

INTRODUCTION

It is possible to wonder what more there is to say about whether the Church of England should have women bishops. The Church of England has already been blessed by a series of substantial reports – notably the Rochester Report in 2004, and the series of documents that went to General Synod in 2006 from the Guildford Group, the Bishops of Guildford and Gloucester, and the Faith & Order Advisory Group.

This Report, nevertheless, breaks new ground and is of a different character from what has gone before. The task that the General Synod gave us in July 2006 was to prepare possible legislation, consistent with the Synod's view that the time had come to explore in some detail what the practical implications would be of admitting women to the episcopate. This report, therefore, seeks to move the debate on from the 'whether' to the 'how'. In so doing it sets out some key options, with illustrative legal material.

Our hope is that this Report will now enable Synod members to make an informed choice as to how to proceed. While the Report essentially focuses on practicalities, the Group has throughout been engaged on the theological and ecclesiological implications of different ways of proceeding. Within the Group, as within the Synod, there has been a wide range of views and we have not seen it as our task to strain for consensus. We have, however, engaged with one another with great courtesy, united in a shared commitment to a common task, and been nurtured by much prayer and fellowship together. We are unanimously agreed that the report which we now offer to the House of Bishops and the Synod offers a balanced, and we hope thorough, analysis of the complex issues we were asked to consider.

I wish to record here my own debt of gratitude to the members of the group, who have been remarkably faithful in attending our meetings, and to the supporting staff who have kept us to our task and managed the substantial volumes of paper that we have received and ourselves generated. On behalf of the Group I also wish to thank all those who took the time to write in with their views, and who responded to invitations to see us. Their contributions greatly enriched our work.

+NIGEL MANCHESTER
April 2008

Membership of the Working Party

Members

The Bishop of Manchester, the Rt Revd Nigel McCulloch (Chair)
The Archdeacon of Chester, the Ven Donald Allister
The Revd Jonathan Baker (Principal, Pusey House, Oxford)
The Dean of the Arches, the Rt Worshipful Dr Sheila Cameron
The Dean of Leicester, the Very Revd Vivienne Faull
Dr Paula Gooder
Mrs Margaret Swinson
Sister Anne Williams
The Bishop of Basingstoke, the Rt Revd Trevor Willmott

Staff assessors

Mr William Fittall (Secretary General of the Archbishops' Council and the General Synod)
Mr Stephen Slack (Head of Legal Office, Archbishops' Council)

Secretariat

Ms Frances Arnold (Executive Officer, House of Bishops) from September 2007
Miss Jane Melrose (Assistant Secretary, House of Bishops) May – September 2007
Mr Jonathan Neil-Smith (Secretary, House of Bishops)
Mr Adrian Vincent (Executive Officer, House of Bishops) until May 2007

CHAPTER ONE

SETTING THE SCENE

1. We met for the first time in January 2007. Since then we have met 13 times, we have received 312 submissions, held discussions with a number of groups and individuals, read much, discussed much and prayed.
2. Our work is the result of a motion passed by the General Synod on 10 July 2006. A copy of that motion, and of other relevant motions passed by the Synod in 2005 and 2006, can be found at Annex A.
3. This motion needs to be viewed in the context of earlier consideration of the Church of England's handling of the admission of women to the three orders of ministry. Unlike some other Churches in the Anglican Communion, the Church of England has not chosen to admit women to all three orders at once.
4. The history of the development of women's ministry in the Church of England has been surveyed elsewhere¹: suffice to say here that the General Synod approved the admission of women to the diaconate in July 1986, and to the priesthood in November 1992. In July 2000 the Synod invited the House of Bishops to commission a study of the theological issues associated with the admission of women to the episcopate.
5. The events leading up to the establishment of our group can be traced from the publication in November 2004 of the results of this study – *Women Bishops in the Church of England?*². This document - the Rochester Report – explores with great care the underlying issues. Its fifth chapter provides an extensive analysis of the theological case for and against admitting women to the episcopate. The Synod took note of the Rochester Report in February 2005 and, in parallel, the House of Bishops set up a small group under the chairmanship of the Bishop of Guildford to examine possible ways forward.
6. General Synod in July 2005 voted to set in train the process to remove the legal obstacles to the ordination of women to the episcopate, and invited the House to make its report on the options available for a future debate. At the inaugural meeting of the new Synod in November 2005 a seminar was held on the episcopate, involving ecumenical contributions.
7. In February 2006 the Synod had a presentation on ecumenical responses to the Rochester Report³ and debated the report from the group chaired by the Bishop of Guildford. It agreed that the approach advocated by the group – 'Transferred Episcopal Arrangements' merited further study and asked for further work to be done for July.

¹ See, for instance, chapter 4 of *Women Bishops in the Church of England?* [the Rochester Report]

² GS 1557: from the Group chaired by the Bishop of Rochester

³ See GS Misc 807: Ecumenical Responses to the Rochester Report

8. A report from the Bishops of Guildford and Gloucester⁴ was produced by the end of May 2006, and this together with a further set of essays from the Faith & Order Advisory Group⁵ resourced two debates at the General Synod in July 2006. The House of Bishops was, however, unable to commend to the Synod a particular approach. Instead it invited the Synod to pass two motions (see Annex A); one on the underlying theological issue, and one establishing our group.
9. We have not seen it as our task to revisit all the issues that had been covered extensively in the earlier reports, but rather to focus on our primary tasks set out in the 10 July 2006 motion, recognising, as the first paragraph of that motion states, that ‘the implications of admitting women to the episcopate will best be discerned by continuing to explore in detail the practical and legislative arrangements’.
10. Our work has also been informed by engaging with the House of Bishops over a set of key questions prepared in liaison with its Theological Group in October 2007, and by further comments from the House of Bishops following its meeting of January 2008.

⁴ GS Misc 826: *Women in the Episcopate: Report to the House of Bishops from the Bishops of Guildford and Gloucester*

⁵ GS Misc 827: *Resources for Reflection on the subject of women bishops in the Church of England* – this publication incorporated an address from Cardinal Kasper to the June 2006 Bishops’ Meeting

CHAPTER TWO THE NATURE OF THE CHALLENGE

11. In agreeing to be members of the Drafting Group, none of us was under any illusions about the difficulty of the task that we faced. Two things had emerged clearly from the General Synod debates of 2005 and 2006. First, there were significant majorities in all three Houses of Synod for the principle of admitting women into the episcopate and introducing the necessary legislation to enable this to happen.
12. Secondly, there was a great deal of perplexity over how this could be done in a way which (a) had ecclesiological integrity; (b) left space within the Church of England for those who in conscience could not accept the priestly or episcopal ministry of women; and (c) avoided any flavour of discrimination or half-heartedness on the part of the Church of England towards women priests and bishops.
13. This perplexity needs to be understood against the background of the decisions that the Church of England took in the early 1990s and its experience since the first women priests were ordained in 1994. Our task is to look forward rather than to revisit the arguments of 15 and 20 years ago. Nevertheless, we have found it helpful to try and come to a balanced assessment of what was decided in the early 1990s in order to understand more clearly the nature of the choices that the Church of England now faces.
14. We offer the following reflections on the nature and outworking of decisions taken in the early 1990s. First, the 1993 Measure and Episcopal Ministry Act of Synod were the fruits of a difficult process of debate and engagement over the ordination of women to the priesthood. Even those – and there are many – who believe that they have provided as good a way out of a difficult impasse as was achievable in the circumstances nevertheless acknowledge their shortcomings. There are particular sensitivities around the Act of Synod. Whatever view is taken about its substance, the fact that it was devised at some speed only after the legislation had completed its very protracted scrutiny in Synod is widely seen as regrettable and not a process to be imitated.
15. Secondly, and more substantively, there remains a profound ambivalence within the Church of England over how to understand what was decided 15 years ago. It is not simply that different people take different views. Many who rejoice that the Church of England found a way of admitting women to the priesthood, while leaving space for those who, on grounds of conviction, could not receive their ministry, nevertheless remain uncomfortable about the situation that has been created.
16. This is partly because for so long as the Church of England admits women into the diaconate and the presbyterate but not the episcopate, there will be a sense of unfinished business. But it is also because of a continuing sense of insecurity on the part both of women priests and of those who, in conscience, cannot receive their ministry.

