

Second Day

Wednesday 15 November 2000

THE CHAIR *Professor Michael Clarke (Worcester)* took the Chair at 9.45 a.m.

The Archdeacon of Barnstaple (Ven. Trevor Lloyd) led the Synod in prayer.

Loyal Address

The Chairman: Sadly, the Archbishop of Canterbury finds himself without a voice this morning. We commiserate with you, Your Grace, though there may be a contradiction in terms between being Archbishop and not having a voice! The Archbishop of York, therefore, will move the Loyal Address, the text of which has been circulated on the seventh notice paper.

The Archbishop of York (Rt Revd David Hope): On behalf of the Archbishop of Canterbury, who wishes to remind the Synod of the saying of Ignatius that a bishop is most like God when he is silent, I beg to move:

‘That a Loyal Address be presented to Her Majesty The Queen.’

It is the custom of each new Synod to send Her Majesty The Queen a Loyal Address after its inauguration, but this is no mere matter of ritual. Rather, it is a sign of the deep affection and respect which we all have for Her Majesty, an affection which was amply evident in this chamber yesterday. The text of the proposed Address was circulated in draft for comment on the seventh notice paper and has now been put in final form and is before you this morning on the twelfth notice paper. It incorporates a minor amendment to the penultimate paragraph suggested by Dr Richard BurrIDGE. I hope that without the need for further debate Synod will unanimously agree to its despatch to Buckingham Palace.

The motion was put and carried.

The Loyal Address was as follows:

‘We, Your Majesty’s faithful subjects, the Archbishops, Bishops, Clergy and Laity of the Church of England, together with the representatives of other Churches assembled in General Synod, wish to assure Your Majesty of our loyal and devoted service to Your Majesty’s Throne and Person.

‘We offer our heartfelt thanks to Your Majesty for honouring us with Your Presence on the occasion of the inauguration of the Seventh General Synod of the Church of England on Tuesday 14 November

2000, first at the service of Holy Communion in Westminster Abbey and then at the opening ceremony in Church House. We express our deep appreciation of the address you gave us on that occasion, and of the example of Christian service which you have so steadfastly given the nation and Commonwealth.

'We assure you of our prayers for your continued health and well-being, and for that of your family. As we face the challenges ahead of us, we are in turn heartened to know that we have your support and encouragement. We pledge ourselves in all that we do to seek the strengthening of Christ's Church, in the spirit of unity of which you spoke to us, and to seek the extension of God's rule here on earth.

'We warmly pray that God's blessing will rest upon you, now and at all times.'

Message of Greeting to the Bishop in Jerusalem

The Archbishop of York: If I may just detain the Synod for a moment longer, Chairman, I want to draw members' attention to the tenth notice paper. I am sure that members of Synod are equally concerned about events in the Middle East, and this is the text of a message of greeting to the Bishop in Jerusalem, sending fraternal greetings to him and to his diocese, with the assurance of our thoughts and prayers at this anxious time. I felt, first, that it was necessary to draw Synod's attention to this but also that we should associate ourselves with that message in a particular way, using the prayer of the Anglican Bishop in Jerusalem, which he has prepared and which he has commended for use throughout the Communion at this particular time. I just wonder if we could spend a moment praying that prayer now, bringing before God all those who are involved in the troubles, divisiveness and strife in the Middle East, praying for God's justice, God's reconciliation, God's righteousness in the hearts, minds and lives of all. (*The Archbishop led the Synod in prayer.*)

Legislative Business

Draft Clergy Discipline Measure (GS 1347B)

Draft Amending Canon No. 24 (Amendments related to clergy discipline) (GS 1348B)

Measure and Canon for Final Drafting and Final Approval

Report by the Steering Committee (GS 1347Z)

The Chairman: For the benefit of new members of Synod let me explain how we shall handle this business. There are six stages to it. We shall take first of all the report of

the steering committee, which contains a number of detailed drafting amendments. We shall then move on to the special amendments which are more substantive and which are set out in the sixth notice paper, and we shall take them one by one. There is then the debate on the final approval of the Measure. Assuming that we reach that stage, we then move to Canon No. 24. There is one special amendment which we shall deal with, we will then move to final approval of the Canon, and then, before we complete the business, Synod will be required to approve the Petition for the Royal Assent.

Just one more thing to note: inevitably during the next hour and more we shall be voting a lot. I urge you to hold your hands high when you vote. As we go through votes it is tempting to do it in a half-hearted kind of way. In Florida, for all I know, they may count half-votes; we do not, so hands held high, please.

The Archdeacon of Malmesbury (Ven. Alan Hawker): I beg to move:

‘That the Synod do take note of this Report.’

Before I proceed with the report, may I just note for members a couple of typing errors on the draft Measure? On page 32 near the bottom the clause number 44 should read ‘42’ otherwise members will find that they have two clauses 44. Immediately on the opposite page, at the top of page 33: ‘In the case of’ should be followed by ‘clerk in Holy Orders’ not ‘cleric’. I also need to remind members that, on the white sheet GS 1347ZZ Item 4, there is a drafting amendment which, sadly, was left out of the draft report when it was published.

Having said that, may I say, on behalf of the steering committee, that we have considerable sympathy for many members of the Synod for whom this is their first piece of legislative business; it seems a bit rough at one level to be faced with this. They will discover, as they get into the Synod, that when legislative business arises we usually start with the item closest to its completion and work down to those that are farthest off; due to causes that the steering committee had no control over, this is a piece of business that could not be completed in the latter part of the last quinquennium. In the earlier part of the quinquennium the National Institutions Measure and the Cathedrals Measure were so far advanced and needed, rightly and properly, so much time and attention that they held up not only this but other pieces of legislation as well, and then at the conclusion of the quinquennium it was so important to get the *Common Worship* material authorized so that it could go to the printer in February (I believe, on the day after Synod finished), that it was essential that it was pushed through at the possible cost of other things. The net result is that members have a significant and substantive Measure here before them for final approval, and I do feel for them if they are new to Synod and it appears to be somewhat confusing for them. However, that is where we are and I hope that new members will this morning be able to trust those who have gone before, who have had very significant and detailed debates on the detail of this Measure and who were quite satisfied with it in July.

GS 1347Z summarizes the work carried through since July by the steering committee. It met on one occasion and went through the entire Measure and Amending Canon No. 24. The drafting amendments are listed consecutively by clauses in the draft Measure and appear in italics in the Measure itself.

One thing that I want to bring to Synod's notice is that, in accordance with a decision made by the revision committee in July, deposition is no longer to be an available penalty. Members will therefore notice that the practical effect is achieved by prohibition for life. So section 24(1) has been divided: whereas before (a) was deposition and (b) was prohibition, whether for life or for a limited period, members will find that now prohibition for life stands by itself as (a) and limited prohibition stands by itself as (b).

However, having clarified that, which is one of the things that we had to do consequentially from the revision committee, members may be a little surprised to find that deposition continues to be mentioned in the Measure, at sections 26 and 29. The reason for this, please remember, is that depositions continue from the current situation under the 1963 Measure, and in order that there will be complete clarity they are mentioned there; but, more importantly, it is because this Measure will allow for those who have a sentence of deposition against them at present something that they do not have at present, i.e. the opportunity in certain circumstances to ask for a review of their deposition, that it may be lifted. I believe that that is an advance for them and one that a number of people asked for particularly; I hope that Synod will feel that that is a wise thing for us to do. In any event, that is why deposition still continues in those two clauses even though it will not be available to anyone under the new Measure.

The Chairman: The matter is now open for debate. Because of the large number of people who have indicated their wish to speak during the course of this business, I impose a speech limit of five minutes. Does anyone wish to speak? (*No response*) That is interesting! Archdeacon, do you wish to respond to yourself?

The Archdeacon of Malmesbury: I will forgo the pleasure, Chairman.

The motion was put and carried.

The Chairman: We come now to the special amendments listed in the sixth notice paper.

Clause 21

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsections (2)(a) and (3)(a) at the end of each of those paragraphs *insert* "or on the community roll of a cathedral which is not a parish church".'

Perhaps I should explain that a drafting amendment is simply where one is tidying up the language or where a consequential has to flow because of a decision made at revision stage: deposition was a classic example of that. These special amendments are where something has been put into the Measure which was not there and available for debate at the time. My own feeling is that they are not controversial but simply follow on logically from the Measure itself, but that is for Synod to decide.

This first one is simply to enable those who are on the roll of a cathedral which is not a parish church to be available to be considered for membership of the tribunal. We suddenly realized that the Measure as it stands meant that they would be excluded because they are not on a parochial church council roll, so this amendment simply adds that to clause 21 of the Measure so that they can be included.

The special amendment was put and carried.

Clause 23

The Archdeacon of Malmesbury: I beg to move as an amendment:

‘In subsection (1) *leave out* “three” and *insert* “five”.’

I would like to speak to this group of amendments, Items 506 to 511, in one go; they all affect the same clause.

At the revision stage in July the steering committee made the suggestion, which was accepted and taken up by the Synod, that the tribunal should consist of five members rather than three: two laity, two clergy and a legally qualified chair. However, having agreed that, we thought that it would be right (as one of our principles is that all clergy of whatever rank or position in the Church be treated as equally as possible) that the Vicar General’s court which would handle a disciplinary case against a bishop should also have five members instead of three. The effect of these particular amendments is, first, to increase the number of that particular panel from three to five. It does so by making it one more layperson, but then in the case of the Holy Orders side of things the suggestion is that one of the two clergy should be in episcopal orders and one should not be.

I would be happy for all these amendments to be voted on *en bloc* but I await your guidance and discretion on that, Mr Chairman.

The Chairman: I am sorry to disagree with you, Archdeacon, but we need to vote on them individually. Item 506 is open for debate. (*No response*)

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsection (1)(b) *leave out* "one person in Episcopal Orders" and *insert* "two persons in Holy Orders (one of whom shall be in Episcopal Orders)".'

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsection (1)(c) *leave out* "one lay person" and *insert* "two lay persons".'

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsection (2) *leave out* "three" and *insert* "five".'

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsection (2)(b) *leave out* "one person in Episcopal Orders" and *insert* "two persons in Holy Orders (one of whom shall be in Episcopal Orders)".'

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move as an amendment:

'In subsection (2)(c) *leave out* "one lay person" and *insert* "two lay persons".'

The special amendment was put and carried.

Clauses 30 and 31

The Archdeacon of Malmesbury: I am speaking to the special amendment to each of these clauses:

'In subsection (1)(b) *leave out* the words "following a finding" and *insert* the words "on the ground".'

I want to put a little bit of background into this particular amendment. In the early stages of drafting the Measure, we knew that the Family Law Bill was coming up in Parliament which would take away any grounds for divorce within the proceedings and create a completely 'no fault' situation (which of course comes largely out of a

suggestion made by the Church of England a good few years ago). The Bill became law, since when, to our amazement, the Government have declined to bring into practice a significant part of the Act; so we have an Act which is going in one direction but that has been blocked since it was enacted, so we are a little bit one way and the other.

In that situation, where we were working on a 'no fault' basis, members will find that in the Measure there is a section which requires all clergy who are going through a divorce to notify their bishop of it in order that he is aware of it. Remarkable though it may seem, there have been one or two instances where a cleric has been involved in divorce and no one in the Church has known a thing about it.

What happened here is that the diocesan registrars became a little twitchy. They felt that, if anything, the bishops were being offered too much discretion because there was no guidance as to what might be 'conduct unbecoming' in this sort of situation. So the thinking behind this clause and clause 31 was basically to give an indication of those areas of concern where divorce is taking place, recognizing that there will be other areas where an entirely pastoral response is the only appropriate one to make. The difficulty was finding the wording to do it. The principal function of clauses 30 and 31 is to wave a flag and indicate the sort of areas that would be a cause of concern when divorce was taking place.

We had one set of words in the revision stage and that, we have suggested, should be changed to the set of words now before Synod, but I am prepared to leave them as they are. In fact, on mature consideration with one or two members of the steering committee, we have decided that we do not wish to move clauses 30 and 31. We feel that, on balance, it is probably better the way it is. Findings will only be apparent in contested cases which, I am led to believe, constitute only 1 to 2 per cent of all the cases that go through the courts. There are findings from time to time there, and if there are findings in the secular court we would be wise to take note of them, but more importantly the clauses as they stand indicate the areas of concern that a bishop might wish to respond to when dealing with a cleric who, sadly, has a divorce.

