Women bishops update

Update on progress on women bishops legislation, 26 March 2013

The Church of England has issued the following news release:

> "The consultation document on women bishops issued on 8 February generated 376 responses by the closing date of 28 February. Of these, 10 were from organisations and three from bishops. Of the remaining 363 submissions, 154 were from General Synod members and 209 from others.
> The working group has met twice in March and has further meetings scheduled for April and May. It remains on track to report to the House of Bishops before the meeting of the House on 20/21 May, when the House will be deciding what proposals to bring to the Synod in July. At its April meeting the group is having further facilitated conversations with those who joined it for the earlier discussions at the beginning of February."

Attached is my submission in response to the consultation

Women bishops consultation, February 2013

The Working Group set up by the House of Bishops to help it to decide on new proposals for women bishops legislation to put to the General Synod in July, has issued a consultation document to General Synod members.

General Synod members have until 28 February to reply. To help me in this task I would welcome any views to be sent to me by 21 February. Email: avwebsite@hotmail.co.uk

Attached is the consultation document.

Adrian Vincent, General Synod member 320.

Sent by email to: women.bishops@churchofengland.org

27 February 2013

Response to consultation document GS Misc 1042 'Women in the Episcopate: a new way forward'[1]

I am grateful to the Working Group for this consultation and for inviting the views of General Synod members.

1.) I support the submission of the Catholic Group in General Synod.

I fully endorse the submission from the Catholic Group in General Synod. I add the following thoughts of my own.

2.) I support the House of Bishops' statement.

I fully support the statement from the House of Bishops of 11 December that new proposals need:

> "(i) greater simplicity,
> (ii) a clear embodiment of the principle articulated by the 1998 Lambeth Conference "that those who dissent from as well as those who assent to, the ordination of women to the priesthood and episcopate are both loyal Anglicans",
> (iii) a broadly-based measure of agreement about the shape of the legislation in advance of the beginning of the actual legislative process."

3.) I support the facilitated discussions.

I agree with the assessment in paragraph 10 of the consultation that:

> "a different mode of discourse was now needed...the experience of listening to and engaging with those of differing convictions was essential if a solution that worked for the whole Church of England was to be identified and accepted."

I am heartened that the facilitated discussions are taking place. I think that they offer the potential for a new and agreed way forward. I wrote in my 2010 election address[2] that we should:

> "move beyond campaigning from their own 'camp' and instead to seek a deeper appreciation of the views of those with whom they disagree. We need to respect other people's theological integrity. Only then will we find a way to introduce the ordination of women to the episcopate without splitting the Church."

The facilitated discussions should be given enough time and on-going commitment to fully bear fruit, even if that means not having a fully formed new way forward by the July Synod.

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[1] http://churchofengland.org/media/1665705/gs%20misc%201042%20-%20wie%20update.pdf
[2] http://www.adrianvincent.org.uk/electionaddress.html

The great demand inside and outside the Church for agreed action without delay should focus the minds of our representatives in the facilitated discussions to reach agreement. It should not be used to rush out half-baked proposals that later end in failure. The facilitated discussions should therefore continue beyond the short term.

4.) "Grace rather than law" results in two separate churches

Regarding paragraph 14 of the consultation document:

> "For many, the priority remains the securing of the simplest possible legislation that signals an unqualified "yes" to equality in ministry between men and women. While they wish the Church of England to remain a broad Church they believe that this can best be achieved by placing the emphasis on trust rather than enforceable safeguards, on grace rather than law."

Relying on 'grace rather than law' sounds lovely. That is the method that The Episcopal Church in the United States used when it ordained women as bishops without legislative provisions for traditionalists. It has had a positive and negative result.

