares his or her assent to this declaration in the following form:

*"I, N, do so affirm, and accordingly declare my belief in the faith which is revealed in the holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness ...";*

- (b) the balance which is reflected in the overall doctrinal position of the Church needed to be recognised: not all articles of doctrine were necessarily of equal importance, but all had a part in the integrated whole and should be respected as such;
- (c) full account had to be taken of the implications of the Worship and Doctrine Measure 1974 and of the central position of the Declaration of Assent (Canon C15) in declaring:
  - (i) the doctrine of the Church;
  - (ii) the need for an affirmation of loyalty to that doctrine on the part of those entering into and in holy orders and licensed lay ministry;
  - (iii) the calling to those in holy orders to proclaim afresh the received faith of the Church to each generation;
  - (iv) the obligation in public prayer and the administration of the sacraments to use only the forms of service which are authorised or allowed by Canon;
- (d) there needed to be sufficient freedom to allow the understanding of Christian doctrine to 'develop' while maintaining the cohesion of the Church around shared doctrinal beliefs;
- (e) relations with other Churches, and particularly the resolutions of the Lambeth Conference, and ecumenical agreements, had the potential to bring about further explications of doctrine;

- (f) the harm which may result to the wider Church from those who make statements or act in a manner inconsistent with the doctrine of the Church needed always to be borne in mind;
- (g) exploration and clarification (as opposed to denial) of belief should be allowed as a liberating process, although the context in which it took place was important;
- (h) liturgy expressed a common faith, so issues of ritual and ceremonial could not be separated from doctrinal issues;
- (i) the public position of those in the ordained ministry as office holders meant that it was important that what was said in public reflected the doctrine of the Church;
- (j) the constraints on publicly exploring doctrinal questions were greater for bishops and dignitaries than for other clergy;
- (k) new legislative provisions to deal with disciplinary cases involving issues of doctrine, ritual and ceremonial were needed which were an improvement on those in the 1963 Measure;
- (l) the procedures adopted for doctrinal discipline cases should parallel those in the CDM, with adaptations in particular areas as appropriate, as it would be undesirable to have a disciplinary system for doctrinal discipline that was radically different from that for non-doctrinal discipline cases;
- (m) in dealing with clergy accused of doctrinal misconduct, any new procedures would need to reflect a proper balance between the need for doctrinal discipline and proper safeguards for the clergy;
- (n) the balance between the two roles of the bishop (as pastor as well as the focus of discipline) had been identified as a key element in the CDM and would need to be reflected in new doctrinal disciplinary procedures;
- (o) the respective roles of bishops and lawyers in deciding on whether there was a case to answer was crucial;
- (p) the adjudication on a complaint to decide whether there was a case of alleged doctrinal misconduct to be answered could only be made by a bishop (subject to a right of appeal against the bishop's decision being available to the complainant), but the bishop should have the option of consulting with episcopal colleagues before making his decision;

- (q) as was currently the case under the 1963 Measure, the interest of the secular courts in any new procedure should continue to be that ‘due process’ had been followed (including that the rights protected by the Human Rights Act had been properly safeguarded) and not in the substantive issues of doctrine that might be at the core of any disciplinary case;
- (r) the new procedures needed to be robust enough to stand up in an employment tribunal if, at some future date, clergy were brought within secular employment legislation;
- (s) in so far as compatible with other requirements, they should also be of such a kind as to avoid disproportionate cost.

### **DOCTRINE IN THE CHURCH OF ENGLAND IN AN HISTORICAL PERSPECTIVE**

16. Where is the Church’s doctrine to be found? As far as the Church of England is concerned, the answer is at first glance simple. Canon A5 states that -

*“The Doctrine of the Church of England is grounded in the Holy Scriptures, and in such teachings of the ancient Fathers and Councils of the Church as are agreeable to the said Scriptures.*

*In particular such doctrine is to be found in the Thirty-Nine Articles of Religion, the Book of Common Prayer, and the Ordinal.”*

Furthermore the Worship and Doctrine Measure 1974 notes that “*references in the Measure to the doctrine of the Church of England shall be construed in accordance with the statement concerning that doctrine contained in the Canons of the Church of England.*”<sup>4</sup>

17. The legal position of the Church of England, has been set out in the following way<sup>5</sup>:

*“As with its canon law the doctrine of the Church of England is that of the Western Catholic Church immediately before the Reformation, subject to modifications both explicit and implicit introduced by the Reformation. The Church of England is a reformed Catholic, and in that sense a “protestant” church, the term “Catholic” being applied to all those churches which maintain the faith and traditions of the Creeds, the*

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<sup>4</sup> Doe, *The Canon Law of the Church of England*, p.256. Yet it has been noted that that same Measure contains a circular argument in that once a Measure with doctrinal reference has been passed by the General Synod and Parliament and received the Royal Assent, that determines that such doctrine *is* in accordance with Scripture and Tradition and the historic formularies according to the Canons of the Church of England, and cannot further be tested. (Cf the cases brought by the Reverend Paul Williamson on precisely this issue in relation to the question of the ordination of women to the priesthood.)

<sup>5</sup> Lynne Leeder, *The Ecclesiastical Law Handbook*, Sweet & Maxwell 1997

*Ecumenical Councils and the Church Fathers, together with the practice of the Sacraments and the Episcopate in historical succession from the Apostles.*"<sup>6</sup>

18. Following the break with Rome, uniformity in worship was defined by the Prayer Books – 1549, 1552, and (after the break of Mary Tudor's reign) 1558, and a further revision in 1662 after the restoration of Charles II in 1660 . It was the intention of Archbishop Cranmer to replace the diversities of mediaeval English practice ('the uses of Hereford, Sarum, and Bangor') by a single form of liturgical practice for the Church of England. Such uniformity was undoubtedly aided and abetted by the concurrent invention of printing which enabled the mass reproduction and distribution of a single liturgical form. Within the Prayer Book form of worship were the ancient summaries of belief – the Nicene (strictly Niceno-Constantinopolitan) Creed, the Apostles' Creed, and the (so-called) Athanasian Creed (*Quicumque Vult*), all of which were used as summaries of the Christian faith within the authorised Church of England services.
19. In March 1553 Cranmer presented his proposals for the reform of ecclesiastical law ("*Reformatio Legum Ecclesiasticarum*") to Parliament, but, because of Edward VI's death that summer, matters were not taken further. Nonetheless the *Reformatio* begins with a clear doctrinal emphasis which has been continued in Anglicanism. It begins with the doctrine of God, revealed as Holy Trinity and the mysteries of our redemption in Christ. "*Every required belief must come from the canonical Scriptures ... so that if something is not read or contained in it, neither does it follow nor is it deduced from it, [it] cannot be demanded of anyone that it should be believed as an article of faith*" (I.9). The Apostles, the Nicene and Athanasian creeds are to be received as summaries of faith, "*for they can easily be proved by the most certain testimonies of the divine and canonical Scriptures*" (I.5). The first four Councils are to be embraced and accepted with great respect, and the authority of the orthodox fathers is not to be despised, though Holy Writ must be our rule and judge for all Christian teaching (I.15). The second section of the *Reformatio* deals with heretics who "*receive the doctrine of our common faith in a way which is contrary to what has been determined by Holy Scripture*" (II.1) and a series of articles on doctrinal errors follows, concerned with classical Christian heresies, what were judged to be Roman 'inventions' and a repudiation of anabaptism. The third section sets out procedures for judging those who profess heretical opinions, by "*inquest, accusation, evangelical denunciation, and exception*" (III.1).<sup>7</sup>
20. Although the *Reformatio* was not put into effect (John Foxe published it in 1571) it had a significant influence on the Thirty-Nine Articles which were published, "*agreed by the Archbishops and Bishops of both provinces and the whole clergy in the Convocation holden at London in 1562.*" They were stated to be "*for the*

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<sup>6</sup> Ibid. 9.2, p.267

<sup>7</sup> Gerald Bray (ed), *Tudor Church Reform: the Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum*, The Boydell Press, Church of England Record Society, 2000, pp.xli ff, pp.170-224

*avoiding of the diversities of opinions and for the stablishing of consent touching true religion.”* They were thus intended as Articles of peace. They were also “*put forward by the Queen’s authority.*” In 1571 the Subscription Act repeated what had been said nine years earlier, asserting that ecclesiastical authority lay with the convocations, but acknowledging that the publishing of the Articles lay with the Crown. Canon V of the 1603 Canons censured the Impugners of the Articles of Religion established in the Church of England:

*“Whosoever shall hereafter affirm. That any of the nine and thirty Articles agreed upon by the Archbishops and Bishops of both provinces, and the whole Clergy, in the Convocation holden at London, in the year of our Lord God one thousand five hundred and sixty-two, for avoiding diversities of opinions, and for the establishing of consent touching true Religion, are in any part superstitious or erroneous, or such as he may not with a good conscience subscribe unto; let him be excommunicated ipso facto, and not restored, but only by the Archbishop, after his repentance, and public revocation of his wicked errors.”*<sup>8</sup>

21. Canon XXXIV, which deals with “*The Quality of such as are to be made Ministers*”, requires that those admitted to Holy Orders must “*be able to yield an account of his faith in Latin, according to the Articles of religion approved in the Synod of the Bishops and Clergy of this realm, one thousand five hundred sixty and two, and to confirm the same by sufficient testimonies out of the holy Scriptures.*”<sup>9</sup> The particular reference to the Articles in the 1603 Canons is set within the affirmation of the Royal Supremacy (and by implication the repudiation of papal claims), stating that the Church of England is a “*true and Apostolical Church*”, “*teaching and maintaining the doctrine of the Apostles.*”<sup>10</sup>
22. Canon A2 states that “*The Thirty-nine Articles are agreeable to the Word of God and may be assented unto with a good conscience by all members of the Church of England.*” The Clerical Subscription Act of 1865 amended Canon XXXVI of 1604 so that instead of an obligation to “*acknowledge all and every one of the Articles to be agreeable to the Word of God*” only a general assent was demanded. In 1975 the obligation laid on every beneficed cleric to read the Articles to his congregation on the first Sunday after taking up a cure of souls was abolished. In the same year Canon C15 set out the new Declaration of Assent to which all clergy of the Church of England must give public assent before being licensed or instituted to any office. The Preface to the Declaration of Assent states that  
*“The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim*

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<sup>8</sup> *Constitutions and Canons Ecclesiastical 1604* (ed.J.V.Bullard), 1934, Canon V, p.6

<sup>9</sup> *Ibid.*, Canon XXXIV, p.38

<sup>10</sup> *Ibid.*, Canons I, III, pp.3,4

*afresh in each generation. Led by the Holy Spirit it has borne witness to Christian truth in its historic formularies, the Thirty-Nine Articles of Religion, the Book of Common Prayer and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make, will you affirm your loyalty to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making Him known to those in your care?"*

The minister declares his or her assent to this declaration in the following form:

*"I, N, do so affirm, and accordingly declare my belief in the faith which is revealed in the holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness; and in public prayer and administration of the sacraments, I will use only the forms of service which are authorised or allowed by Canon."*

This formulation is significantly looser than Canon XXXVI of 1603.

