

## D13 MARRIAGE IN CHURCH AFTER DIVORCE

*These Guidelines are based upon advice issued by the House of Bishops in November 2002.*

### **Background**

In July 2002, the General Synod passed the following motion by 269 votes to 83:

*“That this Synod*

- a) *Affirm in accordance with the doctrine of the Church of England as set out in Canon B30<sup>1</sup>, that marriage should always be undertaken as a “solemn, public and life-long covenant between a man and a woman”;*
- b) *Recognise –*
  - i) *That some marriages regrettably do fail and that the Church’s care for couples in that situation should be of paramount importance; and*
  - ii) *That there are exceptional circumstances in which a divorced person may be married in church during the lifetime of a former spouse;*
- c) *Recognise that the decision as to whether or not to solemnise such a marriage in church after divorce rests with the minister (or officiating cleric if the minister is prepared to allow his/her church or chapel to be used for the marriage) and;*
- d) *Invite the House of Bishops to issue the advice contained in Annex 1 of GS 1449.”*

The following advice to clergy is that referred to in paragraph (d) and is issued in the name of the House of Bishops following the General Synod’s decision in November 2002 to rescind the marriage resolutions of the Canterbury and York Convocations (which had exhorted clergy not to use the marriage service in the case of anyone who had a former partner still living). The decision to rescind the resolutions was carried in all three Houses of the General Synod as follows: bishops 27-1; clergy 143-44; laity 138-65.

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<sup>1</sup> Canon B30 states as follows:

“(1) The Church of England affirms, according to our Lord’s teaching, that marriage is in its nature a union permanent and lifelong, for better or worse, till death do us part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which one ought to have of the other, both in prosperity and adversity.

(2) The teaching of our Lord affirmed by the Church of England is expressed and maintained in the Form of Solemnization of Matrimony contained in *The Book of Common Prayer*.

(3) It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church of which he is minister, to explain to the two persons who desire to be married the Church’s doctrine of marriage as herein set forth, and the need of God’s grace in order that they may discharge aright their obligations as married persons.”

## **ADVICE TO THE CLERGY**

Marriage is created by God to be a lifelong relationship between a man and woman. The church expects all couples seeking marriage to intend to live together *"for better for worse....till death us do part"*. It is not, then, a light matter to solemnise a marriage in which one partner has a previous partner still living. It is important that the decision you take as to whether to solemnise such a marriage should be on the basis of clear principles that are consistent with the church's teaching.

This advice has been issued by the House of Bishops to assist you as a member of the clergy, since it remains your decision under the Civil Law relating to marriage whether such a couple may be married in church. (It is also intended for use by the bishop and / or his adviser when cases of difficulty are referred to him for advice)

## **Principles**

### **The Responsibility of the Parish Clergy<sup>2</sup>**

The responsibility for deciding whether or not to conduct a further marriage rests with you both for pastoral and legal reasons. Experience suggests, however, that clergy may welcome some support in making this decision and the following advice is accordingly intended to assist you in this difficult and sensitive task.

Under the Matrimonial Causes Act 1965 you are not compelled to officiate at such further marriages, nor to make your church available for them<sup>3</sup>. If you are unwilling to officiate at further marriages or to make your church available for such services, you should make this clear to enquiring couples at an early stage.

If, as a 'minister' of a church, you are unwilling to conduct such a wedding yourself you may invite a colleague to do so; but other clergy in the area cannot be required to conduct further marriages against their conscience. The decision as to whether or not to conduct the marriage will become theirs alone; and the issues discussed below will accordingly be as relevant to their decision as to your own.

### **Issues and questions you may wish to consider in the light of the Church's doctrine of marriage**

It is your responsibility to form your own judgement as to whether to proceed with the proposed further marriage, in the light of the Church's teaching on marriage<sup>4</sup> and of the General Synod's Resolution of July 2002 set out above. You may find it helpful to that end, in the course of your interview with the couple, to satisfy yourself in relation to the following questions, which are intended to draw out issues relevant to the Church's teaching:

- **Do the applicants have a clear understanding of the meaning and purpose of marriage?**

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<sup>2</sup> This advice also applies to non-parochial clergy who have pastoral charge.

<sup>3</sup> S.8.2 of the Matrimonial Causes Act 1965 states, "No clergyman of the Church of England or the Church in Wales shall be compelled (a) to solemnise the marriage of any person whose former marriage has been dissolved and whose former spouse is still living; or (b) to permit the marriage of such a person to be solemnised in the church or chapel of which he is the minister."