The positive result is evidenced by the Revd Maggi Dawn, a Church of England priest now serving in the US. She describes how the US experience is a much more liberating environment for women priests because they are unencumbered by people expressing theological reservations about the ordination of women:

> "in a new situation where no such prejudice prevails...I had no idea the depth of impact it would have on me, both personally and professionally, to be treated simply as a priest, not as a woman priest. ...It makes a huge difference on a personal level – heart, soul, mind and strength – to work in an environment where I am never treated with suspicion just because I am a woman." [3]

The negative result is evidenced by Bishop Keith Ackerman, formerly a bishop in The Episcopal Church and now a bishop in the Anglican Church in North America, who describes the consequence of no legislative provisions for traditionalists:

> "We started out as a respected minority, then we became a recognised minority, then we became a welcomed minority, then we became a tolerated minority, then we became a marginalised minority, and then we became a persecuted minority. This is all capped off by the election of a female Presiding Bishop and then we became an extinguished minority."[4]

A 'grace rather than law' approach to provision for traditionalists in the US has eventually resulted in a great liberation for women priests, achieved at the expense of traditionalists being forced out to set up a parallel Anglican Church.

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[3] Maggi Dawn "Like the Wideness of the Sea: Women Bishops and the Church of England", DLT, 2013. Pages 2, 3, 65.

[4] Speech at 12 October 2012 Forward in Faith National Assembly. http://www.adrianvincent.org.uk/12%20October%202012%20Forward%20in%20Faith%20National%20Assembly%20Bp%20Keith%20Ackerman.pdf

In the Church of England, proposals for structural provision for traditionalists (e.g. third province; non-geographic diocese; transferred episcopal arrangements) have often been resisted on the grounds that it might 'create a church within a church'. However, the eventual consequence of no structural provision is two parallel churches.

5.) I do not accept the second proposition of the consultation document

Proposition two in the consultation document, paragraph 20:

> "Secondly, any new approach should not seek to reopen questions around jurisdiction and the position of the diocesan bishop, in law, as the ordinary and chief pastor of everyone in the diocese."

I do not agree that previous discussions around jurisdiction must be 'off limits' for the new discussions. As is well known, the problem has been that campaigners for women bishops have insisted that any provisions for traditionalists must be *delegated* by the woman bishop, so that there is no reduction in her authority, 'no second class bishops'. Whilst traditionalists have insisted that delegated provision cannot meet their theological needs (episcopal provision under the delegated authority of a woman bishop cannot meet the biblical male headship needs of conservative evangelicals, or the sacramental assurance needs of anglo-catholics).

It should not be forgotten that we were not always in that stalemate. In 2006, the General Synod voted 348 in favour and 1 against[5] that the principle of a transfer of some jurisdiction was a reasonable way forward.[6] Attitudes subsequently hardened against the transferred episcopal arrangements idea, but attitudes having changed once, might yet change again.

I am encouraged that paragraph 23 of the consultation, "pastoral and sacramental care from bishops needs to be available to parishes, this needs to be provided in a way that does not affect the position of the diocesan bishop as the ordinary" does not actually exclude the possibility of something along the lines of co-ordinate jurisdiction. The draft legislation for co-ordinate jurisdiction stated – though many in the House of Clergy did not believe it – that it involved no reduction in jurisdiction or authority for the diocesan bishop. Synod has debated co-ordinate jurisdiction twice already and people are heavily dug into their trenches on the subject. But we should not exclude the possibility that a proposal that the majority of Synod voted for in 2010 and only fell by 5 votes in the House of Clergy might still have some merit.

6.) I welcome the new offer from the Catholic Group of General Synod

Paragraph 4 of the submission from the Catholic Group says:

> "We did suggest during the facilitated discussions that we try to move beyond the language of delegation, and use instead the language of permission. There are shades of the Act of Synod here, and of the 1978 Dioceses Measure, which confers limited jurisdiction on area bishops, without specifying that it is delegated from the diocesan bishop. Under this scenario, alternative bishops would be nominated by the diocesan

[5] General Synod Report of Proceedings, February 2006, Volume 37 No. 1. page 308.
[6] "an approach along the lines of 'transferred episcopal arrangements', expressed in a Measure with an associated code of practice, merits further exploration as a basis for proceeding in a way that will maintain the highest possible degree of communion in the Church of England." General Synod Report of Proceedings, February 2006, Volume 37 No. 1. page 268.

bishop, and operate with the permission of the diocesan – but not as delegates of the diocesan; they would, however, operate in partnership with the diocesan."

That offer from the Catholic Group is a positive approach, which could be a way round the stalemate of the argument for and against 'delegation'. The risk is that this offer gets misused by the campaigners for women bishops who might seek to turn it into a US situation where there is nothing written down and the 'permission' provision is at the entire discretion of the diocesan bishop. That road leads to two parallel Anglican churches. The 'permission' would therefore need to be granted in all cases where a request was made, and not rely upon episcopal whim.