23. When we consider what is involved in making an assent of faith obvious questions arise. What is entailed in assent to such a declaration? What does it mean to declare one's belief in a body of doctrine which is to be found in such a various collection of writings as the Scriptures of the Old and New Testaments? To say that the doctrine of the Church is grounded in the Holy Scriptures, or that it is to be found in the Thirty-nine Articles or in the Book of Common Prayer, is not to say that everything contained in those documents necessarily constitutes the doctrine which is in question. Who then discriminates between those parts which count and those which do not? Who is to determine the sense in which assent is to be given?
24. Then there is the issue of the development of doctrine to consider. A good definition of the development of doctrine is to be found in the 1981 report of the Church of England Doctrine Commission, *Believing in the Church*. "*Doctrinal development may be described as the community working out a fuller understanding of its inheritance of faith and submitting this to the test of time, that is, of the life and thought of the Christian people in future generations.*"<sup>11</sup> Some doctrines have at one time been generally understood in a literal sense and at other times more figuratively. A doctrine which has appeared central or fundamental to one generation has appeared less so to another. The issue of development takes a particular form in a body like the Church of England which accords special authority to documents which were formed in the controversial circumstances of a particular era. How, in the light of subsequent developments and very different circumstances, such as the major developments in ecumenical theology, and the scientific understanding of the universe and human nature, is the Church to arrive at and recognise an authoritative reading of those earlier authoritative documents? The questioning of both the imagery and the justice of

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<sup>11</sup> *Believing in the Church*, 1981, p.266

- eternal punishment in almost all Christian traditions, a greater willingness to accept God's participation in suffering which an earlier age would have condemned as patripassianism, and the impact on doctrine of the demise of Platonism and idealism, might all be cited as instances of significant doctrinal evolution. Yet doctrinal development can never be a simple endorsement of change. As Newman epigrammatically put it, doctrine changes "*in order to remain the same.*"
25. We must recognise that it is never enough simply to appeal to documents, whether they be primary documents such as the scriptures or secondary ones such as the Book of Common Prayer and the Articles. The question will always arise as to who has authority to interpret these documents.
26. It should indeed be noted that authority is properly a quality of persons, not of documents. Documents have authority only in a secondary sense, derived from the authority of those persons who have written or approved them. Thus the issue of the authority of the Church is inescapable. This is recognised in Article XX ("*Of the Authority of the Church*"):

*"The Church hath power to decree Rites or Ceremonies, and authority in Controversies of Faith: and yet it is not lawful for the Church to ordain anything that is contradictory to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of Salvation."*
27. Later on in Article XXXIV ("*Of the Traditions of the Church*") the Articles deal with the authority of particular or national churches "*to ordain, change, and abolish, ceremonies or rites of the Church ordained only by man's authority ...*". It is significant that this Article says nothing about matters of doctrine. This is in clear distinction from Articles XIX and XX, which include doctrine in their scope and which deal with the authority of the universal Church and the authority of Scripture.
28. Articles XIX and XX provide the context for the immediately following Article XXI ("*Of the Authority of General Councils*"). The Church of England acknowledges the authority of General Councils, with the proviso that "*things ordained by them as necessary to salvation have neither strength nor authority, unless it may be declared that they be taken out of Holy Scripture.*" Thus the authority of councils such as Nicaea and Chalcedon is assured. It is also made clear that, as far as Christian doctrine is concerned, the Church of England sees itself as a part of and subject to the authority of the universal Church, provided that declarations ascribed to the 'universal Church' are judged to be consonant with Holy Scripture.

29. The same understanding of the position of the Church of England (and of the Anglican Communion) within the universal Church is expressed in the Preface to the 1975 Declaration of Assent. The Church of England “*is part of the One, Holy, Catholic and Apostolic Church,*” and its particular formularies are subordinate witnesses to the faith revealed in the Scriptures which are common to all Christians and set forth in the creeds which belong to all Christians.
30. The nineteenth century saw a significant increase in questions of doctrinal dispute, and questions relating to liturgy. The vast majority were in the second category. The catalyst was the Oxford Movement and the subsequent catholic revival. Ironically the Court of Delegates, which had been established as a final court for determining appeals which before the Reformation would have gone to Rome, was abolished in 1833. Its place was taken by the Judicial Committee of the Privy Council. At the very moment therefore when doctrinal and liturgical cases came to the fore, the final court of appeal was not a church court, and this of itself was one of the causes of contention. When George Cornelius Gorham was refused institution to the living of Brampford Speke by Bishop Phillpotts of Exeter because of Gorham’s denial of the doctrine of baptismal regeneration, it was the Judicial Committee of the Privy Council which finally ruled that Gorham’s views were legally acceptable in the Church of England. It was a secular court determining doctrine in this instance that finally led to Henry Manning’s secession to the Roman Catholic Church and his publication of a strongly worded criticism of the Erastianism of the Church of England in his pamphlet, *The Appellate Jurisdiction of the Crown in Matters Spiritual*.
31. The Judicial Committee was clear that its role was to set the limits of what was permissible. “*The court sat simply to determine whether particular doctrines, be they true or false, were such as a clergyman was forbidden to hold or teach. A doctrine to be prohibited had to contravene either the Thirty-Nine Articles or the Prayer Book. Those were the official formularies of the Church of England. Where they were silent, liberty prevailed.*”<sup>12</sup> A number of other cases besides the *cause célèbre* of the Gorham Judgement may be noted: *Henry Erskine Head* (1843) was condemned for attacking the confirmation service, the catechism, and aspects of the baptismal service. *Frederick Oakeley* (1845) was condemned in the Court of Arches for claiming in a published document that it was permissible to hold the entire doctrine of the Church of Rome and remain a clergyman of the Church of England. (This went further than Newman’s *Tract 90* which sought to interpret the Articles as being directed against popular Romanist beliefs at the time they were issued, rather than against the later formulations of the Council of Trent). *Dunbar Isidore Heath* (1862) and *Charles Voysey* (1871), who maintained a religion of general benevolence, were both condemned for particular propositions taken from their writings that were held to contradict particular Articles. In the case of *Essays and Reviews* (1863) the two defendants (H.B. Wilson and Rowland Williams) were condemned on a limited number of

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<sup>12</sup> Robert E. Rodes, Jr., *Law and Modernization in the Church of England: Charles II to the Welfare State*, University of Notre Dame Press, 1991, p.259



charges arising from their essays (concerning eternal punishment and the inspiration of scripture) in relation to particular Articles. The Dean of the Arches (Lushington) condemned the defendants on three charges. His judgement was reversed by the Judicial Committee in a famous judgement which was said to “*deprive members of the Church of England of their hope of everlasting damnation.*” The Judicial Committee noted that it did not see it as part of its duty “*to pronounce any opinion on the character, effect, or tendency of the publications known by the name of ‘Essays and Reviews’.*” Their judgement was narrowly confined to the extracts before them. “*If, therefore, the Book, or these two Essays, or either of them as a whole, be of a mischievous and baneful tendency, as weakening the foundation of Christian belief, and likely to cause many to offend, they will retain that character and be liable to that condemnation, notwithstanding this our judgement.*”<sup>13</sup>

32. Robert Rodes notes that with the Voysey case “*the series of doctrinal cases comes to an end. Never again was a clergyman of the Church of England to be required to answer for his doctrines in an English court*”. When doctrinal objections were raised against Frederick Temple (he was a contributor to ‘Essays and Reviews’ and was later to become Archbishop of Canterbury) on becoming Bishop of Exeter, and to Charles Gore (as a contributor to *Lux Mundi*) on becoming Bishop of Worcester, the courts refused to consider objections to their doctrine. Much more recently Michael Bland (1972) had his argument that he refused to baptise the child of parents who did not attend church as being a doctrinal one dismissed. “*He was prosecuted for what he failed to do, not for what he believed or taught.*”<sup>14</sup> Overall as Rodes notes, there has been a “*frustration inherent in trying to decide current theological controversies by resort to judicial interpretation of sixteenth-century formularies*”, but there has also been little willingness to develop a new set of doctrinal standards to replace the old. “*As a result, canons of scholarship have tended to take the place of canons of orthodoxy in establishing the doctrinal commitments of the church. Anglican controversialists no longer look for official condemnation of opposing doctrines. They look for such doctrines to fare in the church as the Baconian theory has fared among Shakespeare scholars, or the flat earth theory among geographers. They are not always disappointed.*”<sup>15</sup> As Lynne Leeder again notes:

"In doctrinal matters the law permits a considerable degree of liberty, and where two interpretations are possible either is permissible. Further there are many matters upon which the formularies are silent and much is therefore left to the conscience of the individual. In England it is generally in the outward expression of doctrine, that is public worship, rather than in exposition of doctrine itself, that the greatest controversies have arisen and where heterodoxy has been challenged."<sup>16</sup>

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<sup>13</sup> Quoted *ibid*, pp.274-275