The Chairman: So not moving Items 512 and 513 –

Mr Brian McHenry (Southwark): On a point of order, Mr Chairman. I would be grateful for clarification from the Archdeacon as to precisely what he is proposing at the moment: he seemed at one point to be suggesting that we were going to withdraw both clauses. Could he please explain what he is about?

The Archdeacon of Malmesbury: What has actually happened this morning is this: you will find that the wording that you have got is down as a drafting amendment and because you passed the steering committee's report the existing wording of these two clauses is 'following a finding'; that is the position at this moment in time. It only became a special amendment when we thought that we might need to turn it back to

what it was before. We are now saying that we do not feel that it is necessary to do that, therefore there is no need to move these special amendments. Does that help?

The Chairman: So the special amendments at Items 512 and 513 are not being moved, which takes us to Item 514.

Clause 44

The Archdeacon of Malmesbury: I beg to move as an amendment:

‘After subsection (3) *insert* –

“1986 No. 2. (3A) In section 10 of the Ecclesiastical Fees Measure 1986 –

- (a) in the definition of ‘ecclesiastical judges’ after the words ‘Commissary General’ there shall be *inserted* the words ‘the president and deputy president of tribunals for the purposes of the Clergy Discipline Measure 2000’;
- (b) in the definition of ‘legal officers’ after the words ‘provincial registrars,’ there shall be *inserted* the words ‘the registrars of tribunals for the purposes of the Clergy Discipline Measure 2000’.”’

This is a tidying-up job. If we pass it, it means that the Fees Advisory Commission will be authorized to determine a fee for the president and deputy president of the tribunal and also for the provincial registrars in the work that they do. If you fail to pass this, I do not know where they will get their fees from. (*Members:* Aahh!)

The Chairman: The Chairman is not going to comment.

Revd Simon Killwick (Manchester): When I came in this morning I found on my seat the tenth notice paper which informs me and other members that a document has been placed in our trays: a Clergy Discipline Measure financial statement pursuant to SO 98. I feel that it would be helpful to members of Synod if we could be informed of the contents of this financial statement before we consider this particular amendment.

The Chairman: Archdeacon, are you in a position to comment?

Mr Barry Barnes (Southwark): On a point of order, Mr Chairman. In fact, they are on our seats.

The Chairman: Mr Killwick, does that satisfy your question? (*Some dissent*)

The Archdeacon of Malmesbury: My understanding was that the paper had been distributed.

A member: There is still a big pile of papers here in the middle of the row.

Canon Hugh Wilcox (St Albans): On a point of order, Mr Chairman. The paper may have been circulated but I for one have not had time to read it.

The Chairman: Would you like to comment on the paper that has been circulated, Archdeacon?

The Archdeacon of Malmesbury: I propose to comment on the financial paper in my final approval speech, if we get that far, Mr Chairman. Would you be happy with that?

The Chairman: Canon Wilcox, would that satisfy you? It would? Thank you. Are there any other contributions on this item? *(No response)*

The special amendment was put and carried.

Clause 45

The Archdeacon of Malmesbury: I beg to move as an amendment:

‘At the end *insert* –

“(3) In section 25(2)(c) of that Measure after the words ‘1963 Measure’ there shall be *inserted* the words ‘or disciplinary proceedings under the Clergy Discipline Measure 2000’”.

The purpose of this amendment is to bring this Measure into line with other recent Measures. It means simply that when the Rules Committee meets it will have co-opted to its number a couple of people who have significant information and awareness of this particular Measure so that it has that detailed information available to it when it formulates the rules.

Perhaps I ought just to explain that the Rules Committee – a rather vague sort of committee in the background – actually formulates rules, for example, on how a tribunal hearing would be heard, or, if we are doing faculty legislation, how a faculty would be arranged. It looks into technicalities and deals with them. Each Measure recently has had people attached to it for that purpose who have been involved in developing the Measure in order that that detailed information is available to the committee. The special amendment carries this through.

Mrs Margaret Brown (Chichester): On a point of order, Mr Chairman. I am very sorry, Chairman, but there are lots of us here who still have not got the pink form. Could we have some sent round so that we do know what we are doing, please?

The Chairman: Thank you, Mrs Brown. That will be seen to. The item is now open for debate. *(No response)*

The special amendment was put and carried.

Final Approval

The Chairman: That completes the special amendments. We now proceed to the final approval motion. May I draw to the attention of new members particularly that it is not in order to move closure, speech limit or next business in a final approval debate? I do however retain the power to vary the speech limit, and I shall want it to remain at five minutes.

The Archdeacon of Malmesbury: I beg to move:

‘That the Measure entitled “Clergy Discipline Measure” be finally approved.’

It was in November 1994 that I was invited to become involved in reviewing and updating our clergy disciplinary procedures. This has led over the past six years to a thorough-going consideration not only of our existing procedures but of best practice in commerce and industry; so I would like to put on record our gratitude to the many people, both inside and outside the Church, who have contributed to this project.

When introducing the report *Under Authority* in November 1996 I likened our disciplinary procedures for the clergy to the ribbons in the colours of the losing side in the Cup Final: always present on the occasion but never used. That would be the ideal: to have a disciplinary procedure which is always there but never has to be activated. Realistically, however, with over 16,000 clergy – stipendiary, non-stipendiary, chaplains and retired – there will always be a number, albeit a small one, for whom disciplinary procedures will be needed.

It was soon agreed that something more than a modification of the existing 1963 Measure was required. In the past 37 years we have seen significant developments in employment and disciplinary tribunals, with a corresponding growth in awareness of best practice. These we have reviewed and, I hope, learnt from, while adapting and developing the insights and experience to our particular needs as a Church. The developing new procedures have been intensively discussed in four stages and have been thoroughly debated in General Synod at three points in the process. They have also been scrutinized by counsel to ensure that they are in accord with the recently introduced European human rights legislation. Conscious too of the pressure in some quarters to bring clergy within secular employment legislation, this disciplinary procedure has been carefully designed so as to be equally relevant whether we are outside or within that legislation.

The resulting legislation which is before Synod today is the fruit then of the past six years. It offers the Church of England a new disciplinary procedure that reflects best practice as it has developed in the period since the current procedures were

authorized, and has been designed to the particular context that is the Church of England today and for the foreseeable future. On the one hand, it sends out a clear message that there are standards to which we expect our clergy to conform. When, sadly, a cleric falls short of those standards, we are prepared both to recognize and to respond to that situation in appropriate ways, for in past years our laity have suffered due to lack of disciplinary action against erring priests (and there is a large amount of frustration and anger among our congregations at times because of that). On the other hand, this Measure sends out an equally clear message that clergy, the very large majority of clergy, who adhere to the standards that we expect will be supported and protected from unfair, false and malicious attacks upon their reputation and integrity.

Discipline is, by its very nature, a controversial area. At one extreme there will be those who wish to remove all restraints, to trust everyone unconditionally and to turn the other cheek when indiscipline occurs. At the other extreme there will be those who wish to be very firm indeed, to act against all indiscretions and even to deny the possibility of eventual rehabilitation and restoration to ministry. Both extremes can point to Scripture to support their stance, but neither is taking in the full spectrum of the biblical material. James 3 clearly states that teachers and those who are exemplars to the flock will be more strictly judged; but 1 Corinthians 5 and Galatians 6 emphasize that we discipline so as to encourage repentance, restoration and rehabilitation.

The standard that is breached may relate to personal behaviour or to public ministry. It may also have to do with belief, which is important in a Church based upon the creeds, and we await the report of the Bishop of Birmingham's working party concerning discipline in doctrine, ritual and ceremonial cases before we add this particular area of discipline to the new Measure. So we will, remember, be coming back to this Measure at a later stage.

The alleged indiscipline may be very serious indeed or it may be relatively minor. Whatever it proves to be, the Measure provides first of all a procedure for ascertaining the truth; second, a variety of ways of proceeding to allow for the flexibility and sensitivity that will be needed; and, third, a wider range of responses to indiscipline. Until now the discipline has been rather 'all or nothing' in its response: either little more than a mild rebuke, or loss of preferment. The new Measure again provides for a flexible response.

Some concern has been expressed about a new procedure at a time when society is becoming noticeably more litigious, but however much we may rightly regret this trend it is a reality that we as a Church must face. The existing procedure can be seen as deliberately obstructive to complaints, but obstruction will inflame rather than calm the situation. So this new Measure provides a two-stage procedure: section 11 provides what I call an initial sieve, with the purpose of allowing only the genuine disciplinary complaints to proceed forward to a more detailed investigation. In this way a good many complaints will be dealt with fairly, firmly and quickly.

The Measure also seeks to balance the legitimate interests of various groups. We have society in general; we have our congregations; we have those who feel that they have cause to complain; we have those who have to administer the procedure on behalf of the Church; and we have the clergy themselves, with their own expectations. This new procedure is designed, as it must be, to be fair to all groups and to balance their needs, and that means that possibly one group or another may not be one hundred per cent satisfied with what they get; it is the balance which is critical if it is to be acceptable to all.

The clergy go about their ministry with the assurance of the Church that, by virtue of their calling, their training and their ordination, they can be trusted. The new procedures assure the wider community and our congregations that this is still so, that alleged indiscipline will be investigated properly and that, where it is found to have occurred, appropriate action will be forthcoming.

For those who are troubled or damaged by the consequences of indiscipline, a new and simpler procedure is provided for making a complaint. Under the 1963 Measure the making of a complaint in the correct way was unclear and complex; the new procedure is much simpler and clearer, but it requires the complainant to provide the evidence in support of their complaint, and failure to do so will rule the complaint out straight away; and it recognizes that, because clergy hold a public office, they are vulnerable to frivolous, malicious and vexatious complaints. The new procedures require this always to be borne in mind and, when that is the case, for the complaint to be struck out.

For those who are tasked with responding on behalf of the Church to alleged complaints, the new Measure offers a wider range of procedures and a much clearer manner of working. Because we are an episcopal Church in which the bishops ordain and license, the discipline of the clergy will revolve round the bishop; but the Measure is quite clear that no bishop is, or ever should be, a solo performer. He is expected to use a team of clergy and laity to assist him in responding to disciplinary matters.

The Measure requires the bishop and those who assist him to ensure that pastoral care as appropriate is provided alongside disciplinary investigations and responses. Discipline may only be by these procedures, and to discipline without using these procedures will be of itself a disciplinary offence. Inevitably the operation of discipline requires the exercise of discretion. In this Measure, wherever discretion is allowed, it is clearly ring-fenced and a right of appeal is provided for use where clergy or complainants are of the opinion that the permitted discretion has been abused or extended.

The last General Synod had before it in its discussions a draft code of practice, which I know members found helpful in getting to grips with the Measure. Part A of the code offered practical detail which was to be mandatory and which spelt out our expectations of the bishop and his helpers. As members will observe in section 39 of

the Measure the mandatory material was removed at revision stage, so while, regrettably, this means that the draft code cannot be among your current papers, it will still be there but now it will be in the Rules.

Issues of natural justice and guidance on maintaining neutrality during investigations are not going to be lost to the procedures; they will simply appear in section 45 under the Rules. I remind Synod that the Rules will have to come in due course before it to be approved, as indeed the advisory code of practice will also have to come before the Synod to be approved. So members have two or three further opportunities to ensure that things are the way that they would wish them to be.

What about the clergy themselves who of course include the bishops and the archdeacons, the non-stipendiaries, the ministers in secular employment, the retired clergy as well as stipendiary clergy in the parishes, dioceses and chaplaincies? They fulfil a strategically important role in the life of our Church and they do so in a society which sometimes finds them something of an anachronism and in a Church where limited resources seem to be placing ever heavier burdens on our clergy.