17. For many of the former, the effect of the Measure and Act of Synod is to cast a shadow over their calling. Is the Church unequivocally committed to them? Does talk of a period of reception mean that the Church of England is, at least in theory, open to the possibility that it has taken a wrong turning? For those Evangelicals and Catholics whose convictions point to an all male presbyterate and episcopate the unresolved question is whether the Church of England has determined to create a permanent place for them or whether special arrangements are, ultimately, only transitional.
18. Our third reflection on the experience of the past 15 years concerns the difficulty of interpreting the contextual changes that have undoubtedly occurred. In society more generally there is now an even greater suspicion than previously of anything that smacks of “discrimination.” This partly reflects changing attitudes and partly an ever expanding body of domestic and European legislation designed to safeguard individual rights.
19. Similarly, within the Church of England the fact that about half of those now in training for the ordained ministry are women⁶ makes it hard for many to see why there is still anything to be discussed about having women in the priesthood and episcopate. Fifteen years ago there were some who were uncertain about the ordination of women, not so much out of theological conviction, but simply because it was an unfamiliar idea. Subsequent experience has generally banished those sorts of doubts.
20. As against that, those who perhaps expected to see a steady contraction in the constituency of those theologically unable to accept women’s ordination will have been disappointed. There remain over 900 parishes that have passed one or other of the two resolutions under the 1993 Measure⁷. Such parishes continue to produce a steady stream of ordinands who themselves have conscientious difficulties over women’s ordination.
21. This is not the occasion to revisit the theological issues extensively explored in the Rochester Report, but in summary these conscientious difficulties are generally of one of two kinds, though they are not, of course, mutually exclusive. For some, there will remain, at the very least, a significant measure of doubt over admitting women to the orders of priest and bishop – and thus a need for honouring an open process of reception – for so long as those Churches with whom the Church of England shares the historic episcopate do not do so. For others, the issue turns more on what Scripture is understood to say on headship and leadership within the household of faith.
22. Against that background, what conclusions should be drawn for the decisions that the Church of England faces in relation to women bishops? It seems to us, as a group encompassing a wide variety of views on the underlying theological issues, that **far and away the most important question that the Church of England now has to face is the extent to which it wishes to**

⁶ In 2007/8 49.4% of those in training were women.

⁷ For a breakdown of the statistics for parishes passing Resolutions A / B and/or petitioning for extended episcopal ministry as at 1 January 2008 see Annex G.

continue to accommodate the breadth of theological views on this issue that it currently encompasses.

23. At first sight that may appear an easy question to answer. There are probably few in the Church of England who would cheerfully own up to wishing, as a matter of settled policy, to shrink its comprehensiveness. Nevertheless, the shape of legislation on women bishops turns crucially on how determined members of General Synod are to stretch as far as is theologically and ecclesiologically possible in order to continue to accommodate the widest possible breadth of theological convictions.
24. The debates and votes in Synod in 2005 and 2006 suggest that there is a genuine openness to exploring creative and innovative solutions to allow the Church of England to have women bishops while still maintaining its comprehensiveness. At the same time there was a clear strand of anxiety running through the debates over whether, in practice, this was a circle that could be squared with integrity. Within an episcopal church the role of bishops is clearly pivotal. Full communion and collegiality within the House and College of Bishops has up to now been a central plank in Anglican ecclesiology. The prospect of a House of Bishops where there would no longer be full communion and collegiality between its members does, therefore, raise new and difficult issues.
25. The maintenance of a mixed economy would also raise questions of a different kind over the nature of the Church of England's perceived commitment to those women whom it had admitted to the priesthood and episcopate. For some, the willingness of the Church of England to accommodate two views would raise a doubt over the wholeheartedness of its commitment, not least in circumstances where it continued to speak of the full admission of women to holy orders as a development that it offered for reception by the Universal Church.
26. On this analysis, therefore, it would be crucial that any special arrangements for those with conscientious difficulties in relation to women's ordination did not appear to leave any doubt over the Church of England's unqualified commitment to a threefold order of ministry, open equally to men and women. For all practical purposes the Church of England would have passed the point of no return on this issue, notwithstanding the acknowledgement that the period of reception in the Universal Church continued.
27. So, to pull the threads together, we believe that the House of Bishops and the General Synod need to be absolutely clear about whether they remain committed to finding an approach that accommodates those who have theological difficulties with women's ordination to the priesthood and episcopate. Either way there are very significant consequences which should not be underestimated.

CHAPTER THREE UNDERSTANDING THE CHOICES TO BE MADE

28. Evaluating the various possible approaches that we explore in the next two chapters turns crucially on the issue identified in the preceding chapter about the sort of church that the Church of England wishes to be if it admits women to the episcopate. There is, in addition, a further set of issues that are important to get on the table up front. It is clear, both from the early debates and the evidence that we have received, that they are the subject of a good deal of confusion. We make no apology, therefore, for devoting this short chapter to them.
29. At its simplest, the Church has three decisions to make about women bishops. First, and most fundamentally, is **whether** it wishes to proceed. Secondly, if it does, it has to resolve **what** it wants that development to mean in practice. Thirdly, it has to decide **how** it wishes the change to be effected.
30. The first of these decisions has already in principle been taken, though since it is not currently lawful to consecrate women as bishops in the Church of England it will have no practical consequences until and unless the necessary legislation has been considered by the General Synod, approved by a majority of the Diocesan Synods, given final approval by a two-thirds majority in each of the three Houses of the General Synod, approved by each House of Parliament and given the Royal Assent.
31. In July 2005 the General Synod voted by significant majorities (bishops 41 - 6, clergy 167 - 46, and laity 159 - 75) in favour of setting in train the process of removing the legal obstacles for the ordination of women to the episcopate. In July 2006 by majorities of 31 - 9 in the House of Bishops, 134 - 42 in the House of Clergy and 123 - 68 in the House of Laity, the Synod welcomed and affirmed “the view of the majority of the House of Bishops that admitting women to the episcopate in the Church of England is consonant with the faith of the Church as the Church of England has received it and would be a proper development in proclaiming afresh in this generation the grace and truth of Christ.”
32. Notwithstanding these clear statements in relation to “whether,” the Synod was not ready in July 2006 to come to a view on the “what “ and “how.” The report from the working group chaired by the Bishop of Guildford (GS1605) and subsequent report from the Bishops of Guildford and Gloucester (GS Misc 826) had explored both sets of issues. The House of Bishops had, however, not felt able to offer the Synod a clear steer.
33. For that reason, we have found ourselves confronted with a wider range of choices than would normally be expected of a drafting group. Typically, the Synod would decide the “what” and then give a drafting group the task of sorting out the “how.” We have had to address both.

34. Our task has not been made easier by the way in which some of the positions taken by the various groups have come to be summarized in ways that tend to confuse means and ends - the 'how' and the 'what'.
35. This is not to be critical and, of course, questions about what to achieve and how best to achieve it are not wholly separable. There are some outcomes which could be secured only by clauses in a Measure. Thus, for example, if it were decided to create a new province or if it were decided that certain existing statutory provisions needed to be modified, that could only be achieved by including the necessary clauses and or schedules in a Measure.
36. But what has, perhaps, not sufficiently been appreciated is that there is quite a wide range of arrangements that could be promoted in a variety of ways: Measure, regulations made under Measure, a statutory code of practice, a non statutory code of practice and an Act of Synod. **The choice of instrument to adopt turns largely on a judgment about the degree of assurance required and the extent to which there is a wish to create rights which will, in the last resort, be legally enforceable.**
37. In general it is one of the less attractive features of the Church of England that it has, over the decades tended to over-legislate and over-prescribe - partly as a reflection of the complexity of its structures and partly because of a deficit of trust. It might be thought that the affairs of Churches and other Christian communities should be less hedged about by elaborate legal safeguards than those of organisations not committed to the precepts of Jesus Christ.
38. Nevertheless, even Christian communities need their rule books. There is, therefore, a judgment to be reached about the extent to which some arrangements which do not necessarily *require* legislative expression should, nevertheless, *be given* legislative form in order to provide reassurance and predictability.
39. It may help if we set out briefly the various kinds of instruments that are open to the Synod, whether individually or in combination:
- **A Measure** is a piece of **primary legislation**, the Church of England equivalent of an Act of Parliament. It can create rights and duties that are legally enforceable. Since the ecclesiastical law of the established Church is part of the law of the land it can, in some circumstances, be enforced in the civil courts as well as or instead of the ecclesiastical courts. If there are to be women bishops in the Church of England, there will have to be a Measure to confer the authority for their consecration. Any binding rights or duties would have to be provided for in the legislation or in statutory regulations made by virtue of an enabling power in the Measure;
 - **Rules, regulations or orders** made by virtue of a Measure are also a form of legislation (**secondary legislation**.) They may include such rights, duties and other provisions as are provided for in the enabling

power conferred by the Measure under which they are made. Regulations and orders generally deal with more detailed matters than primary legislation. Like a Measure, they normally have to be approved by Synod and are subject to amendment there. They also have to be laid before Parliament before coming into force, though they do not involve the scrutiny of the Ecclesiastical Committee. Examples of statutory regulations of this kind are the annual Fees Orders (made under the Ecclesiastical Fees Measure 1986) and the detailed procedural rules contained in the Clergy Discipline Rules and Clergy Discipline Appeal Rules (made under the Clergy Discipline Measure 2003);