<sup>14</sup> *Ibid.*, p.275

<sup>15</sup> *Ibid.*, p.276

<sup>16</sup> *Ecclesiastical Law Handbook*, 9.3, p.270

33. If the nineteenth-century cases concerning doctrine were relatively few, by the same token the cases concerning liturgy were frequent. The Oxford Movement and the subsequent Ritualist movement, and the sharp division between parties in the church led to a series of law suits concerning the celebration of the eucharist in particular. The Church Association from the Protestant side brought prosecutions, which provoked sharp defences from the ‘Catholic’ side led by the Church Union. Priests were imprisoned for ritual offences (Arthur Tooth, Thomas Pelham Dale, R.W.Enraght, Sidney Faithorn Green, James Bell Cox) because they refused to acknowledge the authority of Erastian courts, or claimed to be following the practice of Western Catholic Christendom. There were cases about eucharistic vestments, the ‘manual acts’ in the Prayer of Consecration at Holy Communion, the lighting of candles on the altar, the use of incense, Benediction of the Blessed Sacrament, the use of Latin and parts of the Roman canon. The Purchas Judgement (1871) was particularly significant. In this the Judicial Committee of the Privy Council declared Eucharistic vestments, the eastward position of the celebrant at Holy Communion, the mixed chalice, and the use of wafer bread illegal, overturning an earlier judgement by the Dean of the Arches that they were legal. *“The verdict marks a turning-point in the ceremonial revival in the Church of England in the 19<sup>th</sup> century, because hitherto such practices had been regarded on nearly all sides as conforming with the letter of the law, whereas from then on ritualists were held to be law-breakers. The judgement was widely disobeyed, however, as without spiritual authority, and the eastward position was continued, e.g. at St Paul’s Cathedral.”*<sup>17</sup> In 1877 in the Ridsdale Judgement the Judicial Committee of the Privy Council pronounced that *“alb and chasuble or cope, as distinguished from the surplice”* were illegal in the Church of England, except that copes were allowed in cathedrals or collegiate churches. The eastward position was permitted provided that the manual acts were not concealed from the congregation as a result.<sup>18</sup>
34. In pre-Oxford Movement days there had been lawsuits about hymns, which were of doubtful legality.<sup>19</sup> There was controversy about the disuse of the Athanasian Creed, prescribed in the Prayer Book for use on certain days. There was controversy about the spiritual authority of the courts which ruled on ritual offences. Erastian courts were themselves offensive to Catholic minded priests. Archbishop Tait’s attempt to ‘put down Ritualism’ by the Public Worship Regulation Act of 1874 proved a failure because it only succeeded in making martyrs to the ritualist cause, and Lord Penzance as a divorce court judge was thought particularly unsuitable to preside over a court concerned with ritual offences. The narrowness of appeal to rubrics and sixteenth-century documents was also a frustration, from which there was a certain deliverance when Archbishop Benson concluded that he had the right to try Bishop Edward King of

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<sup>17</sup> ODCC, 1997 ed., entry on Purchas Judgement.

<sup>18</sup> Ibid., entry on Ridsdale Judgement.

<sup>19</sup> Cf. Thomas K McCart, *The Matter and Manner of Praise: the controversial evolution of hymnody in the Church of England 1760-1820*, Scarecrow Press, 1998

Lincoln for ritual offences and was able to draw on a much wider range of patristic and pre-Reformation practice in coming to his 1890 Lincoln Judgement.

35. The Royal Commission on Ecclesiastical Discipline was set up in 1904 to “*inquire into breaches or neglect of the Law relating to the conduct of Divine Service in the Church of England and to the ornaments and fittings of Churches*” and to devise remedies. It reported to Parliament in 1906 after taking evidence from 164 witnesses and consulting the bishops. The Commission reported unanimously that the law of public worship was too narrow, and that the machinery for discipline had broken down. They recommended that practices significant of teaching repugnant to the doctrine of the Church of England should be made to cease, if necessary by force of law; that Letters of Business should be issued to the Convocations to regularize the vestments of the minister and to provide greater elasticity in public worship; that the Judicial Committee of the Privy Council should be replaced as the final court of appeal; that the Public Worship Regulation Act of 1874 should be repealed; and that dioceses should be divided to secure greater episcopal supervision.<sup>20</sup>
36. The Bishop of Gloucester (E.C.S. Gibson) contributed an historical appendix on the Administration of the Act of Uniformity. He noted the stringency of Elizabeth’s Act, and the content of nineteenth-century judgements:

*“In the performance of the services, rites and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed, no omission and no addition can be permitted” (Liddell v. Westerton)*

and

*“Their Lordships are of the opinion that it is not open to a Minister of the Church, or even to their Lordships in advising her Majesty, as the highest Ecclesiastical Tribunal of Appeal, to draw a distinction in acts which are a departure from, or violation of, the rubric, between those which are important and those which appear to be trivial. The object of a Statute of Uniformity is, as its preamble expresses, to produce a universal agreement in the public worship of Almighty God, an object which would be wholly frustrated if each minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, to add to, or to alter any of those details” (Martin v. Mackonochie).*

Nonetheless Gibson stated

*“As a matter of history (1), at all periods practices not enjoined in, and omissions from the requirements of the rubrics have been common, being often not merely acquiesced in, but even approved and sanctioned by Episcopal authority; while (2) every attempt to enforce the strict letter of*

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<sup>20</sup> ODCC, entry ‘Ecclesiastical Discipline, Royal Commission’.

*the law by coercive measures has proved disastrous, and led to a Schism in the Church, 'conscience' in each case being pleaded by the recalcitrant party.*"<sup>21</sup>

37. Letters of Business were issued in November 1906 beginning the process of revision which led up to the Prayer Book presented to Parliament in 1927, and again, in a slightly modified form, in 1928, both books being rejected by Parliament, and therefore leading to a situation in which technically illegal liturgy, if conforming to the 1928 provision, was accorded a quasi authoritative status in the Church of England. Following the enactment of the Prayer Book (Alternative and Other Services) Measure 1965 the principle of uniformity has been replaced by the principle of conformity. Variations are now permitted to the extent that other forms of service are authorised or the minister has a discretion to vary their forms.<sup>22</sup> The passing of the Worship and Doctrine Measure (1974) gave the General Synod power to regulate by Canon all matters of worship including Alternative Services, provided that the forms of service in the Book of Common Prayer remained the standard of doctrine and available for use. In 1975 the form of the declaration of assent was agreed. The processes of liturgical revision leading to the *Alternative Service Book 1980*, and more recently *Common Worship*, have led to increasing latitude and much greater flexibility in the matter of liturgical texts, and the emphasis is now on common structure. Worship in the Church of England must however be according to approved texts or patterns, even with wide variations.
38. At the same time as controversies about ceremonial led eventually to the setting up of the Royal Commission on Ecclesiastical Discipline, so doctrinal issues became matters of concern with tensions in relation to both 'Modernists' and Anglo-Catholics. A memorial was presented to Archbishop Randall Davidson in 1922 which led later that year to the setting up of a Commission with the following terms of reference: "*To consider the nature and grounds of Christian Doctrine with a view to demonstrating the extent of existing agreement within the Church of England and with a view to investigating how far it is possible to remove or diminish existing differences.*"<sup>23</sup> Designed to work for a consensus between the different parties in the Church of England the Commission laboured for fourteen years, with annual meetings of the whole Commission and some further meetings of local groups. William Temple chaired the Commission for the greater part of its life. Temple's biographer judged that "*on the issues between Catholic and Evangelical the Report is a good and constructive piece of work: on those between traditional and modernist it is less satisfactory*" and many felt "*that the Report displayed the irritating inconclusiveness of Anglican*

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<sup>21</sup> *Royal Commission on Ecclesiastical Discipline*, 1906, IV, Appendix C, p.49

<sup>22</sup> Leeder, *Ecclesiastical Law Handbook*, 9.5, p.271.

<sup>23</sup> G.K.A.Bell, *Randall Davidson, Archbishop of Canterbury*, Third ed., Oxford University Press, London, 1952, p.1150.

*compromise*” but welcomed it as “*a triumph for toleration and for the comprehensiveness of the National Church.*”<sup>24</sup>

39. There have been notable furores over matters of doctrine, most particularly when bishops, with their particular teaching responsibility, have been involved. In 1947 E.W. Barnes, Bishop of Birmingham and a scientist by training, who had already tangled with Anglo-Catholics over sacramental doctrine, published *The Rise of Christianity*. It was a book which surveyed Christian origins but in a way which totally repudiated any miraculous element in the origin of Christianity. Many of his fellow-bishops were appalled, Archbishop Garbett calling it a “*miserable book*” and doubting whether he had known anything in the whole course of his ministry more likely to injure the work and influence of the Church. Archbishop Fisher found himself confronted with four courses of action: to ignore the book; to have Barnes tried for heresy; to debate the matter in Convocation; or to issue a unilateral condemnation. Fisher was aware, as he made clear in a number of letters, that if he allowed a trial for heresy in an Archbishop’s Court, an appeal would lie to the Privy Council and once again a lay court would pass judgement on orthodoxy in the Church of England, and he was not prepared to go down that road. Fisher determined on asking E.G. Selwyn and Leonard Hodgson to draft a theological report on the book and on the basis of that report made a statement to the Convocation of Canterbury in which he stated that, if Barnes’ views were his “*I should not feel I could still hold episcopal office in the Church.*” Although the Church of England gave “*a great deal of freedom to its members ... there is a point at which a limit is reached as to what is tolerable, and that point is reached earlier in the case of a bishop, who is specially charged with the responsibility of guarding the tradition of the Church.*”<sup>25</sup>
40. The matter of how doctrinal offences should be handled was considered by the Commission on Ecclesiastical Courts set up in 1951, and which reported in 1954. The Commission recognised the distinction between ‘doctrinal, ritual, ceremonial and simoniacal offences’ and moral offences and offences relating to the neglect of duty. The Commission recognised that a different type of court and procedure would be required for dealing with doctrinal issues. Such cases, designated as ‘Reserved Cases’, were to be tried by a Court of Ecclesiastical Causes Reserved. The Commission noted that as far as liturgical and ritual offences were concerned there was need for the law governing public worship to be amended for “*to make new provisions for the trial of offences against a law, considerable sections of which are no longer observed and in addition are contrary to the mind of the Church as expressed in practice, is sheer waste of time. To expect the ecclesiastical courts to administer such a law, is to require them to make*