The 1963 Measure can only be understood properly in terms of the parson's freehold, but a significant and growing number of clergy no longer have the freehold and a disparity of treatment has developed between freeholders and licence-holders. This Measure addresses the matter by increasing the security of licence-holders so that all clergy are treated on a similar basis, be they the Archbishop of Canterbury or the most recently ordained deacon. The new legislation is providing a single procedure that is equally applicable to all. Section 8(2) requires the use of these procedures for all disciplinary action, thereby safeguarding the right of all clergy to be properly informed of all complaints made against them, to have the facility to respond to those complaints, and to defend themselves. The legal aid provisions that already exist are provided to ensure that, when professional advice or advocacy is required, the clergy may receive such help. Clear stages are defined and time limits are inserted to ensure that there is no undue delay in dealing with complaints. When the complaint is not dismissed following the preliminary scrutiny, there is still a need to clarify the facts and the context in which it occurred. Where the complaint is denied, provision is made for investigation and for adjudication in a tribunal where all the relevant facts can be presented and contested. Although it is called the bishop's disciplinary tribunal its membership is invariably from outside the diocese and the selection of the panel members is done without recourse to the bishop. No disciplinary response is possible on the basis of hearsay or rumour. Those who handle discipline must be fully satisfied that the misbehaviour alleged has indeed taken place.

Clergy can be very vulnerable. Their reputation and integrity are a vital part of their credibility as ministers, so complaints must be taken seriously; they must be handled thoroughly, sensitively and without undue delay. When innocence is established, it must be made clear that that is so, and where, from time to time, misconduct is found to have occurred, appropriate responses must be forthcoming.

If we are going to do this properly, no short cuts are available or acceptable. That means that there is a financial cost to be borne, nowhere near the astonishing figures that several consistory court cases have incurred in previous years but – let us be honest – not cheap either. The paper tabled (which I trust everyone now has) GS 1347C is very much a guesstimate, as the turnover of disciplinary cases in the future is an unknown. It is provided under SO 98 by the Finance Division and is not the product of the steering committee, although we have had some consultation with them in the preparation of it. It is a guesstimate not least because we do not know, for example, whether a full-time officer will need to be employed or whether the volume of work will mean that something less than that can be had. So it is extremely up in the air, but at least it gives members some idea of the realistic costs.

It could be argued that a lot of cases similar to those lodged in the past 38 years but not resolved (and that is a significant problem with the present Measure) could now be determined. It could also be argued that in an increasingly litigious society more complaints are likely, so this may be a busier procedure than its predecessor has been. It could equally be argued, however, that a proper sieve process at the commencement of the procedures will mean that fewer complaints go forward, and those that do will be handled in a much wider variety of ways that will not necessarily require a tribunal or very much in the way of costs. So that is why it is a guesstimate, but it is there, and rightly so, so that members have some idea of what could be involved.

The draft Measure and amending Canon now stand before the Synod. I trust that the Synod will grant final approval and open the way to a new and improved procedure for handling complaints of a disciplinary nature. We stand at the moment in a perilous position as a Church, because bishops will tell you that, if their registrar tells them that the only way of proceeding with a disciplinary case is to invoke the 1963 Measure, there is a high probability that they will consider that the cost of invoking the present procedure far outweighs any benefit that will result from doing so. That is why there is a lot of frustration amongst laity who ask, 'Can't you do something?' Having been an archdeacon for two years, I know that the answer is 'I'd love to but I can't.' This procedure will break through that log jam. It will create a healthier and wiser situation. It is urgently needed by the Church. I strongly urge members to consider giving it their final approval this morning.

Revd Stephen Trott (Peterborough): We have reached final approval stage of this Measure and I would like to pay tribute to Alan Hawker for the immense amount of work that he and his colleagues have done in bringing it to us today, but although we have reached final approval stage it does not mean that we are obliged to accept the Measure as it stands. I wish to emphasize that. We must exercise our judgement as to whether it is a good Measure, worthy to go forward in the name of our Church for scrutiny by Parliament, which is the final stage in the legislative process.

What criteria should we apply in deciding whether this is a good Measure? I would like to suggest that Article 6 of the European Convention on Human Rights 1953,

now part of our law, offers a good start: 'In the determination of his civil rights and obligations and of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' If we were being asked to vote today on the recommendations contained in the original Hawker report, *Under Authority*, I would cheerfully urge Synod to vote for the Measure, but two significant changes have been made in the course of revision which make this a bad, not a good Measure.

Under Authority recommended that the new tribunal should be 'an independent national tribunal'. It also recommended that the standard required to convict should continue to be proof beyond reasonable doubt. These are essential safeguards for justice when accusations are brought which place in jeopardy someone's reputation, living, home, family, welfare and future employment. (Remember, clergy have no employment rights.) My view and, I hope, Synod's is that *Under Authority*, the first version, got it right. In revision, however, ingenious arguments have been advanced to justify reducing the standard of justice on offer from that of a criminal hearing to that of a civil court where the balance of probabilities applies. It is claimed that the civil standard is flexible according to the severity of the case and that it is quite sufficient, although this does not apply in the ordinary courts of the land where a criminal charge requires a criminal standard of justice.

Nor did the revision committee think that the distinction was merely technical. On the contrary, the change was made in order to make it easier to get a conviction. I quote from paragraph 70 of the report: 'The requirement of the present law meant that in practical terms most cases would not be pursued to the consistory court stage because the high level of proof required meant that sufficient evidence could not be collected with the manpower resources available.' That clearly implies that there is a lower standard of proof involved.

The second change from the original recommendations is equally significant. *Under Authority* envisaged an independent national tribunal to hear these cases in which proceedings would be handled by professional lawyers, trained, skilled and experienced in such matters; but we have heard it claimed in earlier debates on this Measure that the office of a bishop includes the duty not only to maintain discipline but actually to administer it as a theological requirement. I know of no such principle either in theology or in law. It is perfectly sufficient for the bishop to lodge formal proceedings against a member of his clergy.

It is entirely improper as the Measure now has it for the bishop to be the source of authority for the tribunal (in clause 1), for the tribunal to be the bishops' disciplinary tribunal constituted for the diocese in question (clause 2), for the bishop to have a major role in scrutinizing complaints made under the Measure (clause 11), including those which he has instigated himself by way of a third party such as the archdeacon. The bishop is not going to be in a position to refuse his own complaints. Curiously under this system he cannot make complaints to himself, thereby negating the claim

that he is required in principle to exercise discipline in person. The bishop can, in clause 14, determine that the matter should be recorded conditionally, in clause 15 he can appoint a conciliator, in clause 16 he can impose a penalty by consent, in clause 17 he can direct formal investigation, he can give evidence in court, he can be invited to give his views on the sentence to be imposed if he has not given evidence, and he can nominate four members of the provincial panel from which tribunal members are drawn for hearings in other dioceses. He and his successors have a continuing role in enforcing sentences passed on those found guilty.

By any reasonable standard of law, English or European, this is not an independent and impartial tribunal, and it cannot assure us of a just outcome. I receive phone calls on average once a week from deeply traumatized clergy facing proceedings of one kind or another against them, and I can assure the Synod that it is essential from the outset that we have an independent and impartial tribunal staffed by those who are trained and equipped to act as lawyers, a tribunal to which bishops can refer cases for discipline but in which they are not themselves involved for they do not have the skills, the training or the professional understanding of law which is required and which is taken for granted in the consistory court and should be applied in a hearing of this kind.

Mrs Jennifer Dunlop (Chester): I speak in support of this legislation. I think that it is a good change from what I understand the previous situation to have been, which I gather was fairly dire. However, I am still concerned about section 30 and the finding of fact in divorce or separation proceedings of adultery, unreasonable behaviour or desertion. I speak as a solicitor in family law so I deal with divorces a lot.

Most divorces are undefended, and I think that that is readily acknowledged. In undefended divorce proceedings the district judge of the county court does make a finding; very often it is on very light evidence, very much on the other party's say-so, admittedly sworn evidence but it is untested and untried as oral evidence by cross-examination. As such, a clergy person who is going through the divorce procedure, if he or she bothers to get out this legislation, will find this paragraph that refers to a finding of fact about adultery, unreasonable behaviour or desertion; I do not think that he or she will bother to read the proceedings of the General Synod as to the purpose and intention behind it, and I am concerned that on receipt of the unreasonable behaviour petition he or she may become concerned, however light the evidence, that he or she may lose his or her job.

I just bring this matter to the attention of the Synod, that it may need amending. As I say, I support the legislation in total, but that is a matter of concern.

Mr Brian McHenry (Southwark): Contrary to Mr Trott, I believe that this Measure deserves the wholehearted support of the Synod this morning. I am aware of the great Hooker's warning: 'The change of laws must be warily proceeded in. Laws as in all other things human are many times full of imperfection'; but a carefully worked-out

scheme is in this Measure to give us a modern disciplinary scheme for the clergy. I believe that it will be fair both for those against whom complaints are made and for complainers and for the Church at large.

So far as one is allowed to call this in aid, I call in aid my long experience as a Government lawyer in public inquiries and in administrative tribunals. Fairness and thoroughness are daily concepts in my work.

Why do I believe that the system will be fair, contrary to Mr Trott? First, the independence of the tribunal (clause 22): not only will there be an experienced lawyer presiding over the proceedings, the lay and clerical members will not be from the diocese concerned. We have already been told that leading counsel has Human Rights Act-proofed the Measure. I personally am satisfied – although obviously lawyers can differ – that the tribunal would withstand a challenge under Article 6 of the convention relating to the independence of this body.

The standard of proof to which Mr Trott referred: we were informed in earlier reports that there is a general trend away from the criminal law standard in professional tribunals to the civil standard, but we know (and we have been told this) that the civil standard does not endanger the right to a fair hearing and a safe decision; after all, that is the current procedure in most civil tribunals in most employment situations. The civil standard's inherent flexibility allows for the criminal standard (the higher standard) to be applied in the most serious cases.

Third, safeguards against vexatious complaints: consider the stages for the consideration of the complaint; follow it through all the way from clause 10 to clause 18. At any one of these several stages a vexatious complaint could be stopped.

Then there is the role of the bishop to which Mr Trott refers. I do fear that the attitude of some of our clergy is to sympathize with the character Mrs Cadwallader in *Middlemarch*. She said, 'Humphrey will even speak well of the bishop, though I tell him it's unnatural in a beneficed clergyman.' I agree with the steering committee that the disciplinary and pastoral roles of the bishop are an integral whole and cannot be separated, hence the wording of clause 1.

Obviously there are other points – and we must address Jennifer Dunlop's point that we heard earlier. I suggest that if clause 30 does not work one would fall back into the general disciplinary regime in the Measure. Nevertheless, this generally is an important reforming Measure. We have been for some time overhauling our ecclesiastical law and modernizing it. This is an important component of that package of reforms. Let us in our final approval vote today show Parliament and the Church at large that we believe that this is a good law, good for the sake of the Church and of the gospel.

Canon Dr Hinton Bird (Sodor and Man): I am afraid that I cannot support this legislation as it stands, chiefly on the grounds of section 30. Those who were at York

heard me make a very fast speech but I gather that some did not quite grasp how this is a bypass of justice, a draconian Measure. We have heard a lot of talk about the standard of proof, whether it be the civil degree or the criminal degree (though Lord Denning did say that he could see that there could be a degree beyond reasonable doubt in a civil case, and I gather that in the exciting case of Wyndham's laundry in 1981 these words were approved). But then we find under this section that a man can be sacked because his wife has a divorce against him, no proof virtually whatsoever. We have heard how this might have been largely irrelevant when the Family Law Act came into operation, but the Government in their wisdom have decided not to implement part two of the Act, which means that the old law still applies, and yet the spirit of this 'no fault' divorce lives strongly on.

Mrs Dunlop told us about what really happens in the family courts, and in the latest edition of *Bromley*, the Family Law Journal, it actually says that if a man wants to defend himself against a charge of unreasonable behaviour his lawyer will tell him not to bother because it will be a waste of his time and money. The sort of charge almost impossible to defend yourself against is if your wife says that you are very nice in public but very nasty in private. How can you defend yourself against this? The practice of the law court is to grant the divorce, and nothing really can be done about it.

So we have this poor clergyman. Very often it may be a late ordinand whose wife cannot take the change of life and finds it rather dull and boring and wants to get out of it; she charges her husband with unreasonable behaviour, he cannot defend himself and she gets a nice financial package and the ability to wander off and look for somebody else. I am afraid that this is life as it happens. What about this poor man? He has lost his wife, he may have lost his family, and now we are told that without any further decision whatsoever he is liable to dismissal. Nothing need be proved further; he is going to get the sack. He has a right of appeal, but when he appeals what will he appeal about? No facts have been established. He is stuck there, unable to defend himself, even in the appeal realm.