7.) We should not let speculation about Parliament determine the content of the provisions

Whilst I agree that the new legislation should be simpler, I do not share the concern of paragraph 46 that: "there is a real risk that Parliament might baulk at approving a measure that seemed too elaborate and hedged about."

For the first few years of the women bishops debate, all the talk was to remind Synod members that in 1993 Parliament demanded additional provision for traditionalists (the Act of Synod), without which Parliament would not have passed the legislation. We were told therefore that the legislation must have enough provision for traditionalists or Parliament would not like it. In the last few years the message has been the opposite, that we must make sure that the legislation does not have too much provision for traditionalists otherwise Parliament will not approve it.

Aside from the theological principle that the Church should draft legislation that it believes to be right, the statements from MPs since the failure of the draft legislation in November has shown that MPs have been happy to join the public outcry against the Church for delaying the introduction of women bishops. There is no way that when the Synod presents fresh legislation, that a majority of MPs will vote against it, thereby being the cause of further delay and inviting the public outcry upon themselves.

yours sincerely

Adrian Vincent

Women in the episcopate: a new way forward

Developments since November

1. On 20 November the General Synod declined to give Final Approval to the legislation that would have allowed women to become bishops.

2. At its meeting a week later the Archbishops' Council concluded that "***a process to admit women to the episcopate needed to be restarted at the next meeting of the General Synod in July 2013. There was agreement that the Church of England had to resolve this matter through its own processes as a matter of urgency***."

3. On 11 December the House of Bishops endorsed the Council's assessment and committed itself to bringing fresh proposals before the Synod in July. It established a Working Group drawn from all three Houses of Synod to help it in this task. The ten members of the Group (four bishops, three clergy, and three lay) were announced on 19 December.

4. The Group held its first meeting on 3 January and following a second meeting on 30 January, held intensive facilitated discussions, with 15 others drawn from a wide range of positions, on 5 and 6 February. The list of those who attended is attached at **Annex A**. The working group then gave a progress report to the House of Bishops at a specially convened meeting yesterday.

5. The House of Bishops meets again on 20/21 May and will have to take decisions then on what legislative proposals to bring to the Synod in July. This is a demanding timetable, but, in the view of the House, unavoidable given the situation in which the Church of England finds itself.

6. To help the Working Group in its challenging task and to encourage a continuing process of discernment and reflection across the Church of England the House agreed at its meeting yesterday that it would be helpful for Synod members to have this note, which reports on the various discussions of recent weeks and provides an early opportunity for comments and suggestions on the ideas and issues that are beginning to emerge.

7. Responses should be sent to "women.bishops@churchofengland.org"-if at all possible by **Thursday 28 February**. The Working Group, which meets again on 4 March, will seek to take account of all comments received by then.

The nature of the challenge

8. There are various ways of interpreting what happened on 20 November. But one thing on which there is a very wide measure of consensus is that **the outcome of that day has left the Church of England in a profoundly unsatisfactory and unsustainable position.** There are several reasons for this:

- It is apparent that opening all three orders of ministry equally to men and women has a very wide measure of support across the Church of England;
- For those women already serving in the ordained ministry, the Church of England's continued indecision is undermining and harmful to morale;
- Even for those with theological difficulties over the ministry of women as priests and bishops there is little appeal in a further prolonged period of debate and uncertainty;
- Wider society – including its representatives in Parliament - cannot comprehend why the Church of England has failed to resolve the issue and expects it now to do so as a matter of urgency.

9. The conversations with people from a wide range of perspectives on 5/6 February revealed **strong support for giving the highest priority to finding a solution which will enable legislation to be approved by Synod on the fastest possible timetable** consistent with the requirements of the Synod's Constitution and Standing Orders.

10. Equally, it was recognised in those conversations that a different mode of discourse was now needed, to avoid the mistake of expecting Synodical processes to be able to carry all the weight. While the process of intensive facilitated conversations that occurred earlier this week could not be replicated in exactly the same way in other contexts, the experience of listening to and engaging with those of differing convictions was essential if a solution that worked for the whole Church of England was to be identified and accepted.

