

WOMEN BISHOPS : THE FUTURE

Geoffrey Tattersall to Carlisle Diocesan Synod: Sat Nov 13th 2010

THE HISTORY

- In 1861 the first deaconess in the Church of England was dedicated to her work by Bishop Tait [Bishop of London]
- Many years passed
- In 1985 General Synod gave final approval to a Measure for the admission of women as deacons
- In November 1992 General Synod gave final approval to legislation for the ordination of women as priests : 1st women priests were ordained in 1994. That legislation allowed parishes to pass resolutions precluding women from presiding at Holy Communion [or pronouncing absolution] or for the appointment of a female incumbent
- In 1993 General Synod endorsed supplementary *non-legislative* proposals from the House of Bishops [`the Act of Synod`] which enabled parishes to petition their Diocesan Bishop for extended Episcopal care by a Provincial Episcopal Visitor or another bishop nominated for such purpose by the diocesan bishop
- For the last 10 years General Synod has been exploring whether women should be consecrated as bishops
- In July 2000 : a General Synod motion initiated the process
- The theological issues were exhaustively considered by a group chaired by the Bishop of Rochester which reported in November 2004
- In July 2005 General Synod voted to `set in train the process for removing the legal obstacles to the ordination of women to the episcopate`
- Meanwhile in January 2005 the House of Bishops set up a working group to consider options : It considered 3 options :
 - a single clause Measure
 - the creation of a third province
 - transferred Episcopal arrangements [`TEA`]

It concluded TEA merited serious consideration as the most realistic way forward it would work but discussions within House of Bishops and General Synod revealed doubts as to whether it could work in practice. So in June 2006 the House of Bishops was unable to endorse TEA or any other option for admission of women to episcopate.

- Recently there has been talk of `coordinate` jurisdiction : you will need to consider whether that could work in practice either.
- So it was that in July 2006 General Synod declared that `admitting women to the episcopate in the Church of England is consistent with the faith of the Church as the Church of England has received it` and set up a legislative drafting group chaired by

the Bishop of Manchester to prepare a draft Measure to remove the legal obstacles to the consecration of women as Bishops

- 1st report April 2008
 - Identified the tensions in finding a way forward :
 - ecclesiological integrity
 - finding space in the Church of England for those who in conscience could not accept the priestly/episcopal ministry of women
 - avoided discrimination towards women
 - set out and analysed 3 broad approaches
 - Simplest possible statutory approach [no binding national arrangements] `single clause Measure`
 - Special arrangements within the structure of existing dioceses
 - Creation of new structures within the Church of England : new dioceses or a new province
- The House of Bishops supported special arrangements on the basis that there should be a national Code of Practice with delegation of functions by Diocesan Bishops to a complementary male bishop
- In July 2008 General Synod agreed that such arrangements should be contained in a statutory national Code of Practice to which all concerned would be required to have regard

HOW WE GOT TO WHERE WE ARE

- In February 2009 General Synod gave first consideration to the draft Measure and sent it for Revision in Committee
- The Revision Committee contained 19 people [4 Bishops, 9 Clergy + 6 Laity : 11 men and 8 women]
- Submissions were made by 114 members of Synod, various groups + from 183 other persons/bodies
- Between 1 May 2009 + 30 April 2010 Revision Committee had 17 full day meetings
- It produced a revised draft Measure, a draft amending Canon and a report 142 pages long : it can also be accessed on the General Synod website
- In short the Revision Committee rejected :
 - Single clause Measure : because such
 - offered no `protection` to opponents of women bishops
 - was highly unlikely to be given final approval by General Synod

- Statutory transfer of all functions
 - At one stage the Revision Committee was willing to `vest` functions in someone other than a Diocesan Bishop but it could not agree what functions could be so vested : the only functions which the majority were willing to vest were insufficient for the minority
 - So there was no practical reason for proceeding on that line
 - It is a timely reminder that the devil is in the detail.
- Society model
 - By such model parishes and clergy who were members of a society [societies] would not be under jurisdiction of the Diocesan Bishop
 - Difficulties perceived by the Revision Committee were that
 - ✚ The Society might be a weightier body than a Diocese
 - ✚ The model was difficult to reconcile with the normal understanding that jurisdiction in the Church is exercised personally
- Additional Diocese(s)
 - In favour it was said this this could be done with an administrative light touch : there was no need for separate cathedrals or additional diocesan administration
 - Against it was said such would tend to institutionalize the separation between various parts of the Church of England : we need to trust each other and work together
- The Revision Committee concluded that the Measure should be based on delegation from a Diocesan Bishop and a statutory national Code of Practice
- In July 2010 General Synod debated the draft Measure
- In many respects there was a coalition between traditional catholics + conservative evangelicals
 - Traditional catholics : relied on their need for sacramental assurance but others did not understand what this was.
 - Evangelicals relied on biblical references to male headship
- There was 12 hours+ of debate and many proposals for amendment
- 22+ amendments were debated : most failed + the Measure survived relatively unscathed but will consider major amendments proposed in context of detailed proposals