I would just say finally that I am very glad that this Measure will not apply automatically to Sodor and Man but needs our explicit and distinct approval.

Revd John Richardson (Chelmsford): I want to speak to one particular part of the Measure but first of all to say how the debate illustrates the difficulty that has been mentioned already of dealing with legislation that a previous Synod has almost but not quite completed. We have had several reassurances that we should trust the previous Synod's work and judgement. I personally would not be surprised to find one or two people here who have stood for General Synod precisely because they did not trust the previous Synod on some matter! Not myself on this particular one, I have to say, but it may well be the case for some people. Also I wish to speak because I am going to be asked in a moment to approve something which could easily affect somebody's life and livelihood. I am very unwilling to send that to the Houses of Parliament with my name on it unless I am quite satisfied, which I am not.

Now to my particular point. Clause 6 at several points refers to 'officiating as a minister without authority' or sometimes simply 'officiating as a minister'. I find that phrase unfortunate, unnecessary and unhelpful. I find it unfortunate because, as it stands, it gives the impression that as a Church ministry is something that we are nervous about. I tried last night to find where this begins its life in the Church of England, this hesitancy about ministry, and the earliest examples that I could find were in the time of Thomas Cranmer, banning the preaching friars in order to prevent their preaching the old message.

That nervousness about certain things has carried on through the Church of England, as Henry VIII wanted the Bible to be read but only in church and without disputation. It is a shame that today ministry seems to be a thing that we are nervous about. So in that sense I find this an unfortunate phrase to see in a piece of legislation.

Second, I think that it is unnecessary. I spoke to Brian Hanson and to Canon Hawker about this issue. As a new member I wanted to know what I could do. I put it to both of them that since the canons of the Church – Canon C 8 particularly – specify that ministry without authority is an offence it would be possible to target the same audience or the same people with a different phrase which did not speak about officiating as a minister, which would take away that unfortunate turn of phrase. It is too late now to move amendments but there are possible ways of wording it which would allow that to be picked up without saying 'officiating as a minister'. But then if Canon C 8 makes that an offence, what is my problem?

That brings me to my third point which is that this is an unhelpful phrase. Canon C 8 does limit ministry. It limits what you can do. For example, you can hold study groups in the house of somebody who is on your electoral roll if they are in someone else's parish but that is about it for the ordinary minister. However, there is a special category of ministers, I discovered. If you are licensed by the archbishop of one of the two provinces, Canterbury or York, or if you hold a licence from Oxford or Cambridge University, you can – and I quote from the Canon – 'preach the word of God' anywhere in England (in the case of Oxford or Cambridge) or the respective province without further authority. That exceptive clause suggests to me that the rest of us cannot preach the word of God anywhere and everywhere, and that is a peculiar thing to make illegal, particularly when one considers the report from the Archbishops' Council that we looked at yesterday on themes for the new quinquennium. Section 4.2(b) says this: 'We will explore ways of resourcing mission and evangelism more flexibly ... in particular areas of need and opportunity, and review current legal and other constraints.' By this wording we are further establishing a legal constraint on evangelism, and quite possibly other forms of ministry, and, in the light of this, clause 6 as it stands is unhelpful as well as unnecessary and unfortunate. I may add that the only people we get with this are ourselves because all those Free Church guys plus all the Roman Catholics plus all the Muslims plus all the Hindus can do what they like and we cannot touch them.

The Chairman: Colleagues, this is one of the occasions in the life of a Synod where a Chairman is nearly powerless. The Chair cannot bring a debate to a conclusion until there is nobody left standing. That is not a request for all of you to sit down but it is just to remind you that it is important that, as we go through this next period of debate, we try to bring new points to the debate and not the reiteration of old ones. It also means, alas, that after the next speaker I will have to reduce the speech limit to three minutes.

I now call Christina Baxter, who will speak as a member of the Archbishops' Council under SO 98 to the financial statement.

Dr Christina Baxter: I need to draw to the attention of the Synod through you, Mr Chairman, that, under SO 98, where there are financial implications of a piece of legislation or anything else that we are dealing with, the Archbishops' Council may lay a financial report before Synod; and that has been done this morning in GS 1347C. I know that the Synod already knows that this is the case because we have had two or three conversations about it as it was being distributed, but it does require to be drawn formally to the Synod's attention by a member of the Archbishops' Council, and I am fulfilling all righteousness by doing so.

Since I am on my feet, and you have not yet put the speech limit down to three minutes, I would like to say that, as the Chairman of the House of Laity, I want to endorse all that Brian McHenry said about this being a good and necessary piece of legislation, and I wholeheartedly support it. I empathize immensely with those who have not been through the procedures of debate and revision in the previous Synod, but I believe that we are in some difficulties in the Church at the moment because of our lack of legislation, and I believe that what we have before us this morning is the best legislation that we can achieve. It is fair; it is fair to all those involved in these difficult cases; and I am sure that, as I vote for it – and I hope that everyone else votes to support it – we will be praying that we do not need to use it.

Dr Jamie Harrison (Durham): I was reminded this morning of some words that we heard yesterday from our preacher: I am sure that you will do all you can, as a Synod, to model good and professional practice in all your workings. As a GP I have been very caught up over the past few years by some of my colleagues who very publicly have not been modelling good practice, and we are trying through the General Medical Council and through new performance procedures within the NHS to rectify some of that. I am personally involved with underperforming doctors and their retraining and also in dealing with someone who is very famous and about whom I cannot tell you today. We take it very seriously because we have struggled and failed both our colleagues, ourselves and particularly our patients and the public.

So what do I make of this Measure? I have been with it for three or four years; I have spoken about the GMC previously; I think that it is a fair, thoughtful and robust procedure for dealing with complaints against the clergy and the mischievous

complaints of the laity and others. It tackles misconduct and it tackles underperformance, and it deals with complaints very favourably in comparison with our NHS procedures. It is more open, and there is more available information both to the complainants and for those complained against.

Just in relation to Stephen Trott's point about the lawyers making the decisions, I like the GMC's view that we have both lay and experts on our panels. I, both as a doctor and as a patient, appreciate the lay approach, in my case the laypeople being you and me as patients.

There is an emphasis too in this report on local resolution which often is key. If we can deal with it at the first and lowest level with an open process, very often we find that it does not go on to anything more serious.

So this does take accountability seriously but it also protects the practitioner, the clergy person, who is guiltless. I urge Synod to vote positively and fully for this for I believe that if we throw it out today we cannot come back to it for five years and that is not, in my view, something that we can afford to do.

Canon Hugh Wilcox (St Albans): This is a Measure that we have been toiling with for so long. I am one of those who very much share the concerns that have been voiced about whether it is a good Measure. I think that it is the best that we have got so far, and I want in the short time at my disposal to address the question of whether we can responsibly vote against it.

My own feeling is that we cannot. Flawed it may be; and I share the concerns about the level of proof: I am concerned, for example, that phrases such as 'conduct unbecoming' remain undefined, though your Convocations are trying to sort that out, but it will not be ready in time, of course. I am concerned that the whole question of what financial aid is available to the clergy appears to be tied up in very strange phrases on the back of the pink document that we have only just received, and I am concerned that clergy feel very restive about the whole process and that they may still not be protected properly from malice and all uncharitableness.

Nevertheless, I believe that we should pass the Measure because we need a Measure that is better than what we have at the moment and because we are going to come back to this in one way or another in the Synod. The Synod needs to vote for this but in doing so to make it quite plain to those in authority that we will be watching the way this Measure, when it becomes law, actually impacts on individuals on both sides of the argument, because I very much support the need of laypeople to be able to complain when they have a righteous complaint. Be in no doubt about that: we need this for laity as much as we need it for the clergy who are not helped by having rogue colleagues round the corner. However, if we are going to have a judgement, we need a fair judgement. So if we pass this but pass it with reservations we do so knowing that we are going to be watching it like a hawk. Above all, we need that code of conduct

and we need it rapidly, and we need always to exercise our authority as General Synod always, without exception, to see the amendments and vote on them, and I wish that we had not got the clause in there that said that the Business Committee could ignore it.

I hope that the Synod will pass this with whatever reservations, pass it to Parliament and encourage Parliament to enact it.

Sir Patrick Cormack MP (Lichfield): We have had the most extraordinary speech from Canon Wilcox. He urges us to pass a Measure which he readily acknowledges is flawed. That is a very bad basis on which to legislate. I would say to those new members of Synod, who have not had the opportunity to look at this before, that in Parliament, if a measure has not completed its progress during a single session of Parliament, there has to be a special resolution before it can be carried over, and no measure that is incomplete in one Parliament can then be taken up immediately in the next without being reintroduced.

We have here before us a Measure which Mr McHenry says he commends to Parliament and hopes Parliament will accept. I would say to Synod two words: 'Churchwardens Measure' and ask members to think what Parliament did with that. The Ecclesiastical Committee was so disturbed by that Measure that it took the most unusual step of saying to Synod, 'Sorry, we cannot have this.'

In his speech Fr Trott mentioned a number of significant points. I, like him, would have been perfectly content with something along the lines of *Under Authority* but we do not now have that and, although it would be presumptuous for me to speak on behalf of my colleagues on the Ecclesiastical Committee (which of course has not yet seen this Measure), I do know those colleagues, I have served on that Committee for 30 years, and I believe that many of my colleagues would be very disturbed by certain aspects of this Measure: criminal as against civil standard of proof, and so on. Fr Trott spoke of these very graphically and very correctly, in my view.

I would urge Synod at this stage not to pass a Measure which, by the testimony of the previous speaker, Canon Wilcox, is manifestly flawed, merely because we wait for something better, so that we will not use the clergy who come before this new system as guinea pigs and see how they get on. That is not the way to legislate. It is casting no aspersion on those who have put hard work and prayerful thought into this to say that we really do have to get this right. We have not got it right; we have a new Synod and a quinquennium before us; we can look at it again. I know that this particular Measure cannot come back for five years but we can look at the issues and the implications. We would not be serving the Church of England, in my view, by passing this Measure as it stands today.

The Chairman: I will take two maiden speakers, after which the speech limit will be reduced to two minutes.

Revd Dr Alan Hargrave (Ely): I stand before Synod a worried man, not just because it is my maiden speech but because I read in clause 8(c) that I can be done for inefficiency. What if the Bishop of Huntingdon (sitting over there) is thinking, 'We could do with a new Vicar of Holy Cross. I wonder if Hargrave is being very efficient in the conduct of his duties.' Could he give me the left boot of fellowship for inefficiency? What exactly does the term mean? If he does give me the left boot of fellowship for inefficiency, who will pay my legal fees? I sincerely hope that this will be taken up and clarified in the Rules.

However, I do take heart because for the most part the Bishop of Huntingdon has no idea what I am up to, day by day, in my parish. That is not his fault. I happen to know that he enjoys visiting my parish but he is there only very occasionally, which is why I support the Measure very strongly because incumbents need to be accountable. Freehold clergy in this country must be the most unaccountable profession of all. I say this as a new member of Synod and as a clergyman. I need to be accountable. I hope that we will not vote against this Measure, because we desperately need our clergy to be far more accountable than they are.

Having said that, I am anxious that the Church concern itself not just with the discipline of the clergy but also with their support and, particularly, frequent and proactive support for clergy who are often honourably wounded rather than just waiting to react when they become, let us say, inefficient.

Mrs Mary Johnston (London): I want to support the Measure. Like many people here, I listened in July as Synod went through this clause by clause, scrutinizing it very closely, and I want to pay tribute to the steering committee for hearing our criticisms and responding to the amendments proposed and all the submissions. What we have here is a very practical, fair Measure.

There are two aspects of clergy discipline which I think have not been covered and I hope very much that they will appear when it comes to drawing up the code of practice. The legal people have played a major part in drawing up the Measure, quite rightly; we are in a complex field of human rights legislation and many aspects of employment law; but I winced when I realized that we were going to call in the registrar at the first stage, what the Archdeacon called the initial sieve. I want to see a stage before that, something which I would call constructive pastoral intervention. The symbol of the bishop is a crook. It has a hook on the end: it is a rescue tool. I would like to see measures put in place in every diocese to make sure that clergy slipping down the slope can be rescued, can be brought back, before this Measure, with all its intense scrutiny and its financial implications, is brought into play.