- **Canons** also form part of the laws ecclesiastical. They require approval by Synod and the Royal Assent and Licence of the Crown. They are not, however, subject to any Parliamentary scrutiny. Canons are binding on the clergy and breaches of them may give rise to disciplinary proceedings. In general the Canons are not legally enforceable against the laity although they do lay down certain expectations in relation to the laity (for example in relation to readers and wardens) and may provide a basis for action against certain lay office holders, for example withdrawal of a licence;
- **Codes of Practice** can have varying levels of formality. A code can be something that is voluntarily entered in to by a group of people who commit, thereby, to observe its provisions. In that case there may be no formal sanction against non-compliance. Increasingly, however, both in secular and ecclesiastical legislation it has become common practice for legislation to mandate the making of a code. Thus for example the Clergy Discipline Measure 2003 and the Dioceses, Pastoral and Mission Measure 2007 both contain provision for the making of codes, which are subject to the approval of the General Synod, and require those concerned to “have regard” to those codes. Increasingly, the secular courts have taken the view that where bodies are required to have regard to the provisions of statutory codes of practice and fail to do so, their action may be invalidated. Nevertheless, codes of practice do not create directly enforceable, legally binding obligations in the same way as a Measure, regulation or rule made under it (or Canons in respect of certain other matters);
- **An Act of Synod** is not, as its name may imply, a form of legislation (the ecclesiastical equivalent of an Act of Parliament being a Measure.) Rather, it is a collective and formal expression by the Synod of its mind on a particular matter. As such, it has strong persuasive force but it cannot create legally enforceable duties. Thus, for example, for many years it was the case that, by Act of Convocation (the forerunner of Acts of Synod), clergy were enjoined not to marry in church those who had been divorced and had a surviving partner alive. Under the law of the land clergy did, however, have a statutory right to marry people in these circumstances. There was, therefore, no sanction against clergy who chose to exercise their statutory right

notwithstanding the mind of the Church expressed in the Act of Convocation. In the case of women priests, a bishop who failed to give effect to a resolution properly passed under the 1993 Measure would render himself vulnerable to legal action. By contrast, no legal remedy would be available against a bishop who declined to respond to a petition for extended episcopal oversight as provided for under the Act of Synod 1993. The question would, rather, be how he would explain departing from assurances formally given at the time by the House and the Synod. In the event, both the Measure and the Act of Synod expressed the mind of the Church and have been generally observed over the past 15 years.

CHAPTER FOUR POSSIBLE APPROACHES

40. Against that background we have worked hard to discharge the two tasks entrusted to us namely:
 - i. Preparing the draft Measure and Amending Canon necessary to remove the legal obstacles to the consecration of women to the office of bishops;
 - ii. Preparing the draft of possible additional legal provision consistent with Canon A4 to establish arrangements that would seek to maintain the highest possible degree of communion with those conscientiously unable to receive the ministry of women bishops.
41. The first of these tasks is straightforward. The Measure and Amending Canon necessary to lift the present legal obstacles could be very brief (see Annex B). If Synod were minded to adopt the minimal legislative approach, the only significant choice would be about what to do with Part II of the 1993 Measure.
42. In summary if it were decided to provide no statutory basis for arrangements in respect of those unable to receive the ministry of women bishops it would, in our view, be illogical to preserve the existing statutory arrangements in relation to those unable to receive the ministry of women priests. Part II of the 1993 Measure would, therefore, need to be repealed. What should be done with Part II if some additional legal provision were to be provided in respect of those unable to receive the ministry of women bishops is a different question, to which we return later.
43. Before exploring the advantages and disadvantages of particular options we have, however, found it helpful to step back and survey the whole spectrum of possible approaches, which is, in principle, open to the Church of England if it wishes to admit women in to the episcopate.
44. For completeness we need to add that there is one further possibility which, given our terms of reference, we have not seen it as our place to explore but which the House of Bishops and the General Synod may wish to keep in mind if none of the possibilities set out in this report commands sufficient support. This is that, notwithstanding the endorsement that the Synod has already given of the principle of admitting women to the episcopate, it might conclude that there was no satisfactory basis on which to proceed in the foreseeable future.
45. The difficulty that we see over any such moratorium on taking the matter further is that there has already been a long process of deliberation since the Synod first voted in July 2000 for a study of the theological issues. The publication of the Rochester Group's Report in November 2004 created both expectations and anxieties that need to be taken seriously.

46. In addition, whatever view is taken of the arrangements put in place in the early 1990s, the fact is that, by their tenth anniversary in 2004, people on all sides of the issue had become used to working them, even though many frustrations remained. The new process of debate on women bishops, involving, as it inevitably does, revisiting many of the arguments of the 1970s and the 1980s concerning the ordination of women to the priesthood, has created fresh uncertainties both among ordained women and among those who wonder whether the Church of England will continue to have a place for those who have conscientious difficulties over women's ordination.
47. Any legislative process is, of course, going to take some years to complete, so some degree of further uncertainty is unavoidable. Nevertheless, from the evidence we have received **we have come to the conclusion that significant delay could further upset such equilibrium as has been achieved since 1994. We believe therefore that, despite the difficulties in the way of reaching a decision, the moment for making choices has come.**
48. What then is the range of possible approaches which the Synod could adopt if it is minded to give effect to its declared intention to admit women to the episcopate? The Synod motion required us, in effect, to identify a number of possible options. In order to do so we have taken seriously all of the very many suggestions put to us both in written submissions and in oral evidence. We have also surveyed the reports of earlier groups and the material available to them.
49. There are many permutations but we have found it helpful to see each of them as, essentially, variations on three distinct themes. The key choice that the Synod will need to make is which of these three broad possibilities is to be preferred. In the light of that decision a further set of choices will then open up about which of the relevant variations to adopt.
50. The three broad approaches are as follows:
- **the simplest possible statutory approach with no binding national arrangements;**
 - **legislation that would provide some basis for special arrangements for those unable to receive the ministry of women bishops, such arrangements to be made within the present structures of the Church of England; and**
 - **legislation that would create new structures within the Church of England for those unable to receive the ministry of women bishops.**
51. We have set them out in this order not to indicate any order of preference but simply to illustrate the progression from what, legislatively, would be the

simplest to what would be the most far-reaching. In the rest of this chapter we explore in some detail the questions which arise with the first and third of these possible approaches. They are, each in their different ways, the most radical of the possible approaches in the sense that they would each involve the greatest change to the Church of England as currently conceived and organised.

52. Because it gives rise to a particularly large number of possible variations we devote the whole of the next chapter to the second option- arrangements within existing structures.

Simplest Statutory Approach

53. We explained in Chapter Two why, in our view, **the central question that now needs to be faced is whether the Church of England still wishes to make special arrangements for those who, on grounds of theological conviction, have difficulties with the ordination of women.**
54. What such arrangements might be and how they should be put in place are, while important, in many respects second order issues compared to the underlying question of whether there should be arrangements at all. We hope that the considerations set out in the following paragraphs will help the Synod and the Church reflect further on this key point. We suspect that it has lain behind much of the discussion thus far about particular options but has, perhaps, not been considered, as it needs to be, head-on.
55. We attach as Annex B an illustrative version of what a draft Measure reflecting the simplest statutory approach would look like. What this approach would involve is legislating to make all orders in the Church of England equally open to men and women and repealing the 1993 Measure (the Act of Synod would also be rescinded). As we noted in paragraph 42, in the absence of any statutory basis for arrangements in relation to those unable to receive the ministry of women bishops, it would be illogical to retain statutory provision for those unable to receive the ministry of women priests.
56. In these circumstances it would be for the House of Bishops separately to decide whether to produce a national statement or code of practice concerning the pastoral care of those unable to receive the episcopal or priestly ministry of women. This could, for example, set out a process by which parishes could continue to ask for special arrangements to accommodate their convictions. Since there would be no statutory underpinning for this, the extent to which the code was observed would depend on the extent to which all concerned accepted its moral force.

Legal Implications

57. One question that would immediately arise would be whether it would still be lawful for parishes to decide, in the absence of provision in Church legislation, to allow only male priests ordained by male bishops to celebrate

Holy Communion and also whether patrons and others responsible for parochial appointments could still lawfully insist in this new statutory situation on the incumbent being male.