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<sup>24</sup> F.A.Iremonger, *William Temple, Archbishop of Canterbury, his life and letters*, Oxford University Press, London, 1948, pp.465-6

<sup>25</sup> John Barnes, *Ahead of his age: Bishop Barnes of Birmingham*, Collins, London, 1979, pp.395-412; Edward Carpenter, *Archbishop Fisher – His Life and Times*, The Canterbury Press, Norwich, 1991, pp.295-301

*decisions that are either contemptible or ridiculous.*”<sup>26</sup> Provision was made for assessors, theologians in a doctrinal case and liturgists in a ritual or ceremonial case. But the Commission had wise words about the limited and exceptional role of ecclesiastical courts in doctrinal matters:

*“An ecclesiastical court in the Church of England can play only a limited part in the correction of unsound doctrine. It would appear that, as the law now stands, a court can only deal with doctrine that is alleged to be a denial of or contrary to the teaching of the Church. The type of unsound doctrine which makes use of orthodox phrases with presuppositions which rob those phrase of their real meaning and, because it is more subtle, is more dangerous than verbal denials, cannot be satisfactorily dealt with at all by an ecclesiastical court. In any case the circumstances in which the Church of England carries on its mission make proceedings in an ecclesiastical court a remedy for dealing with unsound doctrine which should be resorted to only as an extreme measure. Methods in many ways more consonant with the spirit of the Church of England are theological discussion and debate accompanied by sympathetic understanding and patient persuasion on the part of those who oppose a particular unsound doctrine. These methods have an additional advantage, as compared with proceedings in a court, in that they better enable what is true in any alleged unsound doctrine, though perhaps long forgotten, to be sorted out from what is false and brought home afresh to the mind of the Church”.*<sup>27</sup>

The Commission hoped that the new Court of Ecclesiastical Causes Reserved would be cautious in acting, not only when *“a complaint was trivial or without foundation, but also when in its opinion such actions would not be in the interests of the Church.”* The Court has in fact only had two cases brought before it, one concerned with a statue of the Blessed Virgin Mary erected in a church at Torrington, the other concerning the Henry Moore altar installed in the Wren City Church of St Stephen, Walbrook. In the latter case the Chancellor of London had refused a faculty not only on aesthetic grounds but on the grounds that the Moore altar was made of stone and had nothing of ‘tableness’ about it. The Court overruled the Chancellor and permitted the installation of the altar.

41. The Court of Ecclesiastical Causes Reserved was not called on to sit in judgement on perhaps the two most celebrated furores involving bishops and doctrinal matters, the first involving Bishop John Robinson and *Honest to God* in the 1960s and the other concerned with the views of David Jenkins, Bishop of Durham, on the resurrection and virgin birth in the 1980s. *Honest to God* was published in March 1963. Michael Ramsey had been enthroned as Archbishop of Canterbury two years earlier. Robinson drew on his own theological reading of Bonhoeffer (‘religionless Christianity’), Bultmann (demythologising) and Tillich (the

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<sup>26</sup> *The Ecclesiastical Courts: Principles of Reconstruction*, Commission on Ecclesiastical Courts, SPCK, London, 1954, p.73

<sup>27</sup> *Ibid.*, p.71

symbolic character of theology and God in the depth), and also on the new challenge of the highly secularised south London where he ministered as Bishop of Woolwich. The book said little that was surprising to those familiar with the writings of Bonhoeffer, Bultmann and Tillich, but, as Eric James points out in his biography of Robinson, the furore was caused by the fact that its author was a bishop, and a bishop who had gained notoriety in 1960 for defending the publication of D.H. Lawrence's novel, *Lady Chatterley's Lover*, which had been held to be obscene. But more important was the article Robinson wrote at the invitation of *The Observer*, which was given the headline "*Our Image of God Must Go*", which many took to mean that the bishop was an atheist. This was far from what Robinson had intended, and no one could have been more ardent than Robinson for a personal God. But the perception projected by the article led Michael Ramsey to criticise Robinson in a television interview because it was "*utterly wrong and misleading to denounce the imagery of God held by Christian men and women and children; imagery they have got from Jesus himself, the image of God the Father in Heaven, and to say that we can't have any new thought until it is all swept away.*" Later, in a presidential address to the Convocation of Canterbury, Ramsey spoke of the difficult balance between "*encouraging freedom of enquiry and adhering to a definite faith revealed in Holy Scripture and summarised in the historic creeds.*" "*If heresy is a danger so too is an obscurantist spirit in respect of the study of truth.*" So Ramsey continued:

*"The effort to open up new modes of contact between our Faith and a secular age is one with which I feel much sympathy. We state and commend our Faith only in so far as we go out and put ourselves with loving sympathy inside the doubts of the doubting, the questions of the questioners, and the loneliness of those who have lost their way. But again, the book appears to reject the concept of a personal God as expressed in the Bible and the Creed. The presence in the book of gentle remarks for the comfort of orthodox believers does not cancel this fact. In place of the doctrine of God which is to be rejected there emerges instead some doctrine about God and about the deity of Christ. But I doubt whether any argument could show that the doctrine which so far emerges is properly the same as the doctrine of the Church. The Bishop however assures us that he upholds the Biblical and Catholic Faith and the thought of the book is tentative and exploratory."*<sup>28</sup>

Ramsey later wondered whether he had been too harsh in his judgement and began to see the wider shifting in the context in which the Church was now set. "*A world of half-belief and half doubt, of searching and questionings, was dug up by Honest to God...Here was an opportunity to learn from that wistful world*

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<sup>28</sup> Eric James, *A Life of Bishop John A.T. Robinson, Scholar, Pastor, Prophet*, Collins, London, 1987, p.121

*which was being uncovered, to understand, to discriminate, and then to try to guide with patience.*"<sup>29</sup>

42. In the 1980s a further controversy centred on the teaching of Bishop David Jenkins in respect of the Virgin Birth and the Resurrection. The issue was, as Clifford Longley put it, that by divorcing the doctrine of the Resurrection from its anchor in an historical event Jenkins had undermined it, redefining it to mean something else. "*When he says he believes in it, he does not mean what the Church has always understood it to mean. Similarly with the Virgin Birth ...*". But, as Longley also pointed out, "*nothing in the Church's founding documents, whether the Creeds of the early centuries or the Thirty-Nine Articles of the sixteenth, explains exactly how the words Resurrection and Virgin Birth are to be understood.*"<sup>30</sup> As David Jenkins has recently made clear his traditionalist critics maintained that it was essential that the 'historical claims' relating to the incarnation and the resurrection "*had to be guaranteed as being literally true because they were stated in certain biblical texts and were thereby authenticated by divine scriptural warrant .... Christian faith depends on the fact that these truths are guaranteed by scripture, endorsed and handed on by the God-granted authorities of the church. If divine authority does not endorse the literal truth of these particular historical claims (such as the virgin birth and the empty tomb) then our faith collapses.*" For Jenkins such a stance "*involves an untenable idea of God, one that it is impossible to hold or commend if one takes seriously advances in modern thought since at least the middle of the seventeenth century.*"<sup>31</sup>
43. The response to the theological controversy was a debate in General Synod in February, 1985, in which Archbishop Runcie reminded Synod that "*the issues about the limits of interpreting credal statements which have concerned us in recent months are far from new*" and he commended as an Anglican virtue what T.S.Eliot called "*continence in affirmation.*"<sup>32</sup> The House of Bishops responded to the debate a year later with a statement, *The Nature of Christian Belief*. Affirming the objective reality of the Resurrection, belief in the empty tomb underlined the fact "*that in the resurrection life the material order is redeemed, and the fullness of human nature, bodily, mental and spiritual, is glorified for eternity.*" The statement went on to say that:

*"There must always be a place in the life of the Church for both tradition and enquiry. The relation between them is not simple and never settled, and has always meant that there can be a proper diversity in the understanding and expression of the Christian faith. But provided that we*

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<sup>29</sup> Owen Chadwick, *Michael Ramsey: a Life*, Clarendon Press, Oxford, 1990, pp.372-3, q. Michael Ramsey, *Canterbury Pilgrim*, 1974, pp.3-5

<sup>30</sup> q. in Jonathan Mantle, *Archbishop: the Life and Times of Robert Runcie*, Sinclair-Stevenson, London, 1991, p.207.

<sup>31</sup> David E. Jenkins, *The Calling of a Cuckoo: Not Quite an Autobiography*, Continuum, London & New York, 2002, pp.52-53

<sup>32</sup> Adrian Hastings, *Robert Runcie*, Mowbray, London, 1991, p.202



*are attentive to the Holy Spirit as he glorifies Jesus and leads us into all truth, this variety which our faith not only allows but fosters need not become a cause of division, but can deepen our relationship with God and our understanding of the Gospel.*"<sup>33</sup>

Before proceeding to a detailed exposition of the doctrinal issues relating to the Virgin Birth and the Resurrection, the Statement considers the implications and character of the Declaration of Assent, including important words about the task to which the Church and Christian ministers are called of 'proclaiming the faith afresh in each generation.'