I believe that bishops need help in this field. Sometimes it is a bit disconcerting to realize that they are very quick to turn for financial help or appoint communications advisers but do not seem to feel that they need personnel expertise. People are much more difficult than sheep; they need professional help.

The other area which I think needs to be covered is that of balance. If clergy support this Measure – and I hope that they all will – they need, and it is only fair to provide, a grievance procedure so that they too can make their complaints, especially as they are under oaths of obedience. Curates are still bullied; even bishops occasionally make injudicious remarks or actions. Give them a grievance procedure to balance this, but please support this Measure.

The Chairman imposed a speech limit of two minutes.

Dr Philip Giddings (Oxford): It is important that we register the implication of the speeches that we have heard, that we have not fully considered this legislation properly, because that is the implication of what has been said in this debate, particularly in Sir Patrick's remarks. In this Synod we have very fully considered at very great length the important arguments that have been made. They have been rehearsed again this morning by Fr Trott. They are important arguments, but the Synod has considered them fully and at great length before and has made a considered and balanced judgement between the requirement of the protection of the interests of those who are accused – the old insistence on the criminal standard of proof – and the requirement that those who bring accusations should have full assurance that the accusations are properly dealt with.

In July we made a deliberate decision to increase the membership of the tribunal under an independent legal chairman, and we dealt with other matters that we have discussed this morning, to ensure that the procedures that would apply under this Measure would fully guarantee justice to all parties, whatever the charge. There are some in the Synod, I recognize, who do not agree, but the fact that they do not agree must not be used as a reason to argue that we have not as a Synod fully and responsibly debated the Measure and come to our decision, whatever that decision is.

When this Measure, if we pass it today, goes to Parliament, it must be recognized that this Synod has given its full and proper attention to all the important points of justice for Her Majesty's subjects which have been raised, whatever decision we take.

Chancellor Tom Coningsby (Vicar General of York, ex officio): I just want to say that I do not regard this Measure as flawed. I believe that it is a better Measure than the 1963 Measure. I am one of those people who will have to play some part in the implementing of the Measure if it is passed. I have not been involved in any formal way in the preparation of the Measure but I have watched it develop and have been asking myself all along, 'Is this a workable Measure? Are there parts of it which are flawed?' I have reached a clear conclusion that this is not a flawed Measure. I believe that it is much needed in the Church and I hope that we shall pass it today.

I just want to make one point about clause 30 which may have concerned some people. Where it says there that after certain types of divorce a clergyman is a person who is liable for removal, it does not mean that he will be; it just means that he is in a

category of persons who have to be considered by the bishop. If you look at sub-clause (2) you will see that there are five stages and five safeguards before the point can be reached where the clergyman is removed from office. The important words are that, first of all, the bishop has to propose to do it, which means that he has to give some thought to it first. Then there has to be consultation with the president of tribunals, then there has to be an opportunity to receive representations from the clergyman, then the bishop has to sit down again and decide whether he is going to impose a sanction or not, and then there is an appeal to the archbishop. We have a similar procedure under the 1963 Measure which bishops have been operating in a fair-minded and pastoral way, and I believe that there is nothing wrong with clause 30. I hope that what I have said does something to allay people's concerns about it.

Mrs April Alexander (Southwark): In reply to the speech of Patrick Cormack and the implied threat therein, I wonder whether Synod might rely on the Ecclesiastical Committee not to exceed its powers in the Church of England Assembly Act and restrict itself to a report to Parliament on the expediency of the Measure, especially in relation to the constitutional rights of Her Majesty's subjects. If it does this, we may think it likely that the Houses of Parliament may regard this as a sensible Measure, in no way interfering with the constitutional rights of Her Majesty's subjects.

Mrs Margaret Brown (Chichester): The points that I was going to make I cannot, because of the time, but I do feel that this Measure before us is very badly flawed. I am very sad, after all the work that has gone into it, to say that I will have to vote against it. We are going to look very foolish as a Synod if we do not take heed of what Sir Patrick Cormack has said because we do not want egg on our faces as we had with the Churchwardens Measure.

I feel that a friendly bishop can veto prohibition for life and that clergy will be able to nip over the border and be let off the hook. I am very concerned – and this is the most important of all and it has not been brought out today, and I know that I am always saying it – that the Church must get itself right on the question of morals. One of the reasons why we have so few in the Church is because we let things like this go through. We have got to have our clergy whiter than white, and if we have them whiter than white and the Church right on morals, we shall bring people back into the Church. I know from experience what dreadful harm it has done the Church in places all over the country where we have clergy – and I know of one case who is on his third wife – who have run off with other people's wives et cetera and then, after a given period of time, are allowed back into the Church. I say that they should not be (not as clergy anyway), and I ask Synod, for the sake of the people in our parishes, for God and for his Church and for our country, please to vote against this Measure this morning.

Revd Penny Fleming (Guildford): I suspect that there is no such thing as watertight legislation, otherwise what would lawyers do all day? I also suspect that there is not one single person in this House who has not at some point acted unreasonably.

However, in matrimonial matters unreasonable behaviour is in the eye of the beholder. It is not easy to be accused of having behaved unreasonably. We are being asked today to choose between being legalistic and having a certain amount of trust. It seems to me that if there is a body which could pass legislation which requires a certain amount of trust to be involved, it ought to be the General Synod of the Church of England.

Revd Dr Richard Turnbull (Winchester): As we vote, Chairman, it is especially important that we do not lose sight of the strategic and foundational importance of the matters before us. The first of those is the wholly reasonable expectation of our parishes, of the people of God, for an effective discipline system. The second is a basic demand of our professional integrity as clergy that we are regulated by a discipline system which is not juridical but is one of professional regulation. Those are important strategic and foundational matters that we must not lose sight of.

We have heard siren voices in Synod this morning arguing on particular matters, not least on the standard of proof. I want to reinforce what Dr Giddings said: that the matter has been tabled before this Synod, it has been pressed, it has been debated and it has been voted upon. It seems to me wholly misplaced logic to surrender the strategic importance of this Measure to a particular issue, especially one that has not carried the mind of Synod.

Finally, may I press the Archbishops on the matter of the code of practice, reinforcing the point that I made to the Synod at revision stage in July, to exercise their powers under section 48(2) of this Measure to bring different parts of the Measure into operation at different times so that the clergy discipline commission may be established and may formulate the Rules and the code of practice, and so that they may be tabled before the Synod, debated and approved, before the rest of the Measure comes into operation?

I urge the Synod to support this strategic Measure, this Measure which is of professional importance to the whole Church.

Revd Peter Hill (Southwell): – I speak also as the chair of the House of Clergy in my diocese. This is a massive improvement. I hope that Synod will support it and I hope that Parliament will subsequently, but what I want to say is practical and about trivial complaints. For some people, complaining is a way of life. The Archdeacon has acknowledged that. No doubt at the feeding of the five thousand some people complained that there were bones in the fish. However, for a parish clergy person there is no such thing as a trivial complaint. Any complaint affects us deeply. It is a complaint not just against our ministry but against our life, and often we are involved in prophetic ministry which draws trivial complaints.

So what I want to say practically is that I hope that we pass this, and that clergy in dioceses will receive preparation and training to deal with this process and the psychological effects of it (because there will be an upsurge in complaints).

Second and last, bishops have an onerous task. We need our bishops to respond properly, promptly, advisedly, decisively and above all pastorally to trivial complaints. We need to pray for them in doing so. They also need to gather together and be trained for this new Measure when, as I hope, it comes into effect.

The Chairman: There are still a number of you wanting to speak. I urge you to concentrate on the essentials.

Revd Clive Mansell (Ripon and Leeds): I will vote for the Measure. I think that we should respect the changes that Synod has made after hearing various arguments, though I have concerns, as have others. I suspect that some concerns will be allayed by the content of any code of practice, and I would like to ask what code of practice in a draft form will go to our colleagues in Parliament to see. Will it be the one that we have already seen in draft form or will it be an amended version? When will we as a Synod have a chance to consider a more final version of the code of practice? Can we be given some guidance on the timescale, please, as it would be helpful? The code of practice may show how we are likely to interpret the legislation in reality.

On a totally different issue, thank you for the paper on financial matters, which is helpful in all sorts of ways. We have been led to believe that probably we shall not see large sums expended, large beyond those indicated here. Would it be possible to take out some degree of insurance against the improbable occasion of very large sums being incurred in legal matters? Has that been looked at?

Revd Jonathan Alderton-Ford (St Edmundsbury and Ipswich): I urge Synod to take courage. As a matter of fact we got the Churchwardens Measure right and the Ecclesiastical Committee got it wrong. At the York group of sessions we should have followed the strong lead of the Archbishop of York and sent it back.

We are presenting today a living thing. Of course we will make adjustments to this Measure because that is precisely what Parliament does to all its laws as they go ahead. It is a living thing, we will make changes and that is just and right and fair.

There are members here who have agendas. There are certain people here who want to drive the clergy into the arms of a trade union. As the son of a trade unionist I would want to say that that is not a desirable thing. My view of the Church is that it is a supernatural body which should model supernatural things as our God is amongst us. Therefore I would urge Synod to resist certain 'Trottskyite' tendencies – (*laughter*) – and vote with confidence and courage for this Measure and see it through to the end.

Revd Stephen Trott (Peterborough): On a point of order, Chairman. Is it in order to make personal remarks of this nature in the course of a serious debate?

The Chairman: I think that such remarks are probably better avoided. However, I think that this one was made in a spirit which the Synod understood.

Mr Gerry O'Brien (Rochester): I want to pick up something that John Richardson said earlier in the debate and the concern that the Measure before us could be used to inhibit gospel ministry in the clergy. I hope that Canon Hawker may be able to reassure us in his summing up as to how the Measure will be used. It seems to me that we are in an age where church planting is becoming quite a thing, ministry may easily take place outside one's own parish, and technically that is without authority. I would be concerned if we had a Measure that powerfully inhibits the clergy from doing this but has no inhibition at all over the laity doing it. That would be an unfortunate direction in which to move.

Mr Derek Jago (Durham): I would simply like to say that we are here today not as politicians but as members of the General Synod, and I happen to feel that General Synod is not a place where threats should be offered, no matter how veiled they may be. We are here as Christians and that puts things in an entirely different light. I also speak as someone who has, sadly, gone through a breakdown in pastoral relationships as a PCC secretary and also as someone who five years ago was subject to unfair dismissal. I had to go through a tribunal and my case was found, in the finish; because of that experience I find this legislation before us today to be fair. When I say 'fair', we also have to think of the fact that in legal terms we will never find perfection, because for every argument there will always be a counter-argument.

I urge Synod to support this legislation.

Revd Jonathan Baker (Oxford): It has been a struggle for us new members to deal with this straightaway on the second day of the first group of sessions. I had two particular concerns, one of which has been very helpfully dealt with by the remarks on my right on the matter of divorce, with particular respect to unreasonable behaviour, but my second concern is about some of the language of the Measure at first reading over the past couple of weeks, some of which is very general and unspecific and one is not quite sure when it is intended and how it is intended to kick into gear. It would help me very much as a new member to make up my mind if the Archdeacon in responding to the debate could say a little more about 8(c) and the use of the word 'inefficiency' there. There was a good and amusing speech earlier on that matter but it would help me just a little more to understand some of the thinking about the way in which inefficient behaviour or conduct by a clergyman might bring this Measure into operation.

Revd Simon Killwick (Manchester): I hope that I can avoid vain repetition of points previously made. I feel that there is an omission from the financial statement which was distributed earlier this morning and that is the legal costs of appeals which may well take place under the Measure, particularly if there are flaws in it.

My second concern is that there appears to be a potential for a double jeopardy, that is that in theory a clergyman who is innocent may be acquitted of an offence in the criminal court but still brought before the disciplinary tribunal and 'convicted' because a lower standard of proof is required in the tribunal. I would be grateful for a response from the steering committee on that point.