58. The advice that we have received suggests that the answer is not clear cut, because it would depend on the view taken by courts and tribunals of section 19 of the Sex Discrimination Act 1975 on which, as yet, there has been no case law since it was amended by Parliament in 2005. This provides an exemption from discrimination claims for organised religions where a restriction is applied “so as to comply with the doctrines of the religion, or because of the nature of the [office] and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of significant number of the religion’s followers.”
59. It could certainly be argued that the strongly held convictions of people within a parish were sufficient to attract the exemption, but what view the courts might take of this in a situation in which the Church of England had, as a matter of deliberate policy, removed any special arrangements from its own, national “rule book” is hard to predict. A certain amount might, in practice, turn on what formal statements the Synod or House of Bishops had made, in this new situation, about the continued legitimacy of those convictions which prevented some people from receiving the priestly or episcopal ministry of women.

The Case For

60. What is unarguable is that if the Church of England were to provide no special statutory arrangements for those unable to accept women bishops – and indeed were to remove the present special arrangements for those unable to accept women priests – **there would be much greater legal uncertainty**. The extent to which parishes, patrons and others could continue to decline the ministry of women priests (and also women bishops and those ordained by them) would be far from certain. For that reason alone, the Church of England would, therefore, be in a very different place from where it has been since 1994.
61. What, then, are the positive arguments for a radical approach of this kind? Quite simply that it is the approach that is clearest and has the most obvious ecclesiological and theological coherence. Other churches would know that the Church of England had unequivocally and without mental reservation, committed itself to the view that all of its orders were open, without distinction, to men and women equally. Over time there would be increasing gender diversity within the college of bishops as there already is within the college of presbyters.
62. There might, to the extent that general law permitted, still be a willingness to respect the wishes of those who, on grounds of conviction, wished to continue to receive the priestly and episcopal ministry of men (and those ordained by men). But this would be a matter of informal discussion and

agreement, not the result of rights created in Church legislation.

63. What is clear to us from the evidence that we have received is that there are a significant number of people in the Church of England who do now believe that, with the introduction of women bishops, the time would have come to make a decisive break with the past. They argue that anything short of this would be to continue to perpetuate what they would see as an element of institutionalised discrimination within the Church of England.
64. Given the strong hostility to discrimination that has grown up in society more generally they would see this as a potential barrier to the effective mission of the Church to this and succeeding generations. They also point out that a number of other churches that have opened their ordained ministry to women do not have special arrangements for those with conscientious objections. This is certainly the case with many other Churches, such as the Methodist Church, with whom the Church of England has a covenant relationship, and those Churches with which the Church of England is in Communion by virtue of the Porvoo Agreement.
65. These are all weighty arguments which deserve to be considered carefully. Given the strength and sincerity with which they are held, they should not lightly be swept aside. That said, it is important to be clear eyed about where they inexorably lead.

Previous Assurances

66. First, such an approach would not simply deny any assured provision for those unable to receive the ministry of women bishops but would withdraw the provision that the Church agreed in the early 1990s in relation to women priests. This would be seen as repudiating earlier assurances.
67. For example, in 1993, Professor McClean explained to the Ecclesiastical Committee of Parliament that the General Synod had rejected proposals which would have placed a twenty year limit on the provisions of the Priests (Ordination of Women) Measure. He said that this “signalled [the Synod’s] resolve that protection for incumbents and, in particular parishes, should remain in perpetuity for as long as anyone wanted it.”⁸
68. Similarly the then Bishop of Guildford, the Rt Revd Michael Adie, said, “...the time limit was removed in order to give permanence and continuity to provisions in the Measure so that they can last as long as they need.”⁹ Again Professor McClean noted that: “there are no time limits left at all in the Measure, although there were in earlier versions, and we see that the safeguards will be there and in perpetuity or for as long as they are required.”¹⁰

⁸ 203rd & 204th Reports of the Ecclesiastical Committee, HMSO (ISBN 0 10 486493 1), p.66

⁹ Ibid, p.84

¹⁰ Ibid, p.86

69. A similar question was asked of the then Archbishop of Canterbury about what, at the time, was the proposed Act of Synod. In reply to the question about whether it would have a temporary life and cease to operate in some future date, for example when the last of the bishops then in office retired, Archbishop Carey replied: “it is our intention for this to be permanent and we are not thinking of rescinding it.”¹¹

Possible Impact

70. It is, of course, perfectly possible to argue that assurances given before women were admitted to the priesthood can properly be revisited in the wholly new context created by the admission of women into the episcopate. Nevertheless, those who had accepted in good faith that the Church of England wished to keep an honoured place for them, notwithstanding their conscientious difficulties over women’s ordination, would feel badly let down. We have no doubt that many would conclude that they could no longer remain within a Church of England that had ceased to be willing to provide any reliable, national provisions for their convictions.
71. It is impossible to predict with confidence how individual clergy and parishes would respond if the present safeguards in the 1993 Measure and the Act of Synod were to be swept away. The number of parishes that has passed one or other resolution is only around 7%¹². For a number of reasons, however, this almost certainly underestimates the number of parishes which, on grounds of conviction, are not fully open to the ordained ministry of women.
72. Moreover, what is sometimes not appreciated is the wide geographical variation of the proportion of parishes not fully open to the ministry of women. There are many dioceses, particularly the rural areas, where the proportion of parishes that have passed resolutions is very low. But there are a quarter of dioceses, mainly in the larger urban areas, where more than 10% of parishes have passed one or other of the resolutions. In Blackburn a quarter of parishes have passed at least one resolution, in Sheffield nearly 20%.
73. There is no doubt, therefore, that proceeding with legislation that removed the earlier safeguards would trigger a period of uncertainty and turbulence within the Church of England. Many priests and congregations would undoubtedly leave. The Church of England that emerged at the end of the process might possibly be more cohesive. It would undoubtedly be less theologically diverse.
74. It would also be a Church that no longer attached the same weight as Synod did in July 2006 to resolution III. 2 of the 1998 Lambeth Conference, which asserted “that those who dissent from, as well as those who assent to the ordination of women to the priesthood and episcopate are both loyal

¹¹ Ibid, p.134

¹² See Annex G

Anglicans.”

75. Such an approach would represent an abrupt change of direction. We recognise that there has been much pain and frustration over the past 15 years both for those who believe that the Church of England was wrong to admit women to the priesthood and for women priests themselves who remain concerned that the Church appears less than wholeheartedly committed to their ministry. Nevertheless, the Church of England has managed to model the holding together within one Church of people who differ profoundly on a major theological issue.
76. Bishops who themselves feel unable to ordain women nevertheless license them to parishes within their dioceses. Clergy with fundamentally opposed convictions on this issue work together both in practical ways and in the formal governance structures of the Church. Archdeacons, both male and female, are able to work with parishes right across the spectrum of views. Yes, there is pain, but there has also been much partnership in that Gospel. This is not something lightly to be set aside.
77. It is, however, for the General Synod to take decisions. The fact that this, in legislative terms the simplest approach, is both supported by many in the Church and in principle has much to commend it, means that it needs to be adequately debated.
78. **To put the point differently, we believe that the General Synod needs now to come to a clear view on whether it is committed to securing adequate arrangements for those who cannot receive the ministry of women bishops and priests as part of the process of admitting women to the episcopate. If it is not, then the legislation can be simple but a number of other consequences will follow. If it is, the question then becomes whether such arrangements should involve the creation of new structures of one kind or another.**

New Structures

79. We turn now to a family of possible solutions that would each involve taking particular parishes and their clergy out of the present jurisdiction of the bishop and his diocese and instead placing them within a new legal framework.

An Additional Province

80. The maximalist version of this might be something akin to the fully fledged additional province as advocated in *Consecrated Women?*¹³. The separate legislation and body of Canon Law envisaged for a new province of this kind would, arguably, give it some of the characteristics of the 39th province of the

¹³ *Consecrated Women? A Contribution to the Women Bishops Debate* ed J Baker, Canterbury Press 2004

Anglican Communion rather than an additional province within the Church of England.