*"An integral part of loyalty to the inheritance is this commitment to mission, to the task of 'proclaiming the faith afresh' ... . [The] task of helping the world to know and understand the faith is a never-ending process. Where venerable words are still the best, yet they need to be explained in new ways to the children of new cultures. Where they are failing to communicate, new words have to be found to convey the original vision. Where new knowledge opens up a larger and deeper conception of God, it has to be shown how the inheritance of faith is enriched and developed by this without losing its essential character.*"<sup>34</sup>

In February 1990 the General Synod debated a Private Member's Motion on doctrine which was carried in an amended form. This stated that *"This Synod reaffirms the traditional belief about the birth, death and resurrection of Our Lord Jesus Christ as found in the Canonical Scriptures and the Apostles' and Nicene Creeds, and to which the Church of England bears witness.*"<sup>35</sup>

44. The tensions recognised by the 1986 House of Bishops Statement are part of the necessary balancing between the biblical and credal orthodoxy embodied in the Declaration of Assent and the work of theological enquiry and interpretation. The history of the exercise of discipline in the Church of England with regard to doctrine and liturgy indicates a general trend towards more permissive regulation. Although doctrinal orthodoxy is a fundamental concern, most of the cases have been liturgical, though of course liturgy embodies doctrine and it is easier to monitor what is done and said in services than to tackle broader doctrinal issues. In any case we do well to remember the proper caution of the Commission on Ecclesiastical Courts that a church court can play only a limited part in the correction of unsound doctrine.
45. Nonetheless the Church does have a responsibility to ensure that those given authority to preach the Gospel and teach the Christian faith do in practice uphold that faith, and the Church has to exercise that guardianship of doctrine through

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<sup>33</sup> *The Nature of Christian Belief: a statement and exposition by the House of Bishops of the General Synod of the Church of England*, Church House Publishing, London, 1986, p.2

<sup>34</sup> *Ibid.*, p.9

<sup>35</sup> General Synod: *Report of Proceedings Vo.21.No.1 p.342 (February Group of Sessions, 1990)*

particular persons or bodies charged with the responsibility of so acting. This relates both to the declaration of doctrine, and to its interpretation in particular cases. The two issues are distinct, but cannot be entirely separated.

46. As far as the primary declaration of doctrine is concerned, the position in the Church of England is clear. All doctrinal and liturgical matters are brought to the General Synod by the House of Bishops in virtue of their role as guardians of the Church's faith and teaching. The Synod as a whole determines whether or not to give assent. This reflects the relationship between bishops and laity which was clearly set out by Richard Hooker four hundred years ago. In point of fact, the bringing of any proposals by the House of Bishops to the Synod will have been preceded and prepared for by extensive consultation and discussion. This reflects the theological role of the House of Bishops in discerning the mind of Church in such a way that the Church's representatives may be able to recognise the faith of the Church in what is presented to them for assent. The Bishops have a particular responsibility for saving the local or national church from eccentricity by ensuring that any fresh formulation of faith or liturgy is in conformity with the mind of the whole Church both in space and in time. In this they are exercising their responsibility for guarding the unity, catholicity and apostolicity of the Church. They also have a responsibility for guarding its holiness. This particular responsibility for guarding the faith, holiness and unity of the Church is shared by the Church's bishops together. It is also shared by each bishop with the presbyters of his diocese, with whom he shares the ministry of the Word and of the Sacraments of the Gospel.
47. A clear example of such a determination or clarification of doctrine took place when the General Synod assented to the proposal of the House of Bishops that the statements of ARCIC on the doctrines of the eucharist and of ministry and ordination should be accepted as consonant with the doctrine of the Church of England. The Church of England (and also the Anglican Communion as a whole through the Lambeth Conference of 1988) thus gave an authoritative interpretation of the historic Anglican formularies on eucharist and ministry. Any further revision of the eucharistic liturgy or of the rites of ordination needs to be consonant with this reading.
48. As for the determination of particular cases of doctrinal or liturgical dispute, it is clear (the *St Stephen's, Walbrook* case of 1986 makes the point) that these too can involve the clarification or interpretation of the Church's teaching. Therefore the determinative voice, as far as doctrinal clarification is concerned, must lie with those whose particular role it is to guard the faith, that is, with the bishops, subject to due synodical and legal process.
49. The 1981 Doctrine Commission report reminds us of the nature and character of Christian doctrine in the following words:

*“The Church needs doctrine not because it is called to analyse God, and his ways with mankind, in a scientific and pigeonholing fashion, but because it is called to love God with the mind as well as with the heart, soul and strength. Doctrine is the intellectual counterpart of prayer, holiness, love and mission, and cannot be ignored or played down without denying one highly important facet of our God-given and God-shared, humanity.”<sup>36</sup>*

50. A distinction can properly be made between the faith as it is confessed by the Church as a whole and the assent of particular individuals. However, because of their responsibility as public guardians and teachers of the faith, bishops and other clergy do not enjoy the latitude of interpretation or freedom to withhold entire assent which may be allowed to other individuals. This is one of the constraints inherent in public office. The Church’s ordained ministers speak and act not only for themselves but in the name of and on behalf of the Church. This is the reason for the questions in the Ordinal in which those who are to be ordained as bishop or priest are asked about their readiness to uphold and to defend the teachings of scripture. In the nature of the case, those who hold responsibility must be accountable for the way in which they discharge their responsibility. The issue of doctrinal discipline is therefore inescapable as far as bishops and clergy are concerned. If a bishop or a priest is not witnessing to the faith of the Church in a way that the Church can recognise as faithful and authentic, the Church’s integrity requires that there be a proper and credible means of addressing the situation.
51. This principle is comparatively easy to state. It is far harder to formulate practical proposals for implementing the principle. The following points are nonetheless clear:
- The final determination of what may or may not count as authentic Christian teaching must be in the hands of the Church and, in particular, in the hands of the Church’s bishops in their role as guardians of the Church’s catholic and apostolic faith. That faith is *“the faith once delivered to the saints”* (Jude v.3), and it is this faith which has to be guarded through changing contexts and forms of thought.
  - It has to be recognised that the Church’s understanding of its faith is not static and can never be exhaustively set out. When the Church at any particular time is called upon to decide on what counts as authentic Christian teaching, it must do so in continuity with the biblical faith it has received and in communion with the Church in the rest of the world, acknowledging that new questions asked of the Church in new contexts can often enrich our reading of both scripture and tradition.
  - No system of discipline will work unless it is generally accepted as fair, trustworthy and authoritative.

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<sup>36</sup> *Believing in the Church*, 1981, p.109

- The Church needs protection from false teaching and abuse. It also needs protection from mischievous or mistaken troublemakers and persecutors, and from impatient persons who wish to bring a premature close to issues that ought to remain open.
52. In the procedures we are proposing in relation to clergy discipline as it touches matters of theology and liturgy we are concerned above all with the witness of the Church to the revelation of God in Christ. Our faith is grounded on God’s gracious self-giving in the incarnation, passion, death and resurrection of the Son of God, and the outpouring of the Holy Spirit, through which we are redeemed and sanctified. Doctrinal statements, be they creeds or articles, all witness to this. As Newman wisely wrote, “*Creeds and dogmas live in the one idea which they are designed to express, and which alone is substantive; and are necessary only because the human mind cannot reflect upon that idea, except piecemeal, cannot use it in its oneness and entirety, nor without revolving it into a series of aspects and relations ... the Catholic dogmas are, after all, but symbols of a Divine fact, which, far from being compassed by those very propositions, would not be exhausted, nor fathomed, by a thousand.*”<sup>37</sup> As the Church seeks to proclaim the faith afresh in each generation words both old and new will be needed. New challenges, be they from feminism or genetics, require answers, and these answers will not be fashioned immediately. Living in a world of change the Church has to respond to change and in so responding be prepared to change, but only, as Newman again said, in order that it may remain the same. To witness to a revealed faith requires doctrinal discipline; to speak to the searching for God and meaning of our generation requires empathy and understanding. Inquisitions do not make good agents of genuine conversion. There is therefore a proper balancing to which we are called of witness to Christian truth and respect for theological enquiry, and it is this which underlies our proposals.

**THE GROUP’S RECOMMENDATIONS ON NEW LEGAL PROCEDURES TO DEAL WITH CLERGY DISCIPLINE CASES RELATING TO DOCTRINE, RITUAL AND CEREMONIAL**

53. A draft Measure is attached to this Report in Appendix III for illustrative purposes only. The following chapter starts by identifying the most important issues which the Group addressed in producing this draft Measure and then goes on to provide a commentary on the draft clause-by-clause. As noted above, the Group considered that the procedures adopted for doctrinal discipline cases should parallel those in the CDM, with adaptations in particular areas as appropriate. The commentary below therefore focuses on clauses where the Group has agreed that variations to the procedures under CDM are required.

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<sup>37</sup> J.H. Newman, *Fifteen Sermons preached before the University of Oxford between AD 1846 and 1843*, Longmans, Green, & Co., London 1898, ‘The theory of developments in religious doctrine’, pp.331-332

### **The current provisions of the 1963 Measure and why they should be replaced**

54. The present disciplinary procedures for offences involving a matter of doctrine, ritual or ceremonial are set out in Part VI of the 1963 Measure. In the case of a priest or deacon, a complaint laid before the diocesan registrar is investigated initially by the bishop, who may then refer it to a committee of Convocation. If the committee decides that there is a case to answer, the matter is heard by the Court of Ecclesiastical Causes Reserved. The Court comprises two members who hold, or have held, high judicial office and who are communicant members of the Church of England and three serving or former diocesan bishops. There is a right of appeal to a Commission of Review, which has a membership of five: three Lords of Appeal who are communicants and two bishops who sit as lords spiritual in the House of Lords. The Measure makes similar provision where a complaint is made against a bishop or archbishop.
55. The Group considered that, for a number of reasons, it would not be desirable to retain these procedures for the future. Not only is the process complex and inflexible, but the Group considered it to be wrong in principle that the final arbiter in doctrinal cases should be a body with a majority of its members drawn from the secular judiciary. Furthermore, the 1963 Measure predates by some years the introduction of human rights legislation, and if the Church were to continue to operate these procedures there would inevitably be a risk of challenge on human rights grounds. The Group therefore recommends that new procedures should be introduced.

### **Doctrine, ritual and ceremonial**

56. The Group first considered whether separate disciplinary procedures should be provided, on the one hand, for cases of doctrine and, on the other, for cases of ritual and ceremonial.
57. The Group noted that doctrine was both implicitly and explicitly contained in, and displayed by, the rites and ceremonies of the Church. This linkage had been examined and explored by reports of the Doctrine Commission in the past (the latest in 1981) and was clearly evident from the recent process of authorisation for *Common Worship* which had demonstrated the nature of ritual, including language, and ceremonial as a repository and expression of doctrine.
58. A majority of the Group was therefore of the opinion that the links between doctrine, ritual and ceremonial were so significant that it would be impossible to create a workable disciplinary system to deal with ritual and ceremonial separately from doctrine. Furthermore, to do so would run the risk of legal dispute over the appropriate jurisdiction for particular cases.
59. A minority of the Group's members dissented from the majority view, believing that matters of ritual and ceremonial could and should be separated from matters

of doctrine. To do so, in their opinion, would underline the primacy of doctrine as the most important area in which clerical discipline needed to be applied and would avoid an over-emphasis on the secondary, although still important, area of ritual and ceremonial. One member of the Group also argued that a distinction should be made between doctrinal cases and those relating to ritual and ceremonial as the former would be substantially harder to prove.