THE DRAFT MEASURE AND CANON

- To get a clear grasp of the issues on all sides it is probably easiest to consider
 - What the draft Measure actually says
 - How those `opposed` to it sought to amend it at General Synod

- **The provisions of the Measure and Canon**

- **Clause 1**

This gives power to the General Synod to make provision by Canon to enable women to be consecrated as Bishops

 - This is the only significant purpose of the Canon.
 - Without this clause it would not be lawful to consecrate women as Bishops
 - No Amendment was proposed

- **Clause 2**

This is the means by which Diocesan Bishops make provision for those who for reasons of theological conscience would be unable to accept the ministry of women as Bishops.

 - The Diocesan Bishop has a duty to make and publish a scheme for the exercise by way of delegation to a male Bishop relating to [1] celebration of sacraments and other divine services in parishes where there is a request and [2] pastoral care to clergy and parishioners in such parishes : But note
 - How authority passes to the male Bishop : `by way of delegation`
 - The width of what male bishop can do : [1] and [2] above
 - The male Bishop cannot be retired : because there is a requirement that he is a member of the House of Bishops of a diocese
 - The Diocesan Bishop may make additional arrangements for exercise of Episcopal ministry as he thinks fit [cl 2(3)]
 - If the scheme contains a statement by the Diocesan Bishop that he will not ordain women to the office of priest, [unless the Diocesan Bishop includes a statement to the contrary in the scheme, it is presumed that he will] the scheme must make provision for the ordination of women as priests and for the support and pastoral care of women priests
 - The Scheme shall be reviewed every 5 years but can be amended/replaced sooner
 - A new Diocesan Bishop must review the scheme within 12 months of the confirmation of his election
 - When making, amending or reviewing the scheme the Diocesan Bishop must :
 - take account of the Code of Practice : thus the Code of Practice is fundamental to the Measure

- consult the Diocesan Synod

Proposed amendments to clause 2 which GS rejected

- Creation of additional dioceses
 - Defeated : 258-134
 - Transfers of jurisdiction
 - Defeated : on vote by Houses
 - Archbishops` amendment
 - Its effect was that a male Bishop ministering to parishes that had issued a letter of request would exercise `co-ordinate` jurisdiction with the Diocesan Bishop [ie jurisdiction from Measure rather than by way of delegation] with guidance for co-ordinating such two jurisdictions [of the Diocesan Bishop and the male Bishop] being included in the Code of Practice
 - Defeated on a vote by Houses : defeated in House of Clergy
 - What was proposed was either a perfect solution or an unworkable fudge
 - Those in favour of single clause Measure spoke against Clause 2
But it was really a means of showing that they had given ground too
 - Clause 2 thus passed by 373-14
- **Clause 3 + Schedule 2**
Provides for making of two types of request
 - parishes can request alternative episcopal ministry and pastoral care provided by a male bishop
 - The request is made by the PCC after passing a resolution
 - the letters of request are in Schedule 2 : it records how many were entitled to attend the meeting, did attend, and voted in favour and against
 - The incumbent or priest in charge must vote in favour
 - It is on the grounds of theological conviction of members of the council or of other persons
 - The resolution remains in force for 5 years : but further request can be made
 - The Diocesan Bishop is required to reply setting out arrangements to give effect to the letter of request
 - During vacancy : It can request that only a male priest shall be appointed
 - In both cases it is required that either 2/3rds of PCC members who are entitled to attend do attend the meeting or a majority of those entitled to attend vote in favour [cl 3(12)]