81. There are additional province options that fall short of the maximalist approach canvassed in *Consecrated Women?* There are also structural approaches that do not involve the creation of a new province. For example, parishes might be assigned to new dioceses that would continue to be part of the Provinces of Canterbury and York. Other structural models proposed to us have included attaching such parishes to the Diocese in Europe, or creating a new religious society, or creating a number of new “peculiar” jurisdictions.
82. As to the option of an additional province, there is already much material in the report *Consecrated Women?*. The idea was also explored at some length by the Guildford Group¹⁴. For many, the fundamental difficulty with such a proposal remains the perception that creating an additional province would create greater separation and more structural barriers within the Church of England than are strictly necessary to meet the needs of those unable to receive the ministry of women bishops.
83. Each of three other possibilities that have been suggested– a society model, an expanded role for the Diocese in Europe and new peculiar jurisdictions – seems, at first blush, to offer an interesting and potentially creative way out of the dilemmas confronting the Church. Having, however, looked at each of them and taken legal advice we have been persuaded that they would each raise at least as many difficulties as they would solve. It is also not clear that the advantages that they would bring would outweigh the much greater complexity that each would involve compared with somewhat simpler solutions.

The Diocese of Europe Solution

84. The whole legal basis for the Diocese in Europe is different from that of the rest of the Church of England. It does not seem to us to provide a firm legal platform on which to build a new superstructure. Moreover, we see some difficulty in assuming that the Diocese in Europe, which already has a number of women priests ministering within it, could readily become the umbrella for all parishes in England unable to receive priestly or episcopal ministry of women. If some predictions of numbers are accurate there must also be some doubt whether providing a single diocese would, in any event, be sufficient.

A Religious Society

85. The arguments in relation to a society model or peculiar jurisdiction are more complex. No one has yet produced a detailed description of just what a ‘society model’ would involve but it has been put to us that it might enable parishes wishing to maintain a particular tradition to opt to come under a

¹⁴ GS 1605, paras 36-39 & Appendix 4.

religious society with its own bishops and clergy. Thus, only bishops and clergy who were members of the relevant society would be able to minister in that parish. The analogy would be with the longstanding arrangements in the Roman Catholic Church where priests for certain parishes are provided by members of a particular religious order.

86. The Church of England does not, however, have any tradition of providing the sort of legal recognition to religious societies that exists within the Roman Catholic Church (such societies as exist being voluntary organisations sitting to one side of the formal structures). Moreover, the foundation of all such arrangements in the Roman Catholic Church is that members of the society or order are themselves in full communion with the diocesan bishop.
87. Given the very many new questions that would have to be answered in giving certain societies the sole right to provide priests and bishops for certain parishes, it seems to us that further work on this possible approach would be worthwhile only if it looked likely to resolve issues that could not be satisfactorily addressed more simply. We are not persuaded that that is the case. Moreover, we see some risk that a society approach could lead to a greater fragmentation within the Church of England, particularly if there were to be a range of new societies of varying traditions.

Peculiar Jurisdictions

88. Peculiar jurisdictions were common in the Church of England until the 1830s but, outside the Royal Peculiars and special institutions such as university chapels, have scarcely featured in the mainstream of Church of England life since then.
89. Despite the welcome development of mission initiatives and other aspects of the mixed economy church, we are doubtful whether the revival of a form of jurisdiction abandoned in the reforms of the early 19th century would provide the right way forward. There is certainly a question- which we explore further in the next chapter- whether new arrangements need to include some modification to existing patterns of jurisdiction within the Church of England but if a structural solution is required, it is doubtful whether the recreation of peculiar jurisdictions as such is the best way to achieve it.

New, Special Dioceses

90. Instead, we have decided for the sake of simplicity to focus in this analysis on the structural solution that would involve the least innovation (though it would still involve quite a lot) in terms of the present structures of the Church of England. This is the approach that would involve the creation of a number of new, special dioceses, without a separate provincial structure.
91. The number required would depend on the number of parishes that resolved that they were unable to receive the ministry of women bishops and priests and those ordained by women bishops. But the probability is that one special

diocese would be needed in the Province of York and two in the Province of Canterbury.

92. Those who have advocated this approach to us have argued that it would involve less ecclesial innovation than many other options, since it would not signal a change in the Church of England's understanding of the role of bishops and dioceses save in one important respect. Bishops for the special dioceses would have the same functions and duties as bishops of the historic dioceses. Financially and administratively the new dioceses would have their own powers and responsibilities, though it would be open to them to choose to share staff and support arrangements with the historic dioceses to avoid duplication of effort and extra expenditure.
93. We have set out at Annex C a more detailed description of how a "new dioceses" approach might work. As will be seen, we have not sought to answer all the questions that arise, nor at this stage have we attempted to draft the, probably quite substantial, Measure that would be needed to give effect to this proposal. This would need to be done if the Synod indicated that it was its option of preference.
94. Instead, we have tried to identify as fairly as we can the potential advantages and disadvantages of a structural solution of this kind. As we see it, the key potential advantages are clarity and the provision of an assured space for those unable to receive the ministry of women bishops and priests. In the evidence that we have received we have been struck by how often the phrase "mutual flourishing" has been used.
95. The way it has been put to us is that if the Church of England is willing to provide an honoured place - and not just extend grudging tolerance - to those who have conscientious difficulties over women's ordination, it should do so generously and wholeheartedly. All sides accept the importance of facilitating permeability. But, so it is argued, it would be better to recognise that a degree of separate development was inevitable and healthy albeit within the overall umbrella of the Church of England.
96. By providing special dioceses, which gathered together parishes from out of a large number of the historic dioceses, the Church would, it is argued, provide the space and reassurance needed by those unable to receive the ordained ministry of women bishops and priests. It would also simplify the position for the historic dioceses where there would no longer be any permitted distinction between men and women in ordained ministry.
97. These are arguments that deserve to be taken seriously. There would nevertheless be a judgement to reach over whether the impact on the present geographical integrity of dioceses was a price worth paying. Someone has likened the outcome as something akin to a "Gruyère cheese". Each of the traditional dioceses would have a number of 'holes' left by those parishes that had left to join other parishes some tens or indeed hundreds of miles away to form the new special dioceses.

98. In some the number of detached parishes might be only a few, in others many more. In either case there would be a cost for the bishop of the historic dioceses in terms of leading mission and ministry across the whole of the area previously covered by that diocese. Similarly, the cathedral would no longer automatically be the mother church for all of the Anglican churches in that area.
99. The fact that adjacent parishes were in different dioceses would, of course, not necessarily mean that they could no longer work together or that their clergy could not share fellowship within local deanery chapters. But each new diocese would have its own structures including, no doubt, deanery and diocesan Synods. Over time, there might be some risk that fellowship with Anglicans in neighbouring parishes within the historic diocese would suffer.
100. There are also some question marks arising from the differences between those who have difficulties over women's ordination for reasons of sacramental theology and those whose position derives from a particular view of headship. For Catholics, issues concerning sacramental assurance and the collegiality of presbyters with their bishop are fundamental. As soon as the Church of England had admitted women to the College of Bishops many of them would find it necessary to be able to look to male bishops who had made it clear that they did not intend to ordain women to the presbyterate or participate in the consecration of women to the episcopate. If special dioceses had been created they would, therefore, petition to be part of it straight away.
101. For many Evangelicals, by contrast, the issues would be rather different. On headship grounds they might not be able to accept a female incumbent or direct oversight by a woman bishop. But, for so long as their incumbent was male, and the bishop providing oversight to them male, they would not necessarily see any compelling need to petition to move from the historic diocese, particularly if the special diocese was seen to have an ecclesial culture far removed from their own reformed convictions. It is perhaps partly for that reason that Conservative Evangelicals have put it to us that it would be crucial for one or more bishops within the new dioceses to be Evangelical. Whether that would in fact be sufficient to make the new structures stable is not entirely clear.
102. So, in conclusion, we think that if Synod believes that a structural solution is needed, the approach that would merit further development is the one described at Annex C, which would involve the creation of a number of special, geographically non-contiguous dioceses.
103. Creating new structures would be a big step and is, therefore, one which should probably only be taken if the Synod, having decided that it wishes there to be arrangements of some kind, concludes that what could be achieved within existing structures would fall short of the mark. **Much turns, therefore, on establishing clarity over what options exist within the present provincial and diocesan structures of the Church of England.** To this we now turn.

CHAPTER FIVE ARRANGEMENTS WITHIN EXISTING STRUCTURES

104. It is clear to us that there are some in the Church who believe that the time has come when there should be no special statutory arrangements for those unable to receive the ministry of women priests and bishops. There are also others who believe that there will be mutual flourishing across the Church of England only if a structural solution is found that accommodates the range of theological convictions on women's ordination.
105. In assessing those possible approaches, which we have explored in chapter four, the House of Bishops and the General Synod will want to consider whether there is a possible third approach that might be acceptable in principle and workable in practice.