Mr John Higginbotham (Leicester): I just want to add briefly to what has been said about the balance between Parliament and the Church. My fear is that if this Measure is not deemed expedient by the Ecclesiastical Committee we shall be faced with the same choice as we had with the Churchwardens Measure: confrontation or capitulation. Last time, in the interests of speeding the Measure through, we compromised. I wonder whether this time we shall see it through, because it does this Synod no credit to have to retreat on such issues. Synodical government was set up to give the Church a greater measure of control over its affairs. Sooner or later we shall have to decide whether we wish the present state of affairs to continue. I am not advocating disestablishment – at this stage – it is getting rather late in the day, but we need to be clear about whether we are going to submit to Parliament on this kind of issue or whether the Church has come of age and is really going to be master in its own House. Sooner or later the issue will come to the fore and cannot be fudged. We need to be warned and prepared and consider this carefully before we vote.

The Chairman: I see no one standing. Your unexpected reticence allows me to call the Archdeacon of Malmesbury to respond.

The Archdeacon of Malmesbury, in reply: I want to thank everyone who has contributed to the debate, which I found very helpful. A number of issues have been raised. Can I deal with a number of small issues and then come to two items in particular?

Canon Wilcox and Mr Baker talked about the terminology of the Measure, especially where it refers to the types of matter which would be a source of concern under discipline. One has to say that there is inevitably an element of lack of definition there; members can be assured that in the past six years we have gone over that ground innumerable times. The problem lies between having something that is so precise that you only have to be a small margin out of it and you are not covered, and something which really gives the area that you want to do. You have to trust the tribunals to exercise good sense, but you have to do that whatever sort of adjudicatory system you have. The Convocations are in the process of an exercise to come up with a code of good practice, which is an essential complement to the Measure and it could be very helpful in highlighting what we look on as reasonable behaviour. The sooner that comes up the line, the better.

Canon Wilcox also said that he would be watching closely how it impacts when it comes in. I can assure Synod that he will not be watching anywhere near as closely as I will be watching when we get to that particular point.

Dr Hargrave and Mrs Johnston quite rightly mentioned failing clergy. If we had had the draft code of practice in its full form before us, members would see that you would not even proceed to discipline in that area unless you could show clearly that you had recognized the situation, that you had sought to support the cleric, that you had

brought various support mechanisms to help him or her and that only after an extended process of helping to pull that round would you consider using the disciplinary procedure at all.

As far as John Richardson's point is concerned, my core response is that I do not agree with him, but I have to remind him that canon law, not this Measure, is what says that you do not minister outside your parish unless you at least show some courtesy to those who are responsible for that area and work with them.

Richard Turnbull asked if we could have a staged introduction. I am not in a position to offer that because it rests with the Presidents of General Synod, but I think that it would be immensely valuable and the steering committee is assuming that that is actually what will happen. However, I can go no further than that because it is outside my remit.

I think that the Legislative Committee will want some sort of idea of a code of practice to go with their submissions to the Ecclesiastical Committee because it would be immensely helpful, so I believe that Mr Mansell's hope is likely to be met.

Double jeopardy was mentioned. That does occur in a number of situations where someone is found not guilty in a criminal court but it is felt that there is a residue of disciplinary action that needs to be looked into. That is nothing uncommon and I do not think that we need be too troubled by it.

As regards the Ecclesiastical Committee of Parliament, had this been last night all those comments would have been ruled out of order because they were all hypothetical. We do not know how the Ecclesiastical Committee of Parliament will respond to the Measure if it is given final approval. Some people may have an idea, and I have no doubt that one or two people will be quietly lobbying privately to their own ends. So be it. We cannot really say what is going to happen.

Moving to the two more substantial points that I want to mention, the first came up in the speech from Stephen Trott. He referred to the European human rights convention; we went to specific lengths and considerable cost to seek counsel's opinion. Philip Havers QC, who is a leading exponent in the area, went through the Measure very carefully indeed, and he is satisfied, as of this time, that it is entirely in accord with European human rights. Bearing in mind that this is a controversial area, and bearing in mind that only as it goes on will we fully discover the implications of human rights legislation, we are in the same position as every other piece of legislation across the road. So all we can say at this moment is that we are confident that we are OK on that; and of course, like any legislation across the road, it will eventually be modified if we discover that we are not.

As regards the independent tribunal, I think national, provincial or diocesan is a red herring. What is important is whether the tribunal will be independent. I say

categorically that it will, it must be, so there is no problem there. I also felt that there was a slight smudge during that speech which could have given members a wrong impression. I know that Stephen would not want members to have that wrong impression, but just for the sake of clarity it still is our position that if you are arraigned on a criminal offence you will not be adjudicated in the Church but in the secular criminal court of the land, and the court's decision of your guilt or innocence will be final proof to us of whether you are guilty or innocent; so all criminal cases will still involve a criminal standard of proof and will be adjudicated in another place. We need to be abundantly clear about that.

Having said that, we need to be aware that virtually all disciplinary and employment legislation is based upon the civil standard of proof. Indeed the police have been moved to the civil standard just recently by Parliament. The Government are pressing the GMC to move to the civil standard, because it is seen by everybody, bar a few, to be a more appropriate standard for non-criminal work. Discipline is not criminal; it is civil, in that sense. So, as regards Margaret Brown's comment about egg on our faces, it is just a possibility that if the Ecclesiastical Committee of Parliament says, 'No, you must retain a criminal standard' its members will be the ones to have egg on their faces because they will have to explain why, when everyone else is being pushed in one direction, the clergy are so special, so unique, so discrete that they must have a standard which means that morally they must be more protected than the congregations whom they serve.

Moving to the small matter of matrimonial business under section 30 – and of course section 31 because we would not want to exclude the bishops from the possibility of divorce – a number of comments were made. Under section 1(4) of the Matrimonial Causes Act 1973, which is still the piece of legislation that is operational in this country, the court is required to satisfy itself that there is a factual basis for allegations of adultery, unreasonable conduct or desertion (plus two others that we are not involved with here). The evidence is given on oath in the form of an affidavit and it is part of the divorce proceedings. This proviso is simply a recapitulation of the present law, and it reflects what we have been doing in the Church since 1963. It also indicates which aspects of divorce activity are a source of potential concern to us. As Chancellor Coningsby has mentioned to Synod, even if this were the case there are five procedures that must be gone through, so that there is a sieve within a sieve within a sieve before anything happens; it is not mandatory and obligatory.

The registrars can assure members that, in their experience, solicitors are usually aware of the special implications that will affect the clergy in this sort of situation; they are often alerted to it at an early stage and are always willing to explain the implications of various courses of action to the clergy. I therefore do not believe that this is as much a problem as people believe it to be.

We have reached a critical stage in the life of this particular Measure. After six years we have one final decision to make. It is the only decision that we have left to make:

we either approve this Measure or we throw it out. That is the stark choice that faces us. Under the Standing Orders, if members choose to vote out final approval, it means that neither this Measure nor any other Measure that is similar to it may come before the Synod during the lifetime of the Synod; and as we are at the first meeting of a five-year period it means that if you throw it out today there will probably be no reform this side of 2005. That, I believe, is very serious indeed. We are in difficult straits already, as things stand. It would take, on the estimation of those who would do it (because it would not, I assure members, include me; I have done six years' hard labour on this already), quite a few years to put together a Measure which would have to be discernibly different from this one (unless the Business Committee and the Presidents decided to bring it back and could give Synod a strong enough reason for doing so); but if members turn it down at final approval they will have to come up with a very strong reason to justify overturning the view of Synod.

So the choice is that we either give it final approval and send it on its way to the Ecclesiastical Committee and, if there are problems at that stage, we will deal with them then, or we go back to the drawing board and take the matter up in five years' time.

The Chairman: Before we come to the vote, since we have come to the end of a long and complex debate I suggest that we just pause in a moment of quiet, offer our debate to God and seek the guidance of his Spirit in the action that we are now about to take. (*Silence*)

The motion was put and The Chairman, pursuant to SO 36(d)(iii), ordered a division by Houses, with the following result:

	Ayes	Noes
House of Bishops	38	0
House of Clergy	197	23
House of Laity	200	21

The motion was therefore carried.

The Chairman: The Measure therefore automatically stands committed to the Legislative Committee for onward transmission to Parliament.

On the matter of voting, one or two new members have asked whether there is provision for the counting of abstentions. I should make clear that there is no such provision.

Draft Amending Canon No. 4 (Amendments related to clergy discipline) (GS 1348B)

Having dealt with the Measure we now move to the Canon. Members will see from the sixth notice paper that the steering committee proposes one special amendment to the Canon.

Paragraph 4

The Archdeacon of Malmesbury: I beg to move as an amendment:

'Insert –

- (a) in paragraph 1 after the words "suffragan bishopric" *insert* the words "or who is to be licensed as an assistant bishop,"

and renumber sub-paragraphs (a) to (c) as (b) to (d).'

I suspect that this is uncontroversial, but just to make everything absolutely apple-pie, assistant bishops as well as suffragan bishops need to be included. That is all that the amendment does.

The Chairman: Does anyone wish to speak to the amendment? (*No response*)

The special amendment was put and carried.

The Archdeacon of Malmesbury: I beg to move:

'That the Canon entitled "Amending Canon No. 24" be finally approved.'

The purpose of the draft Amending Canon No. 24 is simply to modify the canons to reflect the new position produced by the Measure; that is its sole function, so it is consequential on the Measure. I do not wish to rehearse anything that was discussed in our earlier debate, and I am happy to move.

The Chairman imposed a speech limit of five minutes.

Revd Stephen Trott (Peterborough): Simply for the record, I wish to repeat for the benefit of new members of Synod who did not have the advantage of hearing the debate in July that I consider that there is a serious objection to the Canon in that it imposes for the first time upon clergy who have not taken an oath of canonical obedience precisely the same duties; and I consider this to be contrary to natural justice.

Again, I quote the Human Rights Act: 'There should be freedom to manifest one's religion or beliefs, subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.' The way the Canon is now framed would impose canonical discipline, and

therefore the effects of the Measure which has just been approved by the Synod, upon a considerable number of people who are no longer in active ministry, having either retired or withdrawn altogether from the ministry of the Church. It will make them for the rest of their lives, whatever the decisions they have taken, to whatever extent they have withdrawn from the authorized and public ministry of the Church of England, subject to a particular law directed at them as clergy or even as former clergy.

If the Church wishes to impose duties upon people it must afford them rights. I know of no consultation that has taken place with representatives of retired clergy concerning this proposal that those who have ceased to hold office should be subject to the effects of the Canon and the Measure. Those who are retired by definition nowadays in current practice do not have a licence and therefore do not have either voting rights or the right to be represented on General Synod. In practice they are excluded from most of the work of synodical government in the Church of England because they cannot even be members of the electoral roll of the parish in which they live in retirement. If we wish to impose duties on people they should at least have the right both to be consulted and to be part of the synodical process, and I would like to suggest that before such a proposal as this is actually enacted we should find some way of including retired clergy among those who do have the right to vote and be members of the Synod so that they play their full part as clergy in synodical government in retirement, just as members of the House of Laity do.

So I am sorry to be reiterating this for those who have heard it already but it is important that the Synod knows that there are considered objections to the proposed Canon, for the benefit of those who are new to the Synod.

The Chairman: Does anyone else wish to speak? (*No response*)

The Archdeacon of Malmesbury: My thanks to Stephen for his comments, which are not new to me. As far as the involvement of retired clergy in synodical government is concerned, that is not a matter on which I can comment this morning because it is not relevant to this Measure. It could be relevant to the next Measure that Synod is going to look at – the Synodical Government Measure – and there may be arguments there which need to be considered, but not in this place at this particular point.

It is incorrect to say that retired clergy have not made an oath of obedience; they have to make one to be ordained in the first place. They have taken oaths of obedience also on each new appointment. They have reaffirmed where they are. They have assured God's people that they are what we think they are. What has happened is that when they retire, well, I am puzzled by this statement by Stephen that they are no longer in active ministry. A number of dioceses would be dead on their feet if retired clergy were inactive; they are very active indeed and sometimes active in ways which are both helpful and otherwise. I was at a PCC just recently where one retired cleric was trying to encourage the parish to throw out *Common Worship* in its entirety because he personally could not say the new words of the Nicene Creed. I think that that is irresponsible, and I said so at the time.