### **What should constitute ‘misconduct’? (Clause 5(1))**

60. The Group considered in detail what should constitute ‘misconduct’ for the purposes of any new legislation. The Group noted that the nature and extent of the doctrinal offences that currently exist at common law is by no means clear, and that there is little recent case law to indicate how a court might interpret these offences today. However, the Group was advised that to seek a repeal of these offences would give rise to considerable practical problems, especially given the possibility of reform of the law of blasphemy. Instead, the Group favoured the establishment of a new doctrinal offence, more clearly relevant to present-day circumstances, which would exist alongside the common law offences. (It envisaged that, whilst those offences would not be repealed, any new complaints would in practice be brought by reference to the new offence.)

61. The Group gave very careful consideration to the wording of clause 5(1)(c) of its draft Measure, which would establish this new doctrinal offence. It took as its starting point, the wording of the corresponding offence under paragraph XI.1(c)(i) of the Constitution of the Church in Wales, which refers to “*teaching, preaching, publishing or professing doctrine or belief incompatible with that of the Church in Wales*”. However, the suggested wording departs from that in a number of respects, taking as it does the form:

*“professing, advocating or promoting beliefs which are incompatible with the doctrine of the Church of England by preaching or teaching or publicly communicating such beliefs”.*

62. A number of points should be made about the wording agreed upon by the Group:

- The structure of the provision is such as to require that the profession etc of false doctrine should be done in certain specified ways – i.e. by preaching, teaching or ‘publicly communicating’ it. The effect of this is to exclude from the scope of the offence:
  - the profession etc of false doctrine in private unless it can be said to involve preaching or teaching (so that, for example, comments made in a private, social context could not form the subject of a charge under the provision); and
  - teaching which cannot be said to involve “*professing, advocating or promoting*” false doctrine (thus making it clearer that clerics involved in the academic process would not be at risk of proceedings unless

either there was some personal commitment on their part to the false doctrines in question or they were positively encouraging others to hold them);

- Although aspects of preaching could be covered by the opening words of the proposed provision, the Group agreed that preaching specifically needed to be included, to emphasise the importance of maintaining doctrinal conformity in this most public of roles in the ministry of the clergy;
- With the exception of ‘publicly communicating’, none of the expressions used in the provision are defined, on the basis that they are best left to be interpreted by the tribunals in the light of the cases that come before them;
- The provision incorporates a reference point for determining the doctrine of the Church of England, reflecting section 5(1) of the Church of England (Worship and Doctrine) Measure 1974 and thus Canon A5 (see paragraph 66 below).
- The Group considered, but decided against, the possibility of giving the House of Bishops power to give guidance to those charged with determining doctrine under the Measure on how they should do so. Instead, the Group was content to rely on its understanding of the present legal position. Although Canon A5 gave particular prominence to the Thirty-Nine Articles, the Book of Common Prayer and the Ordinal, that was plainly not an exclusive statement of the possible range of sources from which the doctrine of the Church of England on any particular matter might be deduced - as demonstrated by the use of the words “*in particular*”. Thus, whilst those three sources of doctrine have a special authority, regard can also be had to other sources of doctrine – such as reports which have been approved by the General Synod<sup>38</sup>. The Group considered it unlikely that, in practice, doctrinal disciplinary tribunals would fail to take account of all relevant material of this kind, although the weight that they attached to particular statements in any particular context would no doubt differ.
- No reference has been included to ‘publishing’ false doctrine, but the reference to ‘publicly communicating’ it (defined in clause 5(3), in order to ensure clarity, by reference to a statutory definition) would cover false doctrine communicated, for example, in a radio or TV programme, on the worldwide web or on a video tape.

63. The Group gave careful consideration to how the proposed formulation of the new offence might impact on clerics engaged as university lecturers or teachers who, as part of a properly exploratory approach to doctrine, encouraged their students to consider the merits of positions which were not in fact consistent with the Church’s doctrine. The Group agreed that the traditional position adopted by the Doctrine Commission had to be maintained, namely that exploration of doctrinal

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<sup>38</sup> Support for this view can be found for example in the decision of the Court of Ecclesiastical Causes Reserved in *Re St Stephen’s Walbrook*, in which the Bishop of Chichester took account of the report of the Anglican-Roman Catholic International Commission ‘Agreed Statement on the Eucharist’.

issues was permissible but that the promotion or profession of false doctrine was not. The Group believed that the formula employed in the draft Measure meant that a complaint could only be made under it if the cleric in question had a personal commitment to the views being expressed or could be said to be advocating or promoting it - which was different from merely exploring a doctrinal position, with detachment, for the purpose of academic discussion or stimulating students or others to engage seriously with it. The Group felt confident that such a distinction could and would be made when the Measure was applied in practice.

64. The Group also addressed the issue of expressing false doctrine implicitly rather than expressly. (Examples might include a bishop knowingly ordaining someone known to hold unorthodox views or to have a lifestyle inconsistent with the doctrine of the Church, or a cleric submitting to re-baptism.) The Group agreed that in principle the new procedures ought to be capable of extending to cases of this kind and was advised that clause 5(1)(c) of the Measure would achieve that result in so far as the conduct in question could be seen as “promoting beliefs” incompatible with the doctrine of the Church of England. The Group accepted that it would be for registrars, bishops and tribunals, advised by theological experts, to determine in each case whether it did so.
65. One member of the Group questioned the exclusion of the category from the CDM of “*conduct unbecoming or inappropriate*” which he thought should also be included in clause 5(1). The majority believed, however, that any misconduct that fell within this category would have to be dealt with under the CDM and not in proceedings to deal with doctrinal discipline.

#### **Definition of doctrine for the purposes of the Measure (Clause 5(2))**

66. The Group accepted that section 5 of the Church of England (Worship and Doctrine) Measure 1974 represented the correct reference point for determining doctrine for the purposes of the new procedures for doctrinal discipline. However, the Group also believed that there ought to be some express reference in the definition of doctrine for the purposes of the Measure to the Declaration of Assent made under Canon C15, the Preface to which refers to the Church being “*called upon to proclaim [the faith] afresh in each generation*”. The first part of clause 5(2) of the Measure is therefore in prescriptive terms, providing a definition of doctrine for the purpose of deciding whether clergy have in practice held to the doctrine of the Church which is the same as that contained in section 5 of the 1974 Measure. The second part of clause 5(2) is in descriptive terms, referring to the fact that it is by reference to the same definition that clergy are required to assent to the doctrine of the Church, using the Declaration of Assent.



### **Clause 1**

67. This clause, which requires regard to be had to the role of the bishop in exercising discipline, reflects the corresponding provision of the CDM, as the Group considered that role to be equally applicable in the context of doctrinal discipline. As under the CDM, the focus of discipline under the Measure will accordingly be diocesan rather than provincial or national.

### **Clauses 2 to 4**

68. Clause 2 constitutes diocesan tribunals (to be called “*bishop’s doctrinal disciplinary tribunals*”) to deal with cases of discipline in matters of doctrine, ritual and ceremonial, distinct from the “*bishop’s disciplinary tribunals*” under the CDM. Jurisdiction is then given to them and (in the case of complaints against bishops and archbishops) the Vicar-General’s Courts to hear and determine disciplinary proceedings under the Measure.
69. The Group recognised that, since any particular case might raise issues of both conduct (to be dealt with under the CDM) and false doctrine etc (to be dealt with under this Measure) problems might arise concerning which set of procedures would be appropriate. It agreed that it would be for the diocesan registrar to advise the bishop on this point at the stage of preliminary scrutiny.
70. As under the CDM, the bishop’s doctrinal disciplinary tribunals and Vicar-General’s Courts will have jurisdiction under the Measure over all those in Holy Orders, whether serving or retired.

### **Clause 5**

71. This provides for the possibility of disciplinary proceedings under the Measure in relation to the types of misconduct specified in sub-clause (1) (see paragraphs 60 to 65 above).

### **Clause 6**

72. This provides a limitation of one year on the institution of proceedings. This time limit starts with the misconduct in question (or the last instance in a series of acts and omissions). However, the President of Tribunals (after consultation with the complainant and respondent) may give permission for proceedings to be instituted after the one year period, if he considers there is good reason why the complainant could not institute proceedings at an earlier date. This mirrors the CDM, except that the provision in that Measure relating to the institution of proceedings against a person who has been convicted in the secular courts is not applicable in this Measure and has therefore been excluded.