Common features

106. Each of the variations on this third approach which are explored in this chapter would put in place arrangements that would work within the present structures of the Church of England. Those with conscientious difficulties over women's orders would receive a measure of episcopal oversight in a manner consistent with their convictions. But there would be no new dioceses or other structures.
107. The diocesan bishop would continue to exercise a measure of authority in relation to all the parishes of the diocese even though certain functions- pastoral and sacramental care, clergy discipline, sponsorship of ordination candidates, appointments and ministerial review- were exercised in relation to some parishes and priests by a complementary bishop.
108. This approach occupies the middle ground between the two approaches already explored. It is a traditional Church of England reflex to look for the middle ground and by characterising the various versions of this approach in that way we are conscious of the risk that, if only subliminally, we shall appear to be weighting the arguments in their favour. That is not our intention.

Four variations on a theme

109. What, then, are the differences between each of the variations to this main theme that we have identified? It is at this point in the analysis that we need to return to the distinction made in chapter three between means and ends - the "what" and the "how." In other words there are distinct but interconnected issues about **what** sort of arrangements the Church of England might wish to provide and **how** (as between Measure, Regulation, Canon, Code of Practice and Act of Synod) it might wish to provide them. This is, in some ways, the most complex and elusive part of the whole argument.

110. At the heart of the legislative choices in relation to any arrangements put in place within existing structures stand two questions:

- what sort of relationship is there to be between, on the one hand the parish and its priest who cannot receive the ministry of women bishops or of men who participate in the ordination of women priests and bishops, and on the other, the diocesan bishop and such other bishop as may be authorised to provide episcopal care to them?

- what level of assurance and enforceability for these arrangements is necessary or desirable?

111. The first of these questions is bound up with sensitive issues concerning the source of authority for particular actions and the recognition/obedience/respect which people should be expected to accord to those of other theological conviction.

112. The second is closely related to the degree of trust and good will that exists to make any new arrangements work. However much or little is put into legislation, the sort of new arrangements envisaged in this chapter will only work if there is a positive commitment on all sides to operate them sensitively and generously. There remains, however, a judgement for the House and Synod to reach over what should be mandatory and what discretionary.

113. In our deliberations we have identified four possible sets of arrangements, each involving a slightly different approach to legislation. The first three involve a measure of **delegation** from the diocesan bishop to a 'complementary bishop' with special responsibility for those parishes and priests unable to receive the ministry of women bishops, of male priests ordained by women bishops or of male bishops who participate in the ordination of women to the priesthood or episcopate. The difference between these three arrangements turns essentially on the degree of consistency and enforceability provided.

114. The fourth is of a different kind in that it involves a measure of **transferred** responsibility from the diocesan to the complementary bishop.

115. These four possible variations on a theme can be summarised as follows:

- **Variation one** - minimal legislation but including an obligation on the House of Bishops to make provision in a **statutory code of practice**, approved by the Synod, for the oversight by complementary bishops of parishes and clergy unable to receive the ministry of women bishops or priests, of male priests ordained by women bishops or of male bishops participating in the ordination of women to the priesthood and episcopate. Bishops would be statutorily required to '**have regard**' to such a code of practice. The complementary bishops would exercise powers delegated by the diocesan bishop. Part II of the 1993 Measure would be repealed;

- **Variation two** – as variation one, except that **Part II of the 1993 Measure would continue in full force** (whether with some amendment, for example, to alter the present position in relation to multi-parish benefices, would be for further discussion). Thus the statutory rights that parishes currently have to decline the ministry of women priests would be perpetuated. It is only the new provisions in relation to episcopal ministry that would be governed by statutory code of practice;

- **Variation three** - as variation two, except that the legislation itself would require the diocesan bishop to delegate the prescribed functions to a complementary bishop rather than requiring him to have regard to a statutory code of practice. Failure to give effect to this **mandatory delegation** would render a bishop vulnerable to legal proceedings through the civil courts requiring him to delegate the prescribed functions;

- **Variation four** - legislation that would itself **transfer** from the diocesan bishop to a complementary bishop specified responsibilities for the oversight of parishes and priests unable to receive the ministry of women bishops, of male priests ordained by women bishops or of male bishops participating in the ordination of women to the priesthood and episcopate. The statutory rights that parishes currently have to decline the ministry of women priests would again be perpetuated.

Assessing the four variations

116. We have provided a more detailed description at annexes D and E respectively of what variations one and four would involve. They also include a first version of what the Draft Measure might look like in each case. **It should be emphasised that these drafts are, at this stage, purely illustrative and would need to be worked on further before legislation could be introduced to Synod for First Consideration.** It may be helpful if we set out what each of the variations has in common and how they differ.
117. As noted above, each of the four variations envisages that, in practice, parishes and priests that could, in conscience, receive the priestly and episcopal ministry only of men and of those ordained by men would have their convictions respected. The degree of assurance provided would be greater in variation three, where the delegation of powers is mandatory, than with variations one and two, where it would be dependent on the diocesan bishop having regard to a statutory code of practice (though that is a strong duty).
118. Variation four would, in terms of legal certainty, provide the same assurance as variation three. It is, however, significantly different from variations one to three in that it would confer a partial measure of jurisdiction on the complementary bishop. The fact that the complementary bishop had certain

powers as of right under the legislation rather than by way of delegation from the diocesan bishop would be a material difference for those who, while they acknowledged the latter's legal authority, nevertheless had conscientious difficulties over accepting his or her headship or seeing themselves as part of the college of presbyters over which he or she presided.

119. It is important to note that, while this approach would include more in the draft Measure, it would not remove the need for a code of practice. Any special arrangements will require goodwill and a degree of self restraint on the part of those operating them. Even where some arrangements are, therefore, set out in statute, it would still be important for more relational issues, including processes for consultation and working together, to be set out in a code of practice.
120. It will be seen that variation four has some of the characteristics of "TEA" as proposed by the Guildford Group¹⁵ although with the important difference that the archbishops would not be involved in effecting the transfer (except, of course, in respect of the Dioceses of Canterbury and York).
121. As a matter of law the transfer would operate by virtue of the provisions in the statute. And, as a matter of ecclesiological integrity, the transfer would be the result of a collective decision by the House of Bishops, reached before the legislation came into force, that they were willing to cede a Measure of their ordinary jurisdiction to other bishops within the Church of England for the sake of the overall unity and health of the Church.
122. Under all of the variations the parish and its priest would remain within their existing diocese. The diocesan bishop would continue to exercise those powers not passed to the complementary bishop and would, in particular, retain responsibility for pastoral reorganisation throughout the diocese, though with an obligation to consult the complementary bishop. The latter would in each case be a male bishop. We envisage that such a bishop could be a suffragan from within the diocese, a diocesan or suffragan bishop from another diocese or the holder of a suffragan see within the province designated by the Archbishop for the purpose.
123. As between variations one and two the single difference is the narrow but important one of whether the new legislation should repeal Part II of the 1993 Measure, which currently gives parishes a statutory right not to have a female celebrant at Holy Communion or a female incumbent. There is an argument that, if episcopal arrangements are to be regulated by statutory code of practice, the same should be true of arrangements for the provision of priestly ministry in parishes.
124. As against that, repealing Part II of the 1993 Measure would involve withdrawing the assurances given both to the Church and to Parliament during the passage of the 1993 legislation. It can also be argued that a code of practice agreed by the Synod and House of Bishops can more readily

¹⁵ See GS 1605, paras 40-47 & Appendix 1.

provide a dependable set of arrangements in relation to episcopal care than could ever be possible in relation to parochial affairs. The much greater number of independent players (including patrons) in the latter context means that there is a stronger case there for having enforceable statutory rights. So, as between variations one and two, the latter merits serious consideration.

125. As between variations one and two on the one hand and variation three on the other, we can see that, for those seeking episcopal care from a complementary bishop, there is a potential attraction in the greater reliability provided by the mandatory nature of variation three.
126. As against that, the concept of ‘mandatory delegation’ would be very unusual since it is normally in the nature of delegation that it is an act freely undertaken by the person who chooses to delegate and who may, at some later point, chose to withdraw the delegation. That would not be the case here, since the diocesan bishop’s discretion would be statutorily fettered by the decision of the parish to pass or rescind the relevant motion.
127. Where, then, does this analysis tend to lead? Lurking behind these difficult choices are two other issues which each require discussion in their own right since they bear directly on the potential acceptability of any arrangements not merely to those in favour of women’s ordination and those against but also more generally to those whose overriding concern is with the ecclesiological integrity of the Church of England. These are the recognition of orders under Canon A 4 and the question of oaths.