Many of them are active. They take services. I know of a cleric who does not take services but still hears confessions, and I can think of one or two clerics who claim to have given up the ministry really and not necessarily retired; I can think of one who went into secular work, never wears his dog collar, and does not like using the word 'Revd', but when his daughter wanted to get married, lo and behold! for approximately one hour he was prepared to restore himself to the status of cleric and officiate at her wedding – and I do not blame him.

If someone has been ordained and is still recognized as a cleric, the Church must continue to have a measure of ability to handle that, not least with the crematorium cowboys who can be handled by the new Measure but could not be handled by the old one. The injunction procedure is there partly for that. My old bishop at Chichester is about to retire. I cannot imagine that he will become inactive at the end of January, and I am sure that we would want to keep some measure of control over him! The principle which has never been challenged at any point in the six years and which was established by the initial working party is that anyone who is an ordained minister of the Church shall come under the discipline of the Church. When a cleric has retired and is relatively inactive, there may be no situation where the discipline is needed, but I think that the principle is right, and the canons are simply being reworded in the light of the Measure that Synod has passed, to ensure that it is crystal clear; it is assumed that the oath of obedience that clerics made at their ordination and that they have reaffirmed on each of their succeeding appointments is still the situation for them right through their retirement or whatever else it is that they are inactively doing after they leave the ministry.

The Chairman: Thank you, Archdeacon. It is good to be reminded that archdeacons of the Church of England remain robust.

Under SO 36(d)(iii) there must be a division by Houses, unless, by permission of the Chairman and the leave of the Synod, this is dispensed with. I give my permission. Do you give your leave? (*Agreed*)

The motion was put and carried.

The Archdeacon of Malmesbury: I beg to move:

‘That the Petition for Her Majesty’s Royal Assent and Licence (GS 1348C) be adopted.’

It is necessary when a canon has received final approval for this particular motion also to be put.

The motion was put and carried.

The Chairman: That concludes that part of the legislative business, for which I am grateful. The Petition will be submitted to Her Majesty for Royal Assent and Licence.

THE CHAIR *Mrs Margaret Swinson (Liverpool)* took the Chair at 12.18 p.m.

Draft Synodical Government (Amendment) Measure
(GS 1364A)

Measure for Revision

Report by the Revision Committee (GS 1364Y)

(Deemed first consideration at the November 1999 group of sessions)

Mr James Humphery (Salisbury): I beg to move:

‘That the Synod do take note of this Report.’

Well, here we are at last. In February we were talked out by the liturgists; in July we were talked out by the disciplinarians, and I thought that they were going to do it to us again this morning. So it is perhaps not surprising that in its preview of this group of sessions the *Church Times* referred to this piece of work very much in passing as ‘the poor little draft Synodical Government (Amendment) Measure’. Since the *Church Times* cannot actually leap up now on a point of personal explanation, I should perhaps say that that phrase was in inverted commas, so the reporter was clearly quoting someone else. I hope that that does not mean that I am the first chairman of a legislative revision committee to be subject to reverse spin.

I hope that the Synod will receive this report because it is a sound piece of work which is the product of very wide consultation. I am not looking for a sympathy vote for some sort of legislative Orphan Annie. I said ‘wide consultation’ because we received 60 submissions on the draft Measure before the closing date and another 19 came in after the deadline. Although these revealed some common themes, the interpretation of those themes was very different, so different that, in preparing for the meeting, I really was not sure if or how they could be reconciled, or indeed how we could escape our meeting in anything less than a couple of long days.

The Church Commissioners were kind enough to host our meeting and before it began a few of us found ourselves making small talk in an ante-room on the first floor of 1 Millbank. I was looking at a bookshelf, hoping to find that spark of inspiration that might help me unravel the day’s puzzles. The shelf seemed to contain nothing but dusty old leather-bound volumes dealing with investment strategy, but among all these impressive-looking books I came across a dog-eared paperback which had clearly been much used. It was a work called *Sharing a Vision* and that title set me off. Archbishops have visions, bishops have visions – they certainly do in Salisbury – so why not the chairman of a revision committee? Duly fortified, I took my seat and there in front of me was a bundle of tabled papers. First, I saw that the legal team had thoughtfully provided extracts from the Pastoral Measure. Madam Chairman, I do not know if you

have ever found yourself speed-reading for inspiration for a meeting of a revision committee, but if you do I do not recommend the Pastoral Measure.

Much more promising were some late submissions from PCCs. The first came from a down-to-earth PCC in the northern province, which wrote, 'Dear Sir, At a recent meeting of the PCC recommendations one, two and three of the Bridge report were discussed. The proposed changes will have little impact on the election and workings of the PCC in our parish so it was agreed at our meeting that the changes appeared to be sensible and worthy of our support.' So much for the vision.

It would be unfair to focus on one PCC's comments, so to give Synod a flavour of the challenge that we faced I want to put before members just four comments that we received on the proposed twelve-month rule. First, 'highly exaggerated and totally unrealistic'. Second, 'a good principle in order to get to know people before they take on such an important role in the Church's life'. Third, 'we're permanently short of PCC members and feel this would discourage any possible candidates who we do find'. Fourth, 'I support the twelve-month rule. I have experienced the need for such protection against attempted infiltration and hi-jacking of a council by disaffected members with little appreciation of the local situation.'

Perhaps that neatly encapsulates the challenge that we all face with so many of the issues which come before us in the Synod, namely reconciling and drawing strength from our many diversities. The report before us this morning sets out the way in which this revision committee faced up to that challenge. I hope that members will agree that the report stands on its own two feet and I am therefore privileged to propose that the Synod take note of it.

Mrs Elizabeth Paver (Sheffield): On a point of order, Madam Chairman. We are now discussing some very serious issues. Are we quorate in all Houses, Madam Chairman?

The Chairman: Which particular House would you like us to count?

Mrs Elizabeth Paver (Sheffield): I would like you to count all three Houses, Madam Chairman.

The Chairman: Will the bishops please stand? The bishops are all right. Clergy? The clergy are OK. Laity? Yes, I am sure that you are all right.

Yes, we are quorate in all Houses.

Mrs Elizabeth Paver (Sheffield): Thank you, Madam Chairman.

Mrs Margot Townsend (Winchester): There has been a considerable amount of worry about the size of the PCC, which is at the end of clause 3, that this Measure does allow the APCM to determine the numbers of their PCC; and there is a year in the

transitional arrangements so that you will not have to go up and then down. I think that a lot of parishes were worried that they were going to be dictated to about their size and, as you know, they do not like it.

Mr James Cheeseman (Rochester): First of all, I attended the revision committee, having put forward a number of suggestions, and I would like to pay tribute to the way in which Mr Humphery ran that committee and the way in which the whole committee responded and the way in which it was held, squaring the circle or whatever the exercise is called, of finding a way through, in pretty swift time, such diverse comments and views.

Second, the revised Measure as we have it now contains very little to which anyone could possibly object. It seems a quite unobjectionable Measure. What worries me is that when it comes down to it virtually none of it is compulsory. Parishes can do exactly what they like, with the exception of the six-month rule, and I do not even know if that does not mean that, if you had an election and you wanted to vote people on who had not been on six months, you could do so by putting them on the deanery synod; that I do not know about. Really this has left parishes very free to do whatever they want and whatever they see fit in the managing of their own business, and that is a good thing; but the question that I would ask seriously is 'Do we really need a Measure to do this or would it be better as advice to parishes as to how they might manage their affairs?'

What are parishes going to say when they realize that this business has gone all through the Synod, all through the processes that are needed, sent down to them with great triumph only to find that they need change hardly anything that they are doing at present?

So why go ahead with it? Perhaps people think that it would be good for parishes, at this stage and because there has been the Bridge report, seriously to reconsider their position and the way in which they do things, but it seems to me that we are running a real risk of being held in derision and having people ask why 'they are up there wasting time and money' in discussing things and sending down legislation which really means that people can do virtually what they want and suit themselves.

I hope that in this brief debate some consideration will be given to whether we really need this Measure.

Prebendary Horace Harper (Lichfield): All of us in the process of the recent elections to the Synod were aware that the reform of synodical government was an important matter in the minds of those who have sent us here and who are paying for us while we are here. I think that we need a very particular regard right through these five years that something sensible comes out of this process of reform. What have we here? The previous speaker has just made a point – I think, a very valid point – that it alters nothing. Do we go back and report to our diocesan synods like this: 'In our sessions

last November we worked very hard at the Synodical Government (Amendment) Measure which means that instead of electing your PCCs for one year (unless you want to make it for three), in future you elect your PCCs for three years (unless you want to make it for one)? Are we really going to stand up and say that to the people who have sent us here to try to reform synodical government?

We are wasting our time on this. We should be dealing with far more weighty matters of the law as it applies to synodical government, and some of us are very anxious to see this begun, especially as the Bridge report in its proposals was not particularly helpful.

Second, an important part of the groundwork of the Bridge report was the principle of subsidiarity, and that is that you take decisions as far out in the scheme of things as is appropriate, and the further out the better. We should not be deciding this here; this should be decided in our annual parochial church meetings. That is what subsidiarity is all about, that we do not clobber people but show our confidence in them, confidence in our parishes, confidence in the democratic systems that are going there.

I will not press the matter of a closure or anything else, partly because I cannot remember what Standing Orders say, and I suspect that having made a speech I am no longer qualified to do it, but I would rejoice if someone else did.

The Chairman: I was about to say that I see no one else standing, in which case it would have been unnecessary! Dr Cull?

Dr Carole Cull (Oxford): Just a simple point. We have heard much about subsidiarity. I was privileged to listen to someone who had worked as a chaplain to the European institutions talking about subsidiarity and he made very clearly the point that subsidiarity means that the decisions are made as far down the system as possible – bottom up – but the State, in European institution terms, has the responsibility to ensure that those who are making those decisions are able to make them and have the right ways of doing that. What we are providing here is a way of enabling PCCs to make their decisions, decisions which at the moment they are not able to do under the current Church Representation Rules. That part of subsidiarity, that we enable them, is very important, and I want to say that we should go ahead with this Measure and that we should follow it through to its conclusion.

Mr James Humphery, in reply: I thank Mrs Townsend for her brief remarks. She was at the meeting and had an opportunity to make those points and did very well. The point that she makes is absolutely right: we are leaving the ultimate decision with the PCCs at the APCM and I think that that is right and proper.

I thank Mr Cheeseman very much for his personal comments. If we have persuaded him that there is very little to object to, we must have achieved one of our objectives at least! On his remarks about guidelines, that is precisely what we are doing. The

decision is remaining with the PCC but we are giving them some very clear guidelines as to what they might consider to be best practice and, in doing so, reversing the principles which have applied in the past.

I am sorry if Prebendary Harper thinks that we are wasting Synod's time on this. I am also sorry to see so many empty seats here, but the fact that we have had close on 80 responses to what is described as a 'poor little Measure' must indicate that there is a great deal of interest about it in the parishes. I hesitate to give a history lesson to a distinguished member of Synod but we have to put this in context. The Measure which comes before Synod today is only the first part of what is likely to be a long and controversial legislative process. Members may recall that when the Bridge report was published it looked at all aspects of synodical government, starting at PCCs and going right up to the General Synod, and it made a whole raft of suggestions at each level of the process. When we debated the Bridge report in this House it only passed by quite a narrow margin in one of the Houses because there was widespread concern about some of the proposals; so that was followed by a consultation process in which every bishop's council in the two provinces was consulted by the steering group and was asked a number of questions about the Bridge proposals. In particular, the councils were asked to say whether they regarded the proposals as controversial or non-controversial. The replies came in and were collated and a decision (a very sensible decision, I think) was taken to deal with the non-controversial matters first and to push them through, hopefully quite quickly, so that we could then concentrate on the more controversial proposals, perhaps dealing with deaneries and so on, at a later time. That is what we are doing today; it is just the first part in a process.

Subsidiarity was mentioned by both Mr Cheeseman and Prebendary Harper. I thought that that was exactly what we were doing: we are giving the decision to the PCCs and giving them a steer. That is what it is all about.

I thank Dr Cull for her helpful remarks; they are noted and I think that they are correct.

The motion was put and carried.

The Chairman: We now come to the revision stage of the Measure. I would remind members that the amendments appear on the sixth notice paper. Where I have no notice of amendments under SO 55(c) I will call a member of the steering committee to move en bloc that the clauses stand part of the Measure.