Proposed amendments

- Some very technical + accepted
 - Others sought to replace 2/3 majority with simple majority : substantially defeated
- **Clause 4**
Provides that Measure applies to crown benefices or where patronage is vested in the Lord Chancellor : uncontroversial
No amendments
 - **Clause 5**
Requires the House of Bishops to draw up and promulgate guidance in a Code of Practice
 - The Code of Practice is to deal with
 - Making of schemes by Diocesan Bishops for the exercise of Episcopal ministry by a male Bishop
 - Exercise of episcopal ministry pursuant to such schemes
 - Appointment of clergy where a letter of request is issued
 - Provision for ordination of females + support/pastoral care for female clergy
 - Such other matters as the House of Bishops considers appropriate
 - Fundamental to the Measure is the Code of Practice
 - It is to be drawn up by the House of Bishops [and will not be subject to an Article 8 reference to Diocesan Synods]
 - Required to be approved by General Synod
 - Cannot be formally drawn up/laid before Synod for approval until after Royal Assent
 - But there is an illustrative Code of Practice
 - a Working Group has been set up by the House of Bishops to work on this
 - Aim is that the House of Bishops and General Synod [but not Diocesan Synods] will be able to consider substance of the Code of Practice before Final Approval
 - No significant amendments proposed : all fell
 - **Clause 6**
Requires any person who exercises any functions, whether Episcopal or other functions, to have regard to any Code of Practice issued under the Measure

- Effect of a statutory Code of Practice [as opposed to a non-statutory Code of Practice] was set out by the Legal Adviser to General Synod in GS Misc 699 [annexed to the Manchester report]

˘The House of Lords (in its judicial capacity) recently had to consider the legal effect of a statutory code of practice that had been drawn up following consultation and laid before Parliament : *R (on the application of Munjaz) v Mersey Care NHS Trust* [2005] UKHL 58. It held that such a code amounted to guidance that had to be considered with “*great care*”. It “*is much more than mere advice which an addressee is free to follow or not as he chooses*”. The House of Lords also acknowledged it to remain the case that the content of a statutory code of practice does not have the binding effect which a statutory provision or a statutory instrument would have. Thus where there is more than one reasonable view as to the appropriate policy to be adopted, it remains lawful for a decision-maker to adopt a policy that is different from the policy contained in a statutory code, provided that he or she can give “*cogent reasons*” for doing so - that is to say, reasons that are spelled out clearly, logically and convincingly. “*The requirement that cogent reasons must be shown for any departure from [a statutory code] sets a high standard that is not easily satisfied*”. If a decision-maker cannot satisfy that standard, his or her decision would be liable to be set aside by the courts on an application for judicial review.˘

- **Clause 7**

Provides exemptions to the Equality Act 2010

- necessary to ensure no conflict with provisions of discrimination law
- the Measure would not have contravened the Sex Discrimination Act 1975 which contained an exemption for ministers of religion
- The Equality Act 2010 [largely consolidating] drafted that exemption in narrower terms
- Before July 2010, The General Synod Legal office was in touch with the Government Equality Office and they agreed that exceptions of the type contained in clause 7 of this draft Measure are necessary to ensure that the Measure is lawful and that there was a precedent for so doing. Although there was debate at General Synod on this, Synod accepted this was necessary

- **Clause 11**

- Requires any amendment to Measure or Canon to be by 2/3 majority in each House
- Inserted by successful amendment
- Amendments to limit life to 40 years were withdrawn

- **Are transitional provisions in Schedule 1**

WHERE DO WE GO FROM HERE ?

- Article 8 of the Constitution of General Synod provides that certain legislation may not be finally approved by General Synod unless it has 1st been approved by the majority of Diocesan Synods.
- This draft legislation [the draft Measure and draft amending canon] falls within Article 8 : hence the Reference to Diocesan Synods
- Hence each Diocesan Synod is asked to consider a motion in identical terms : That the Synod approves the proposals embodied in the draft Measure + draft Amending Canon.
- The motion cannot be amended
- Diocesan Synods are asked to vote by houses : numbers for and against are to be recorded.
- If Houses of Clergy and Laity are in favour the motion is deemed to have been approved.
- Passing the motion will constitute approval by the Diocese
- But a Diocesan Synod can separately debate and vote on further motions
- The Diocesan Synod is neither required or forbidden to consult any other body [eg Deanery Synods/PCCs]
- If majority of Diocesan Synods approve the draft legislation, it will return to General Synod
- The House of Bishops may seek to amend the Measure : but it is debatable whether it will do so
- ? Feb 2012 : final drafting stage
- ? July 2012 final approval stage : requiring 2/3 majorities in each House
- Thereafter consideration by Ecclesiastical C of Parliament and each House

We will have to wait and see what happens