Canon A4

128. In the debate of 10 July 2006 an amendment was carried requiring that possible additional legal provision establishing any arrangements should be “consistent with Canon A4.” It was clear from several of the speeches that the declaratory nature of Canon A 4 had resulted in its being interpreted differently depending on the individual reader.¹⁶
129. As it is the only Canon currently addressing the subject of recognition of orders in the Church of England it is understandable that it should be read as carrying special weight. We have interpreted the amended motion as reflecting a strongly held view that nothing in any future legislation or codes of practice should call into question the recognition accorded by the Church of England to all those admitted by it to Holy Orders. In that context we have given careful consideration to the meaning and relevance of Canon A 4 to our work.
130. Close examination of Canon A 4 has revealed that it does not in fact mean what it is generally thought to mean. The words of the Canon are as follows:

¹⁶ Thus the Bishop of Chichester said “Canon A 4 is part of the law of the Church of England and embodies a very important sacramental and ecclesial principle”, whereas the Revd Sister Rosemary CHN said “at least this Canon assures me that women are validly ordained in the Church of England”. Report of Proceedings Monday 10 July 2006 at pp.294 & 296.

“The Form and Manner of Making Ordaining and Consecrating of Bishops, Priests and Deacons annexed to the Book of Common Prayer and commonly known as the Ordinal is not repugnant to the Word of God; and those who are so made, ordained or consecrated bishops, priest or deacons, according to the said Ordinal are lawfully made, ordained and consecrated, and ought to be accounted, both by themselves and others to be truly bishops, priests and deacons.”

131. We have been informed that this canon is a revised version of Canon VIII of the Canons of 1603 and was written to censure both Puritans and Roman Catholics who asserted that ordinations according to the Church of England’s ordinal were inconsistent with the New Testament or invalid. The Canon is concerned with the “form and manner” of the Ordinal and, in addition, applies only to ordinations under the Ordinal annexed to the Book of Common Prayer. It follows that men and women who have been ordained according to an alternative approved form of service are outside the scope of this Canon.
132. We have received clear legal advice that neither the Church of England (Worship and Doctrine) Measure 1974 nor any forms of service subsequently authorised enable Canon A 4 to be interpreted more broadly. The legal significance of Canon A 4 is now, therefore, essentially historical. The Canon does not have the effect of requiring general recognition or acceptance of the validity of all clergy ordained within the Church of England.
133. Suggestions sometimes made that Canon A 4 is now “in abeyance” or has been “suspended” or “qualified” by the Priests (Ordination of Women) Measure 1993 and the Act of Synod are unsupported in law. The legal status of women priests contained in Canon C 4B¹⁷ flows from the 1993 Measure and the lawfulness of the ordination of a woman to the priesthood derives from (i) her satisfying the requirements of Canon C 4, and (ii) her admission to the order using an approved form of service.¹⁸
134. The Measure, and in particular Resolution A, do not provide that women’s orders are legally recognised in some places and not in others; rather they place limitations on the **exercise of women’s priestly ministry** in certain places. It may be that members of a PCC which has passed Resolution A, have conscientious doubts about women’s priestly orders; but it does not follow that they can question the validity of women’s ordination in legal terms.
135. Nevertheless the fact that the Canon does not in law mean what many people think it means does not dispose of the matter. Far from it. Indeed, it is our conviction that the acceptability across the Church of any new arrangements consequent on the admission of women to the episcopate may well turn on

¹⁷ Canon C4B provides that ‘A woman may be ordained to the office of priest if she otherwise satisfies the requirements of Canon C4 as to the persons who may be ordained as priests.’

¹⁸ Canon C1.

achieving a widely accepted accommodation in relation to the issue that Canon A 4 is thought to address.

136. For many supporters of women's ordination the crux of the current dilemma is whether any special arrangements for those who in conscience cannot receive the ministry of women bishops and priests would be tantamount to acknowledging a doubt on the part of the Church of England over the decision to ordain women as priests and bishops.
137. Moreover, since - irrespective of Canon A 4 - mutual recognition of orders has traditionally been one of the hallmarks of a Church, would it be tolerable to contemplate having within the Church of England people who retained doubts about each other's orders? These have, of course, already been acute questions since 1994 in relation to women priests. They would assume even greater importance in relation to women bishops who would themselves be ordaining men and women to the priesthood.
138. This is undoubtedly one of the most difficult circles to square. Having pondered the matter carefully, we believe that any possible solution needs to incorporate the following elements:
 - a. A clear statement by the Church of England that, in admitting women into the episcopate, it is now fully committed to opening all orders of ministry to men and women;
 - b. An acceptance on the part of those who, theologically, cannot receive the ministry of women priests and bishops or those ordained by them that the Church of England has decided to admit men and women equally to holy orders and that those whom the Church has duly ordained and appointed to office are the lawful holders of the office which they occupy and thus deserve due respect and lawful obedience;
 - c. An acknowledgement by those in favour of women's ordination that the theological convictions of those unable to receive the ordained ministry of women are within the spectrum of Anglican teaching and tradition and that those who hold them should, therefore, be able to receive pastoral and sacramental care in a way that is consistent with their convictions.
139. We have, therefore, come to the conclusion that if the Synod decides in favour of arrangements of the kind explored in this chapter - or if it opts for a structural solution as explored at the end of chapter four - an important part of the legislative package should be the adoption of a new Canon A 4 to meet the needs of the twenty first century rather than those of four hundred years ago.
140. The aim should, we believe, be to produce a new Canon that carefully reflects the three points set out in paragraph 138 and makes it unambiguously clear that the Church of England's willingness to provide space for those who cannot in conscience receive the **ministry** of women bishops and priests, does not in any way call into question the Church of England's

recognition of and commitment to the orders of all bishops, priests and deacons ordained according to its rites.

141. By way of illustration we offer the following possible draft of a new Canon A 4. It would, of course, need to be subjected to the normal process of Synodical scrutiny alongside the other provision in the required draft Measure and Amending Canon:

“1. Those who are ordained or consecrated bishops, priests or deacons in accordance with the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests or Deacons annexed to The Book of Common Prayer and commonly known as the Ordinal, or in accordance with any form of service alternative thereto approved by the General Synod under Canon B 2 or authorized by the Archbishops of Canterbury and York under Canon C 4A, are lawfully ordained or consecrated bishops, priests or deacons and are to be accounted as such by all.

2. Those who, having been lawfully ordained or consecrated as described in paragraph 1 of this Canon, are duly appointed to any office in the Church are the lawful holders of such offices and are to be accounted as such by all.

3. In making special arrangements to respect the conscience of those who are unable, on grounds of theological conviction, to receive the ministry of women bishops or priests, the Church of England nevertheless accounts and affirms those who are ordained or consecrated as described in paragraph 1 of this Canon to be truly bishops, priests and deacons.”

142. A formulation along these lines would go some way, we believe, to dispelling some of the confusion that currently exists in relation to the “validity of orders.” The ecclesiastical law of the Church of England does not admit any distinction between the lawfulness of an ordination and its validity. Thus, an ordination conducted fully in accordance with the various requirements of the Church of England as to matters such as qualifications of the candidate and of the ordaining minister and the rite employed, will take effect for all legal purposes.
143. It is not, therefore, open to any person, whether or not a member of the Church of England, to question the validity of the ordination in legal terms. The fact that some may doubt whether women may, sacramentally, be priests and bishops and/or exercise headship is a separate matter from calling into question whether, as a matter of law, the ordinations are valid.
144. A clearer understanding of these issues may help to remove some current misunderstandings and create the conditions in which special arrangements might be made with a wide measure of assent across the Church of England.

Duties and Oaths of Canonical Obedience

145. A related question concerns the identity of the person to whom the duty and consequent oath of canonical obedience would be owed in the event of special arrangements for those conscientiously unable to receive the episcopal ministry of women and those ordained by them.
146. If Synod were minded to create new dioceses of the kind discussed in the previous chapter, then clergy in those new dioceses would clearly owe their duty of obedience, and take their oath of obedience, to the diocesan bishop of the new diocese. That would be entirely consistent with the provisions in Canons C 1¹⁹ (duty of obedience) and C 14 (the form of the oath of canonical obedience), both of which assume the norm to be one bishop as chief pastor and principal minister of the diocese²⁰. But what would the position be under the approach canvassed in this chapter?
147. Each of the four variants explored here would introduce a novel diocesan arrangement, which falls outside the scope of the present Canons dealing with canonical obedience. The novelty is an apportionment of the functions of chief pastor and principal minister between the diocesan bishop and another bishop.
148. We have concluded that the question of adjustment of the duty and oath of canonical obedience is, though important, an intrinsically secondary matter. The practical reality of the situation would be that the clergy of a petitioning parish would under any of the four variants have a duty of canonical obedience to two bishops exercising different functions in the diocese.
149. We believe that an essential part of the effort “to maintain the highest degree of communion with those conscientiously unable to receive the ministry of women bishops”²¹ is to be accommodating on the subject of the duty and oath of canonical obedience and to provide for two separate duties, and possibly two oaths, one to each of the bishops in respect of that bishop’s functions.
150. We regard this dual allegiance as important both in substance and symbolically, and we recommend that if one of the approaches canvassed in this chapter is adopted, then work should proceed on the formulation of two distinct duties and oaths with consequential amendments to the relevant Canons.