<sup>4</sup> See Canon B30 (set out in footnote 1) and the House of Bishops' Teaching Document *Marriage*, CHP 1999.

- Do the couple understand that divorce is a breach of God's will for marriage?
- ⊖ Have they a determination for the new marriage to be a life-long faithful partnership?
  
- **Do the applicants have a mature view of the circumstances of the breakdown of the previous marriage and are they ready to enter wholeheartedly and responsibly into a new relationship?**
  - Does the divorced person appear to be relatively free of self-deception and self-justification about the past?
  - Did the divorced person take the first marriage seriously and has he/she learnt from mistakes?
  - Is the other party aware of the possible cause(s) of the breakdown of their future partner's previous marriage?
  - ⊖ Is there an attitude of repentance, forgiveness and generosity of spirit so that the applicants are free to build a new relationship?
  
- **Has there been sufficient healing of the personal and social wounds of marriage breakdown?**
  - Has there been enough time and distance for the parties concerned to recover emotional stability and good judgement?
  - Are there any extant court proceedings relating to the former marriage?
  - Are responsibilities to the children of any previous marriage being recognised and honoured?
  
- **Would the effects of the proposed marriage on individuals, the wider community and the Church be such as to undermine the credibility of the Church's witness to marriage?**
  - Would the new marriage be likely to be a cause of hostile public comment or scandal?
  
- **Would permitting the new marriage be tantamount to consecrating an old infidelity?**
  - While it would be unreasonable to expect that the couple should not even have known each other during the former marriage(s), was the relationship between the applicants – so far as you can tell from the information made available to you - a direct cause of the breakdown of the former marriage?
  
- **Has either of the parties been divorced more than once?**
  - In the case of multiple divorces, the sheer complexity of relationships that may have developed will inevitably make any assessment by you more difficult. However, the Church witnesses to lifelong marriage, and should not find itself being a party to "serial monogamy", hence neither of the parties should normally have been married and divorced more than once.
  
- **Do the applicants display a readiness to explore the significance of the Christian faith for their lives so that their further marriage is not an isolated contact with the Church?**
  - ⊖ Given that the provision of careful marriage preparation should be the norm for all couples seeking marriage in church, do the applicants

possess an understanding of the need of God's grace in relationships and show a willingness to be open to Christian teaching?

## **Recommended Procedures**

### **Dialogue with the Parish**

As further marriage is likely to be a matter of concern within the parish, you will no doubt wish to inform your Parochial Church Council (PCC) of the general principles by which you intend to exercise your discretion. As part of the process of informing your own judgement in how to proceed in this sensitive area, you may wish to seek the PCC's views on your proposed approach. But, if so, it is important for the PCC to understand that it has no power to direct you in this matter, and should not seek to do so.

### **Relationships with fellow clergy**

It will be helpful if there are occasional discussions at Deanery Chapter meetings on the issues raised, so that clergy are aware of the views of their colleagues, recognise each other's position, and respect the position of those parishes where such marriages are not allowed.

### **Local Ecumenical Partnerships**

Special consideration will need to be given to consultation with ecumenical partners in parishes where a Local Ecumenical Partnership is in operation.

### **Documentation**

The House of Bishops provides a leaflet on Marriage in Church after Divorce for all enquirers<sup>5</sup>. It includes both an explanatory statement and an application form to be completed by the couple together with any other relevant material about the process to be followed.

### **Interviews**

If the couple's request is to be taken further, the background of their case needs to be explored very carefully. When you come to consider the circumstances of the couple, the cause for the breakdown of the previous marriage may not be clear, so you will wish to handle each case with a great deal of sensitivity. It is recommended that this is done by at least two confidential interviews, using the application form as background material. It is desirable that the couple should understand the purpose of the interviews and that attending the interviews cannot imply an agreement to conduct a marriage. It is also desirable that both partners should attend the interviews, having been made aware in advance of the searching and personal nature of the issues to be discussed.

The interviews cannot have a standard form but the questions which are set out in Section 3 above may be of assistance in enabling you to decide whether the proposed further marriage would be consistent with the Church's teaching on marriage.

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<sup>5</sup> Copies of this leaflet are available from Church House Bookshop [020 7898 1302] or via the link to the bookshop from the CofE website - [www.cofe.anglican.org](http://www.cofe.anglican.org) - from February 2003. It can also be downloaded via [www.cofe.anglican.org/papers/index.html](http://www.cofe.anglican.org/papers/index.html).