## Clause 7

73. This makes provision for who can make a complaint under the Measure. The Group has given this issue its most detailed and lengthy consideration. It recognised the principle inherent in the CDM of the need to filter out vexatious and malicious complaints, whilst allowing for genuine complaints to proceed. However, the Group has concluded that the provisions of the CDM need to be varied in a number of respects, as explained below, to achieve this aim in the context of doctrinal discipline.
74. The Group considered whether the bishop should be able to make a complaint. It recognised, however, that allowing the bishop to initiate a complaint had the unavoidable corollary (because of Human Rights Act considerations) of reducing his involvement later in the disciplinary process. It concluded that the bishop's role as the upholder of doctrinal discipline in a diocese was better served by maintaining his later responsibilities rather than allowing him to make a complaint. Such an approach would also be consistent with that in the CDM.
75. The Group considered that it should not be possible, as it is under the CDM, for a churchwarden of any parish having a proper interest to make a complaint against a priest or deacon. Rather, primary responsibility for making such a complaint should rest with the PCC of any parish having a proper interest. A churchwarden, or some other person nominated by the PCC, should be able to make a complaint on its behalf provided that he or she had the support of two-thirds of the lay members of the PCC. The Group believed that the position in relation to complaints of a doctrinal nature was likely to be different from that in a 'conduct' case and so warranted this variation from the provisions of the CDM: whilst in 'conduct' cases it might well be appropriate for a single churchwarden to be able to make a complaint, in doctrinal cases the misconduct would be of a rather different kind, in relation to which it was desirable to have a wider degree of consensus about the inappropriateness of what had been done.
76. The Group also gave careful consideration to the issue of who, beyond those most closely involved, should be able to make a complaint. The CDM of course provides for that to be possible in the case of "*any other person having a proper interest in making the complaint*". But the Group considered that to be too wide a definition to be appropriate in cases of doctrine, ritual and ceremonial. Whilst accepting that the holding of false doctrine by a bishop or senior cleric was of concern to the wider church, the Group doubted the desirability of allowing any single member of the Church who was concerned at that to be able to initiate the disciplinary procedures under the Measure. It therefore favoured some restriction on the ability to bring proceedings, requiring both a more immediate connection with the office holder in question and concern on the part of more than one individual. The practical application of this principle in one particular was raised when the Group's interim report was discussed by the House. The concern was expressed that the then proposed absolute requirement for ten members of the

diocesan synod to support a complaint was inequitable given the range of sizes of diocesan synods across the Church. The Group agreed and is now proposing ten percent of each House as detailed below. The draft Measure accordingly provides for it to be possible for a complaint to be made:

- (a) in the case of a priest or deacon – by a person acting on behalf of ten percent of the House of Clergy and ten percent of the House of Laity of the Diocesan Synod ;
- (b) in the case of a bishop or an archbishop – by a person acting on behalf of ten percent of the House of Clergy and ten percent of the House of Laity of the Diocesan Synod ; and
- (c) in the case of a bishop or an archbishop - by a person acting on behalf of three bishops and five clergy of the Convocation concerned plus five members of the House of Laity of the General Synod from the province concerned.

It would be for the registrar in the course of his or her preliminary scrutiny to confirm that these requirements had been fulfilled.

### **Clause 8**

77. The provisions for the preliminary scrutiny of a complaint generally follow those contained in the CDM. But, as at other points in the process, the Group considered it crucial that those concerned with deciding whether misconduct had occurred should be able to draw on advice from specialists in the relevant field. To this end, under clause 8(2), the registrar is required to consult with a member of the panel of experts constituted under clause 18, unless he or she considers it unnecessary in the circumstances of the case. Given the need to do that, the Group also agreed that more time should be provided for the registrar to prepare a report for the bishop than the twenty-eight days (with power to extend this once) provided in the CDM.

### **Clauses 9 to 16**

78. These provisions, which set out the courses of action open to a bishop, the conduct of proceedings of a tribunal and rights of appeal, are essentially the same as those in the CDM (with the addition of provisions for extra consultation).
79. One significant way in which the draft Measure departs from the CDM is in the provisions contained in clauses 9(3) to 9(5). Under these provisions the bishop, having received the registrar's report, and if he is minded to direct that a formal investigation be instigated, (i.e. those cases that are most serious, with wider implications), has the option of first requesting that the archbishop of the province appoint three persons in episcopal orders (serving or retired, and from either province) from whom he can formally seek advice (either generally or specifically), before the making his decision. Such advice would be recorded in

writing and be made available to all parties in the proceedings and the “advising bishops” concerned would be excluded from taking part in any subsequent proceedings relating to the case in question. This provision for consultation with episcopal colleagues also applies to an archbishop considering a complaint against a bishop and an archbishop considering a complaint against the other archbishop (clause 7(3)).

80. This right to seek advice has been made optional, as the Group felt that to make it mandatory would unnecessarily infringe the freedom of each individual diocesan bishop to administer discipline in his diocese and may not be thought to be necessary in all cases. It is expected, however, that most, if not all, bishops in these circumstances, would want the advice of episcopal colleagues before proceeding in cases which raise issues of importance or sensitivity; and if they are to be able to do so, express provision needs to be made for that in the Measure.
81. Another difference is that Clause 14 provides for the formal investigation by the designated officer (an officer of the Legal Office designated for this purpose by the Archbishops’ Council) to be conducted “*in consultation with*” a member of the panel of theological experts, that person being different from any person consulted by the registrar under clause 8(2).
82. In regard to clause 15(3)(d), the Group discussed whether doctrinal disciplinary tribunals should meet in private or in public. It was noted that there had been considerable discussion of this point in the course of the synodical approval of the CDM (including taking into account the advice of Leading Counsel with regard to the application of the Human Rights Act). The Group agreed that there was no good reason why the provisions in the CDM in that respect should not also be applicable to doctrinal disciplinary tribunals.
83. As regards clause 16, whilst the Group agreed that the Measure would need to mirror the CDM as regards the imposition of penalties by the tribunal, it felt some concern over the possibility of inconsistent penalties. It noted, however, the duty imposed by section 3(3)(a) CDM on the Clergy Discipline Commission (on which would sit at least two bishops) to give general advice “*as to the penalties which are appropriate in particular circumstances*”, which will be extended by the draft Measure to apply to doctrinal disciplinary procedures.

### **Clause 17**

84. The Group agreed that the grounds for an appeal on “*a question of law or fact*” contained in clause 17(1)(b) (which mirrors section 20(1)(b) CDM) were also applicable in cases involving doctrine, ritual or ceremonial. It would be a “*question of law*” whether any act or omission constituted misconduct under the Measure.

85. The Group considered it important that, in view of the role of the House of Bishops in safeguarding doctrine, it should be able to challenge a finding relating to matters of doctrine, ritual or ceremonial with which it was unhappy. Clause 17(1)(b) therefore provides that the House of Bishops (by means of a member authorised by it) should have a right to appeal against any finding of a doctrinal disciplinary tribunal or a Vicar-General's Court on a point of law.
86. The Group noted that by making the Court of Ecclesiastical Causes Reserved the appellate tribunal under the Measure, these new procedures would give the Church ultimate control over the adjudication of doctrinal disputes, in as much as the Court of Ecclesiastical Causes Reserved is made up of three bishops and two judges – whereas the existing appellate tribunal, the Commission of Review, consists of two bishops and three judges. It was further noted that the constitution of the Court of Ecclesiastical Causes Reserved might need to be amended in the light of the new procedures under consideration, in order to make provision for the possible need for another member to take the place of one who was precluded from hearing an appeal because of their earlier involvement in the matter.

### **Clause 18**

87. This is a new provision, not contained in the CDM. It provides for a panel of theological experts appointed by the House of Bishops to assist at various stages in the Measure. Reference has been made already to registrars and the designated officer being assisted by members of this panel (see paragraphs 77 and 81 above) and members of the panel will also act as assessors to any tribunal (see paragraphs 94 and 95 below).
88. The Group agreed that the terms of appointment for those appointed to the panel of theological experts should provide for a five year term of office, to be renewable at the end of each term and with no other limits set. In deciding this, the Group was conscious of the relatively small number of people who could be drawn upon to become members and the likelihood that they would rarely be called on to serve, which militated against requiring a large turnaround of panel members. However, the Group did feel that provision should be included for the renewal of office at reasonable intervals, to allow for new members to be introduced and to ensure that the Panel continued to provide the expertise required of it. The Group decided against introducing any upper age limit, as this might prove unnecessarily prescriptive.

### **Clause 19**

89. After discussing a number of options for the composition of the doctrinal disciplinary tribunal, the Group agreed on the following composition (which is accordingly embodied in clause 19(1)):

The President of Tribunals or some other legally qualified person nominated by him (Chairman);  
Three bishops (at least two being serving diocesan bishops);  
Two lay persons; and  
Two clergy.

90. Apart from the episcopal members of the tribunal (who would be nominated by the Standing Committee of the House of Bishops) the other members of the tribunal would be selected from the provincial panels established under the CDM.
91. As the tribunal would be made up of an even number of members the President of Tribunals would have a casting vote that he or she would be able (and expected) to use in the event of a tied result. The Group agreed that the standing of the tribunal required that at least two of the episcopal members should be serving diocesan bishops.
92. The Group recognised that the requirement for impartiality in those chosen to serve on a tribunal needed to encompass theological viewpoint and that the general theological balance of a tribunal, if that could be discerned, could be a matter to fall within the provisions of clause 19(2) (thus allowing the person against whom the complaint had been made to make representations about the suitability of members of the tribunal who were not considered impartial).

#### **Clause 20**

93. The Group's decision on the composition of the doctrinal disciplinary tribunal is reflected in the composition of the Vicar-General's court in proceedings against a bishop or archbishop.

#### **Clause 21**

94. This clause provides for the appointment of assessors from the panel of theological experts to both doctrinal disciplinary tribunals and Vicar-Generals' Courts for the purposes of the Measure. The Group preferred this course of action to the alternative of making the experts members of the tribunal or court itself, because it would allow the parties (through cross-examination) to openly examine the advice given to the tribunal by the assessors.
95. The Group agreed that a tribunal or Vicar-General's Court should not be able to waive the requirement to appoint theological assessors as the Group did not consider that these bodies could operate effectively or fairly without advice from theological assessors. The Group further agreed that a provision for "*not more than three assessors*" to be appointed should be sufficiently flexible to allow for varying cases to be treated appropriately.

### **Clauses 22 and 23**

96. These provide for the penalties that can be imposed upon someone found to have committed misconduct under the Measure and mirror the corresponding provisions in the CDM. The Group agreed that the full range of penalties available under the CDM should also be available in relation to cases involving doctrine, ritual and ceremonial.

### **Clauses 24 to 26**

97. These provisions are ancillary to those relating to penalties and again generally follow the corresponding provisions in the CDM. However, clause 24 departs from the CDM in one significant respect. Whereas the CDM contains a provision allowing a penalty of prohibition or deposition to be nullified on grounds that new evidence has subsequently come to light or that the proper legal procedure leading to the prohibition or deposition was not followed, clause 24 also adds a new procedure allowing such a penalty to be revoked if the cleric in question ceases to hold the belief(s) upon which the finding of misconduct was based. To initiate this procedure, the cleric must apply to the Archbishop, who has to refer it to the bishop's doctrinal disciplinary tribunal for determination unless he is satisfied that the application is clearly unfounded. The tribunal (which must not include any members or assessors who were involved in the original decision) will be assisted by the designated officer. If the tribunal upholds the application it may, after consulting the Archbishop, revoke the prohibition or deposition. (One reason for not doing so might be that the tribunal, during the course of the hearing, had come to the conclusion that the cleric held heterodox views on some other important point of doctrine.) There would be a right of appeal to the Court of Ecclesiastical Causes Reserved. Corresponding provisions would apply in the case of bishops.