¹⁹ Canon C 1.3 says ‘According to the ancient law and usage of this Church and Realm of England, the inferior clergy who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop if the same and the bishop of each diocese owes due allegiance to the archbishop of the province as his metropolitan.’

²⁰ Canon C 18.

²¹ General Synod Resolution 10 July 2006 paragraph (b) (ii). See Annex A to this report.

Pulling the threads together

151. So, as we come to the end of this long chapter, what do we see as the balance of advantage between the four variations on a theme that we have explored here?
152. This is not a question on which we are of one mind and, in any event, the choice between these options, as between all of these and the two other approaches explored in chapter four, is for the Synod to make. What we hope that the descriptions in the annexes and our analysis here have shown is that the distinction between the four variants explored in this chapter is, though real, not as sharp as is sometimes suggested.
153. Indeed, whichever approach were adopted the arrangements might, once they were in place, operate in practice in almost identical ways. Nevertheless there are significant differences between them in terms of the levels of assurance provided. Crucially, the transfer option involves conferring a partial measure of jurisdiction on the complementary bishop. It was clear from the evidence that we received that the question of jurisdiction is a key question for many. What, therefore, are the considerations that members of the House and of the Synod should have in mind in coming to a view?
154. While we would each attach slightly different weights to the following considerations, they do seem to us to be where the judgments need to be reached:
- **To what extent would legislation which spelt out how episcopal functions were to be transferred (or mandatorily delegated) be perceived as both changing the nature of the episcopate and to some extent enshrining in legislation provisions which some would perceive as discriminatory?** It seems to us that this is a genuinely difficult judgement. It has been put to us that this is an issue that the Church needs to consider given the need for legislation to achieve approval in Parliament, where attitudes towards perceived discrimination are much sharper than in the early 1990s. Our own view is that the Church should not be deflected from what it regards as right. The law of the land already acknowledges the place of doctrine and religious conviction in relation to gender discrimination (section 19 of the Sex Discrimination Act 1975) and we do not believe that the Church should accept that the theological convictions which some have in relation to sacramental assurance and/or headship can simply be dismissed as discrimination. Nevertheless, the question of how much it would be right to put in a Measure, how much in regulation and how much in a code of practice is not straightforward and repays careful thought.

- **Is the Church prepared to see the repeal of the present statutory rights which parishes currently have under Part II of the 1993 Measure?** This is an integral part of variation one. Parishes would no longer have a statutory right to pass resolutions which then triggered certain duties. The rights of parishes and incumbents would be dependent on a statutory code of practice to which members of the House of Bishops would have committed themselves and to which they would be required to “have regard.” This would not be an obligation lightly to be set aside. Nevertheless, it falls some way short of the present position for parishes. There will, no doubt be different views as to how much that would matter. Variation two would depend on a statutory code of practice in relation to episcopal arrangements but would preserve the statutory rights parishes currently have under the 1993 Measure;

- **How entrenched should any new arrangements be?** Statutory transfer and, to an only slightly lesser extent, mandatory delegation, would more firmly embed the new special arrangements into the polity and ecclesiastical law of the Church of England than approaches based on a statutory code of practice. Since, on any understanding, special arrangements have to be justified as a form of “bearable anomaly”, it is a matter of judgement how deeply they should be entrenched. Lurking here is a question the answer to which is crucial to how the Church of England decides to proceed. Put simply, is the intention to put in place a settlement with the potential to endure, possibly for several generations, or is the purpose to create arrangements of a designedly more temporary and reviewable character?

CHAPTER SIX

THE CHOICES AND WHAT FOLLOWS

155. As the Synod comes to consider the options explored in this report it will want to have in mind the Rochester Group's conviction that decisions need to arise out of and be consistent with the Church's theological understanding of its nature and calling. The underlying questions which have shaped and informed our work could be summarised under the following headings in relation to the decisions to be made:

- The Unity of the Church

What is the proper relationship between unity and truth? In other words at what point in our desire to keep the church together do we either compromise the beliefs we hold, or create an unacceptable degree of disunity?

- The Calling and Character of Bishops

What impact will our decision have on the nature of episcopacy, in other words how will traditional understandings of episcopal role(s) and authority be affected in regard to, for example:

- mission to the wider community
- the current pattern of geographical dioceses
- collegiality
- sacramental relationships?

- Relationships within the Body of Christ

In seeking the mind of the church, how do we treat each other so as to ensure, for example:

- trust and mutual flourishing
- the honouring of strong difference in conviction
- generosity in the handling of conflict?

156. With those issues in mind, our task was to begin the process of legislative drafting and identify some choices that need to be made before the process of drafting can be completed. Legislative drafting is meticulous and time consuming work. Lawyers require initial policy instructions on a whole raft of detailed issues and the process of drafting the legal documents itself then throws up fresh policy issues that have to be resolved.

157. We have taken our work as far as we believe that we sensibly can in the absence of further clear, high level, decisions from the General Synod in the light of advice from the House of Bishops. We stand ready to do further drafting work as soon as Synod has come to a mind. We have drawn up plans for further meetings this autumn against the possibility that Synod is able to come to a view in July.

158. The form of any possible motion or motions is a matter for the House to consider. It may be, however, that others will, like us, find it helpful to address the key questions in the following order:

- **If there are to be women bishops in the Church of England, is there a need for some special, nationally agreed arrangements for those who in conscience cannot receive their ministry (and indeed the ministry of women priests)?**
- **If there is a need for special arrangements, would it be best to provide those by means of creating new structures, in particular additional dioceses within the Provinces of Canterbury and York?**
- **If, instead, the preference is for arrangements which do not involve new structures, which of the four variations explored in chapter five of this report comes closest to providing a coherent, comprehensible and widely acceptable approach?**

159. There are a number of other questions to which we shall need to return before completing the drafting of legislation ready for its first consideration by the Synod. For example, we are clear that, if there are to be women bishops, all of the historic sees of the Church of England should be open to them, including the two Primatial Sees. Nevertheless, an Archbishop of Canterbury is not merely Primate of All England but also an instrument of unity for the Provinces of the Anglican Communion, many of which are unlikely to have women in the episcopate at least for many years to come.

160. There would, therefore, be a question (as the Guildford Group identified) whether the Crown Nominations Commission, when considering a vacancy in the See of Canterbury, could properly take into account the wider needs of the Communion. This is an issue that would require further consideration during the legislative process.

161. If decisions were taken in July we believe that there is a reasonable chance that we could complete the work of drafting the relevant draft Measure, Canons and other associated legal instruments in time for First Consideration in February 2009, though that depends a little on what exactly Synod decides. First Consideration in February might conceivably enable the Revision Stage to take place in Synod in February 2010, depending on the time needed by the Revision Committee. If the Revision Stage could be completed in February or July 2010, there might – just - be time for a legislative package to be referred to dioceses by the Business Committee under Article 8 in the lifetime of this General Synod.

162. A majority of Diocesan Synods would then need to approve the legislation in the form submitted to it (possibly after reference to Deanery Synods). This would enable the new Synod to return to the matter in the light of the diocesan debates, either in July 2011 or, perhaps more likely, in February 2012. The need for Final Drafting Stage and for Article 7 references to the House of Bishops, Convocations and House of Laity would then probably take a further twelve months before the Final Approval Stage in General Synod, when a two-thirds majority would be required in each House.

163. If that were secured, the legislation would then pass to Parliament for consideration. Following the Royal Assent, the Synod would need to promulge the necessary Canon. Inevitably at this stage of an unavoidably complex process it is impossible to offer firm predictions as to when it might be legally possible for women to be consecrated bishops in the Church of England but even if each stage is taken as expeditiously as possible a date much before 2014 cannot now be achieved.
164. Given that, it is perhaps understandable that the view of very many in the Church is that we should all just 'get on with it'. Certainly, as we have noted earlier in the report, there is some danger that the continued uncertainty is itself a cause of difficulty and unhappiness.
165. Nevertheless, as will have been clear from this report, **the Church of England now faces some very serious decisions. They go to the heart of what sort of Church it wishes to be. Far better that those issues are faced calmly, honestly and prayerfully now than that the Synod should set off down a road which may, ultimately, fail to command sufficient consensus.**