### **Reference to the Bishop**

Although the decision whether to conduct a further marriage rests with you, you may wish to seek the advice of your diocesan bishop<sup>6</sup>. In these instances you should send the Bishop the couple's application form with a statement that you have drawn up based on the interviews including any provisional conclusions that you have reached. You will need to bear in mind that the couple will be entitled to see what you have written (under the Data Protection Act). *In this diocese clergy are encouraged to let the bishop know of their intention to conduct a further marriage since he may be able to offer advice or possibly may know of additional factors which affect the situation.*

### **The Decision**

In deciding your response to the application (see 2.1 above), you need to ensure the maximum degree of consistency in your approach (as applicants are entitled to have their cases dealt with by you consistently) as well as bearing in mind the consequences of setting a precedent which it will be hard not to follow.

It will be best if you convey your decision to the couple in person. If you are declining to conduct the marriage, you may feel it appropriate to convey your reasons in writing and to copy this letter to the bishop if you have consulted him.

In cases where you agree to the couple's request, you will need to explain the need for marriage preparation (as for any marriage).

### **Services of Prayer and Dedication**

There may be some cases when a marriage in church is deemed inappropriate, yet you will wish to offer the couple the possibility of beginning their life after a civil marriage in the context of Christian worship. Here a Service of Prayer and Dedication after a Civil Marriage could be appropriate, although it is not intended to be used as a substitute for the marriage service. However, the reasons for considering a further marriage inappropriate may also apply to this option.

In 1985 the House of Bishops approved and commended for use Services of Prayer and Dedication after Civil Marriage. The vows taken in a civil marriage are just as binding as those taken in church but the Service gives the couple an opportunity to express their commitment before God. The Church witnesses publicly to the permanence of their marriage, while also expressing in a more personal way the love and forgiveness of God.

You must of course be satisfied before conducting the Service that the civil marriage has been contracted.

### **Legal Formalities**

#### **Divorce Documents**

Clergy conducting the marriage must see and check the relevant divorce documents before arranging the marriage preliminaries. Particular note should be taken that a decree

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<sup>6</sup> See para. 6.4 in the Report *Marriage in Church after Divorce* (GS 1361). It should be noted that bishops cannot give permission for couples to be married in church and that applicants should not approach the bishop direct.

absolute has been obtained, not merely a decree nisi. The advice of the Diocesan Registrar and / or the civil registrars should be sought if there are any doubts about the document(s) presented.

The Church recognises a declaration of nullity made by the civil courts in the United Kingdom; that is, a declaration that there is no valid marriage in existence. A cleric has the same obligation to marry a parishioner whose marriage has been annulled in this way as would exist if the parishioner had never gone through a form of marriage. If in doubt, seek advice from the Registrar.

Marriage preliminaries are the responsibility of the priest and couple concerned. They follow the pattern applicable in all other marriages, and if there is any doubt the priest should contact the Diocesan Registrar or the archdeacon.

### **Data Protection**

The Data Protection Act 1998 introduced a category of 'sensitive personal data', which includes information about a person's religious beliefs, sexual life (including marital status), physical and mental health and criminal record. With limited exceptions, the Act does not permit sensitive personal data to be collected or used without the explicit consent of the person concerned.

You may wish to record sensitive personal data which is relevant to your decision whether or not to conduct the marriage in your notes, recommendation or correspondence about an application. If you do, and such data relates to the couple making the application, you should obtain their consent by asking them to sign the appropriate section of the application form. This explains how personal data about the couple will be used and with whom it will be shared.

You may need to record sensitive personal data about a third party – for example, a former spouse or the children of a former marriage. It may not always be possible to obtain explicit consent from these people. In such cases, the Information Commissioner has confirmed that you should be able to take advantage of a statutory exception which permits such data to be processed without explicit consent, where such processing is necessary in the context of confidential counselling and advice.

Whether or not personal data is sensitive personal data, it must only be processed in accordance with the data protection principles. They require, amongst other things, that

- personal data is kept secure; and
- personal data should be kept no longer than necessary. Where you agree to conduct a marriage, we suggest that the relevant documents, interview notes etc should be destroyed as soon as possible after the marriage takes place. Where you decline to conduct a marriage, it may be appropriate to retain the data in case a further application is made by the couple to you or to another priest in the diocese. How long the data should be kept in each case is a matter of judgement. We suggest that you agree a policy with your bishop and ensure that his records and yours are destroyed at the same time.

- You should remember that the couple are entitled to see personal data that you hold about them and so you should write your notes, your recommendation and your correspondence with the bishop in a way that can readily be shared with the couple.

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