### **Clause 27**

98. Clause 27 applies to clergy on whom a penalty has been imposed under this Measure who subsequently perform a function in contravention of the terms of that penalty. This clause provides that such an act is to be dealt with as misconduct under the CDM. The clergy concerned would therefore be dealt with under the CDM, with the only issue being whether or not the original penalty had been contravened. Clause 29 of the CDM already provides for contravention of a penalty imposed under the CDM (or a censure under the 1963 Measure) to be dealt with as misconduct under the CDM.

### **Clauses 28 to 33**

99. These are new, reproducing the corresponding provisions of the CDM, *mutatis mutandis*.

- Clause 32 essentially reproduces section 42 of the CDM, making provision for those who can bring complaints in the case of special classes of clergy. Clause 32(3) in particular is noteworthy, providing as it does for a complaint only to be made against “*a chaplain of a prison, hospital, university, school or other institution*” by “*a person duly authorised by the diocesan bishop concerned*”.
100. The Group did not accept the view of the Theological Group that the fact that clause 32 allowed a bishop to authorise the making of a complaint against certain classes of clergy provided support for the view that clause 7 should be modified to allow him to authorise complaints more generally. The Group considered that allowing a bishop to authorise a complaint ought to be a course of last resort, employed where other possibilities were inappropriate or unavailable. Whilst that was the case in relation, for example, to complaints about college chaplains, it was not the case in relation to parochial clergy.
101. Furthermore, it had to be understood that where the bishop was in a position to authorise a complaint, the bishop’s function was simply to decide whether or not the processes under the Measure should be invoked, not to form any final view on whether the case should be dismissed or pursued through one of the range of options available to him. And it was important, again in order to avoid compromising his subsequent role, that the bishop should not encourage the making of the complaint in the first place: it had to be genuinely independent. There might indeed be advantages in the bishop appointing a particular person to undertake his functions in authorising complaints, in order to reduce the risk of any allegation that he had acted partially.
102. The Group also considered the extra-diocesan position of chaplains appointed to the colleges of the Universities of Oxford and Cambridge as well as those ministers with a licence to preach throughout England granted by either of these universities.
103. The Group is clear that such college chaplains would fall within clause 32 of the new disciplinary procedures in the same way as under the 1963 Measure (i.e. jurisdiction to hear and determine complaints of a disciplinary offence would arise in the diocese in which the cleric at the relevant time held office as a chaplain).

### **Clauses 34 to 38 and Schedules 1 to 3**

104. These contain a number of ancillary provisions including consequential amendments and repeals. Amongst other things they provide for the Clergy Discipline Commission, the President of Tribunals and the Registrar of Tribunals (as appointed under the CDM) to perform appropriate functions under this Measure.



## **OTHER RECOMMENDATIONS**

### **Making of the Declaration of Assent**

105. In the course of its discussions the Group touched on the practice of the making of the Declaration of Assent. It was the Group's initial view that in all normal circumstances, including at ordinations, the Declaration of Assent should be made in public. The Group consulted both the Theological Group of the House of Bishops and the Bishop of Salisbury (as Chairman of the Liturgical Commission) on this issue. Both had concerns about the practicalities involved, especially at ordination services with a large number of ordinands. The Bishop of Salisbury also resisted inclusion of the making of the Declaration of Assent in the ordination rite, preferring that the Declaration be made in public before the congregation in which the cleric is to serve thereby preserving "*the distinction between ordination to one of the historic orders and appointment to a particular office*".
106. The Group noted that the amendments to Canon C15 which were proposed to be brought about by Amending Canon No.24 went a long way to meeting the Group's desire: (a) by extending to cathedral clergy and NSMs the requirement to make the Declaration of Assent before they were respectively installed or licensed; (b) by providing that the Declaration of Assent should continue to have effect after a cleric ceased to hold office, in so far as the cleric continued to minister in the Church; and (c) by requiring that any cleric (rather than, as at present, stipendiary curates only) should, if instituted, installed, licensed or admitted to office in some place other than the place in which that cleric was to serve, publicly make the Declaration of Assent on the first Sunday on which he or she officiated in that place.
107. The Group noted that once these changes to Canon C15 were in force it would still be lawful in certain circumstances for a priest or deacon not to make the Declaration 'publicly', but the Group accepted that a degree of latitude was required in the regulations for the making of the Declaration of Assent. The Group therefore agreed that it would not make any recommendations for further changes to Canon C15. Rather the Group recommends that wherever practically possible the Declaration of Assent should be made publicly before a congregation in the context of a public act of worship.

### **Knowledge of the Canons**

108. One issue that emerged at various points in the Group's discussion of the submissions was the question of the knowledge and use of the Canons. The legal advice given to the Group was that the Oath of Obedience contained in Canon C14 and taken by all priests or deacons on ordination, and at every subsequent institution or licensing, obliged clergy to obey the Canons. Given that fact, the Group agreed that greater prominence needed to be given to education in what the

Canons said and the primary sources from which they derived. Having consulted the Ministry Division, the Group therefore recommends with the Division's agreement that (should it be possible to find funding for the purpose) a printed copy of the Canons be provided to each new student on entering ministerial training.

109. Finally, the Group also wishes to highlight that the Canons are available to be downloaded from the Legal Office website – [www.cofe.anglican.org/legal](http://www.cofe.anglican.org/legal). Furthermore, the Group would encourage training incumbents to ensure that training in the proper knowledge of the Canons is covered in the course of their responsibilities. The Group also would encourage the laity, as part of their role of supporting the clergy, to be fully aware of the Canons and the standards which they seek to safeguard. The Group also commends the syllabus for teaching canon law in theological colleges, courses and schemes entitled *An Ordered Church*, which is produced by the Ecclesiastical Law Society.

**On behalf of the Group**

**+Peter Cestr:**

**Chairman**

**4 June 2004**

**Appendix I – responses to the Group’s initial consultation**

Australia, Anglican Church of	
Baptist Union of Great Britain	
Professor Nigel Biggar	University of Leeds
The Venerable the Archdeacon of Bournemouth	
Canada, Anglican Church of	
Canon Paul Brett	Chelmsford (105)
Mr Tim Burkitt	
The Reverend Professor Henry Chadwick	
His Honour Judge Thomas Coningsby QC	Chancellor of the Diocese of York.
The Reverend Stephen Cope	Vicar of Rudston, York
Doctrine Commission	
The Rightt Reverend Ronald Gordon	Judge of the Court of Ecclesiastical Causes Reserved
The Right Reverend Alec Graham	Judge of the Court of Ecclesiastical Causes Reserved
Mrs Faith Hanson	Norwich (448)
Mr John G Hills	
Chancellor Mark Hill	Chancellor of the Diocese of Chichester
The Reverend J L Houlden	Emeritus Professor of Theology, King’s College, London
Ireland, Church of	
The Reverend Kingsley Jones	Vicar of Winshill, Derby
The Reverend Simon Killwick	P-in-c Moss Side, Manchester
Canon Malcolm King	Guildford (157)
The Reverend John MacDonald Smith	
Thyateira and Great Britain, Archdiocese of	
Mr Brian McHenry	Southwark (510) and Archbishops’ Council
The Venerable the Archdeacon of Malmesbury	Bristol (92) (Chairman of “Under Authority” Working Party and CDM Steering Committee)
Mrs Penelope C O Mawdsley	
New Zealand, Anglican Church in	
Christ Church, Oxford	Dean and Chapter
Mr Augur Pearce	PhD student, Magdalene College, Cambridge
The Reverend Ronald Pearse	

The Reverend Ronald Pearse (123 people named petition)	
The Right Reverend the Bishop of Portsmouth	
Retired Clergy Association	
Scottish Episcopal Church	
The Reverend Graham Shaw	Former Chaplain and Fellow, Exeter College, Oxford
Dr Janet Martin Soskice	Faculty of Divinity, Jesus College, Cambridge
Southern Africa, Church of the Province of	
Southern Cone of America, Anglican Church of	
Mr Adrian F Sunman	
The Right Reverend Stephen Sykes	Principal, St John's College, Durham
Mr V H Taylor	
The Reverend Dr Malcolm Torry	Team Rector, East Greenwich, Southwark
United States, Episcopal Church of	
Mr David Wall	
The Reverend Canon Professor John Webster	Lady Margaret Professor of Divinity, Oxford
The Reverend Ian Williams	Vicar of Christ Church, Lichfield

**Appendix II – responses to the Group’s second consultation**

Lynn Anderson	Lichfield 406
The Reverend David Banting	Chelmsford 106
Mrs Elizabeth Bridger	Norwich 449
Daphne Brotherton	Chichester 356
Paul Boyd-Lee	Salisbury 495
J Graham Campbell	Chester 348
Sir Patrick Cormack MP	Lichfield 409
Ian Dobbie	Rochester 475
Sarah Finch	London 429
The Reverend Dr Paul Gardner	Chester 114
Philip Gore	Manchester 440
Lady Jane Gore-Booth	Durham 374
Mrs Faith Hanson	Derby 368
Lee Humby	London 431
Alan Jones	Liverpool 420
David Kidd	Carlisle 333
Frank Knaggs	Newcastle 446
The Reverend Canon David Lickess	York 297
Julian Litten	Chelmsford 339
Ian Looker	Salisbury 499
Sister Mary Angela	Religious Communities 555
Joanna Monckton	Lichfield 412
David Morgan	Chelmsford 342
Terrence Musson	Truro 520
The Very Reverend George Nairn-Briggs	Dean of Wakefield 68
John H W Pope	Chichester 363
Jonathan Redden	Sheffield 505
Mrs Alison Ruoff	London 435
Bill Sargison	Gloucester 394
The Venerable Richard Seed	York 294
Carol Ticehurst	Lincoln 418
The Reverend Dr Richard Turnbull	Winchester 288
The Reverend Canon Michael Walters	Chester 117