Before we start I want to remind members of the procedure under SO 56 in respect of considering amendments. The mover of the amendment will speak and a member of the steering committee will respond. At that stage, if the steering committee indicates support for the amendment, the debate on the amendment will continue; if the steering committee does not indicate support for the amendment, the debate will only continue if 40 members stand to indicate that they wish the debate to continue or that

they wish a vote to be taken. If 40 members stand, debate will continue or, if there are no more speakers, the amendment will be put to the vote.

Clause 1

Mr Bryan Sandford (York): I beg to move as an amendment:

‘In subsection (1), in the new paragraph (d) *leave out* all words after “diocese”.’

I move this amendment as a result of concerns expressed in the Archbishop’s Council of York about the changes to the Synodical Government Measure by the introduction of additional statutory duties on a diocesan synod. Two additional statutory duties are proposed. One is to consider proposals for the annual budget of the diocese and to approve or disapprove them and the other is to consider the annual accounts of the diocesan board of finance of the diocese, full stop.

That the diocesan synod should consider the budget we do not doubt; that it should debate it robustly and, if so minded, refer it back to the DBF we do not doubt; our doubts arise over giving the diocesan synod the statutory duty to approve or disapprove the budget. That statutory duty currently resides with the members of the DBF as directors under the Companies Act and also under the terms of the Diocesan Board of Finance Measure 1925. Giving the diocesan synod a parallel statutory duty can only create doubt and uncertainty, particularly as to where the power to amend the budget lies.

It seems more logical therefore to avoid this doubt and uncertainty and to place consideration of the budget by the diocesan synod on the same footing as its consideration of the annual accounts, hence my amendment.

The Archdeacon of Tonbridge (Ven. Judith Rose): The steering committee wishes to resist the amendment. The principle behind the proposal that we have here in the Measure is that the diocesan synod should take responsibility for finance as well as policy. The diocesan synod only considers proposals for an annual budget; it is unclear what, if any, decision that synod has to make. If it has no say in the approval or disapproval of a budget the parishes could be expected to pay up without the synodical process of making their views known. In many dioceses the diocesan synod and the board of finance sit as a single body, so policy and finance are brought together, and we have been working hard at that at all levels of Church governance. If the two bodies meet separately, perhaps it is even more important that the synod take some financial responsibility.

So the steering committee asks Synod to resist the amendment.

The Chairman: Are 40 members standing who wish the debate to continue or a vote to be taken on this amendment? There are not.

The amendment lapsed.

The Archdeacon of Tonbridge: I beg to move:

‘That clause 1 stand part of the Measure.’

The motion was put and carried.

Clauses 2 to 4

The Archdeacon of Tonbridge: I beg to move:

‘That clauses 2 to 4 stand part of the Measure.’

The motion was put and carried.

Schedule

Paragraph 1

The Archdeacon of Tonbridge: I beg to move:

‘That paragraph 1 of the Schedule stand part of the Measure.’

The motion was put and carried.

Paragraph 2

Mr Lee Humby (London): I beg to move as an amendment:

‘After the word “election” *insert* the words “or made the declaration in rule 1(2)(b) or 1(2)(c) upon applying to be entered”.’

As the provision currently stands, any person can enrol on the electoral roll of a parish church and stand for election to the PCC six months later after having shown little or no commitment to that church. However, a person who worships in a church other than the local parish church, as many people in large cities do, first has habitually to attend public worship in that church for six months before qualifying to be enrolled on the electoral roll. He then has to serve a further six months before being qualified to stand for the PCC. It cannot be right that two people worshipping in the same church should be expected to show such different levels of commitment before becoming eligible to stand for the PCC by reason only of their address.

My amendment therefore provides that, where a person is enrolled upon a church electoral roll by virtue of having made a declaration that he has habitually attended public worship in that parish for six months, no further qualifying period in order to

stand for election to the PCC will be necessary, because he has already demonstrated sufficient commitment to that church.

Mrs Penny Granger: This is a technical matter. Members may find it useful if I sketch briefly the history of paragraph 2 of the Schedule. It relates both to eligibility for election to the PCC and also to membership of the electoral roll, as we have just heard. It is true that, as things stand, if you live in your parish you can go on the electoral roll immediately, and if you are an outsider in terms of either geography or denomination you have to wait six months, but once on the electoral roll you are immediately eligible for election to the PCC. The Bridge review recommended a twelve-month waiting period between going on the electoral roll and standing for the PCC, and this was reflected in the original draft Measure.

The story of what happened in the revision committee is reported on pages 4 to 5, paragraphs 8 to 11, of the revision committee's report. We agreed that some commitment to, and knowledge of, the church was a reasonable requirement for a potential PCC member but that twelve months was probably too long, so six months was agreed as a reasonable compromise. Members will see that we made an exception for young people, anticipating what was said yesterday about PCCs being the place to start encouraging their interest in things synodical, and we stand by that decision. However, Mr Humby wants to add other exceptions.

The steering committee has problems with his proposal. First, if you add some exceptions to a rule you both leave out other exceptions – the Diocese in Europe, for example – and lose clarity of text. At the moment what we have is a clean text, a bit like *Common Worship*, and we do not want the water muddied by exceptions. More important, we believe, is that the effect of this amendment is to privilege outsiders over resident members of a parish. I do not really want to go into this just before lunch but the way that the six-month rule works means that if you move into a parish you are then caught by it in a way that you are not if you are still outside it. We believe that this is an infringement of the basic rights of parishioners.

For these reasons the steering committee resists the amendment and urges the Synod not to support it.

The Chairman: Are there 40 or more members who wish to stand in their place to allow the debate to continue? There are not.

The amendment lapsed.

Mrs Penny Granger: I beg to move:

‘That paragraph 2 of the Schedule stand part of the Measure.’

Ms Jacqueline Humphreys (Bristol): This section is the one section that is actually

compulsory; all the rest, as has been said, is largely up to the respective parishes to decide whether or not they want to arrange their affairs in this way. Paragraph 2 of the Schedule concerns me because it does what the Bishop of Peterborough yesterday clearly said we should avoid doing: it steals other people's decisions. My view is that paragraph 2 is an unnecessary and arbitrary restriction of the right of lay members of a parish church to choose the people that they think are best suited to represent them on the PCC.

At present one is entitled to become a member of the electoral roll if one is baptized and makes a self-professed declaration of the Christian faith. One is only eligible for election to the PCC if, in addition to that, one is also an actual communicant; so the existing Church Representation Rules already provide for a degree of extra commitment to the Church by way of being an actual communicant. I understand the definition of actual communicant to mean that one has had Communion at least three times in the preceding year, so there has normally to have been a measure of involvement in one's parish church or a Church in communion with the Church of England in order to be eligible at all. So there is already a rule which says that someone who feels like interfering and wants to get involved cannot; there are already rules to say that you have to show an element of commitment already.

What I am highly concerned about is any additional rules that restrict the people who can participate fully in the life of their parish church. In the report of the revision committee, concerns were expressed on behalf of the young and on behalf of the mobile, of which the young tend to be a high proportion, not just those 16- and 17-year-olds who, frankly, are likely still to be at home with their parents but those aged 18 to 30 who go away to college and want to get involved with the Church at their college or university, those who have to move to establish their jobs and careers – and in this present work climate that happens to us quite a lot – and also people who often move home and parish again when they settle down to start a family.

Another interesting example of the mobile people who will be caught out by this provision, if it is passed, are clergy spouses, and that is likely to hit home to a number of people here. If you are a clergy spouse you will be moving parish through no conscious desire of your own. You will be automatically banned from playing any part in the PCC until you have been there six months, irrespective of whether you have something valuable to offer. It may be that many clergy spouses should keep off PCCs – I do not doubt that – but if they feel that they have something valuable to offer which their local community wants to share they should be allowed to offer it, and should not be arbitrarily restricted.

By way of example, we do not say that clergy as they move into a parish should not chair the PCC for six months because they do not really know enough about what is going on in the parish.

However, the real targets of this legislation are not the young and the mobile – we are

merely the collateral damage – but the people in the parishes who are on the fringes and the margins; they are committed (they must be because they have been actual communicants) but they may not be interested enough in the politics to bother to get themselves on to the electoral roll. Then something happens in the parish that fires them up and makes them want to get involved. You do get difficult situations. I have read the Bridge report and it expresses concern about PCCs being hijacked by people who have particular issues about what is going on in their parish.

I have a few things to say about that. First, the provision within this Measure to rotate by one-third new membership of the PCC will prevent that happening anyway. At best, people who suddenly want to get involved and suddenly want to get elected are only going to be one-third, or can only be one-third if the parish chooses to go down that way. That, in my submission, is sufficient protection against hijacking of PCCs, if that is what we are concerned about. What I am concerned about is that trying to exclude the more marginal churchgoers is a profoundly misconceived approach to synodical government. In my view, it is far better to face up to divisions and difficulties in the parish than to try to pretend that they are not there, while keeping the PCC a nice, tame group. The use of a technical disqualification period to silence these people will not silence them; it will just disenfranchise them. People who feel strongly about things, people who are angry and upset about what is going on in the parish, will not just shut up and go away; they will express their views, they will be upset and communicate that, potentially in a far more destructive way than through the proper channels of representative synodical government.

Frankly, actual communicants who care enough about an issue to want to get involved – and they do care or they would not be bothering – and who have sufficient popular support to be elected should be welcomed, not excluded because they are difficult. Not only is this a more Christian attitude generally to take towards people whom we think are difficult, but we regular churchgoers and clergy might actually learn something from difficult, fringe, marginal people, even in the role of government. To exclude people like this through technicalities also has potential to cause greater difficulties for the much wider scope of the role and mission of the Church. Parish experience suggests that with things like evangelism, teaching, fundraising, social events, other aspects of Church life, how people relate to them is closely connected to how the Church responded to them when they were at a time of anger and crisis and concern in their own lives; and if they were told ‘We’re not interested in you when you want to make our lives difficult’, they are not going to be interested in us, whether we want to preach the gospel, help them out in their social situation, have their money, or whatever else the involvement of the wider parish should be in the Church.

In summary, bearing the time in mind, paragraph 2 unnecessarily and arbitrarily restricts the right of the electoral roll members to decide who are best placed to represent them, and we should not steal their decisions.

The Chairman: We do not have time to continue with this matter now. I understand

that the chairman of the Business Committee will inform members after lunch when consideration will continue. The debate stands adjourned until then.

Tribute to Standing Counsel

The Chairman: Completion of the work on the Synodical Government (Amendment) Measure means that John Pakenham-Walsh will complete his time with this Synod as Standing Counsel. We do not know whether he will be physically present when we get to the completion.

He has served the Synod in this capacity for the past twelve years, and in 1992 his service to Church and State was recognized by his being made a Queen's Counsel. He has been responsible for many important Measures during his time with the Synod: the Care of Churches and Ecclesiastical Jurisdiction Measure, the Diocesan Boards of Education Measure, the women priests legislation, the Legal Aid Measure, the Team and Group Ministries Measure, the Cathedrals Measure, the National Institutions Measure and the Clergy Discipline Measure.

Before he came to Synod he had a distinguished career at the Home Office and in Hong Kong and Nigeria, for which he was made a Companion of the Order of the Bath.

We would like to take this opportunity to thank him for all that he has contributed to the Synod and for his cheerfulness and skill at all times. John and his wife Deryn have moved to Dorset and we wish them both a long and very happy retirement. (*Applause*)

(Adjournment)

THE CHAIR *The Dean of Wakefield (Very Revd George Nairn-Briggs)* took the Chair at 2.30 p.m.

Variation in the Order of Business

The Archdeacon of Northolt (Ven. Pete Broadbent): I am sure that members of Synod would like to know where we are going with the legislation which was curtailed at lunch-time. As you might expect, I have a variation in the order of business to move.

If members recall, there are one and a half items of legislation still to deal with. The Parsonages Measure (Amendment) Rules had been requested for debate by Mr Cheeseman. I understand that he has now given notice that he no longer requests that debate, so we may not have to debate those rules at all. That is in the hands of Synod.

We are half-way through the draft Synodical Government (Amendment) Measure. My proposal is that we bring back legislation as the first item tomorrow morning. What you would therefore have to insert on your agenda at the beginning of the day tomorrow is 'Legislative Business' and then the rubric, 'Legislative Business will begin