11. In its statement yesterday, the House of Bishops 'affirmed the nature of the facilitation process and encouraged opportunities which may be available to extend this process further at a diocesan and regional level.'

12. In the conversations of 5/6 February, there was an acknowledgement that finding a solution would be challenging. What happened on 20 November had caused much anger, grief and disappointment, as the House of Bishops acknowledged in its 11 December statement. Many of those who took part in this week's conversations talked too of a sense of weariness over a journey that had already consumed so much time and energy and even caused damage to the soul.

13. Yet, there was by the end of the conversations a sense of renewed energy and a willingness to work together to explore the space within which the unresolved issues that had dogged the last process could be tackled afresh. On some of these a degree of convergence started to emerge. And while on others there were still significant differences of view the conversations helped to map where further clarification and hard talking were needed.

14. For many, the priority remains the securing of the simplest possible legislation that signals an unqualified "yes" to equality in ministry between men and women. While they wish the Church of England to remain a broad Church they believe that this can best be achieved by placing the emphasis on trust rather than enforceable safeguards, on grace rather than law.

15. For others the difficulty with the defeated legislation remains that it would not have provided, as they believed, sufficient long term security for the minority. They contrast the relative simplicity and certainty of the settlement put in place 20 years ago when women became priests with what they saw as the complexity of the defeated legislation and concerns over how consistently it would be applied. While, therefore, they accept the need not to legislate in such detail that there is no space left for trust they do want to see a framework that provides assurance.

16. These alternative perspectives are not easily reconciled, especially in a climate which is inevitably polarised as a result of the November vote. There is also a danger that possibilities which, if allowed time to emerge from further discussions, might come to command a sufficient consensus, could be ruled out prematurely if pressed too quickly or presented in the wrong way.

Some emerging propositions

17. For these reasons, the view of the working group- endorsed by the House at its meeting yesterday- is that further consultation is needed over the next few weeks before firm proposals are made. In particular the group wants to test a number of propositions, which commanded a wide measure of endorsement in the conversations earlier this week. If they receive a comparable degree of support from Synod members more generally, they will significantly help with the mapping of the territory within which a solution may lie.

18. The first proposition is that it **would not be sensible to try to take the rejected draft Measure as a starting point and tweak it.** This may seem paradoxical given that it was endorsed by 42 of the 44 dioceses and came so close to carrying, with support from 73% of the Synod, including 64% in the House of Laity.

19. But there appears to be a high level of consensus, involving most of those who voted for the legislation as well as those who voted against, that there is little realistic shape for further compromise within the framework offered by the defeated legislation. Though so narrowly lost, its moment has passed.

20. Secondly, **any new approach should not seek to reopen questions around jurisdiction and the position of the diocesan bishop, in law, as the ordinary and chief pastor of everyone in the diocese**.

21. The General Synod consistently set its face during the last legislative process against any proposals to create new formal structures within the Church of England which would be separate from existing dioceses. And after much debate it also came down against any transfer or qualification of the diocesan bishop's position as the ordinary, even though at different moments the Revision Committee, the Archbishops and around half of the Synod were prepared in principle to contemplate such possibilities.

22. There were in the end two reasons why such ideas foundered and why reviving them seems to the working group very unlikely to provide the way to a new settlement. One reflects the deeply held concern that when women become

bishops they should be bishops with exactly the same powers and responsibilities as their male colleagues. Any notion of a two-tier episcopate is anathema.

23. Secondly, even if such special arrangements as were introduced applied equally to male and female bishops the last legislative process identified serious, unresolved concerns over how any transfer or formal sharing of jurisdiction would work in practice without introducing confusion where there needs to be clarity. So, while it is common ground that appropriate pastoral and sacramental care from bishops needs to be available to parishes, this needs to be provided in a way that does not affect the position of the diocesan bishop as the ordinary.

24. **The third proposition is that there needs, so far as possible, to be a complete package of proposals that can be assessed in its entirety before final approval, without the possibility of further amendments to some parts of it between the final approval of the legislation and its coming into force.**

25. The proposal for a statutory code of practice was designed to give greater assurance than would have been achieved through more voluntary arrangements yet without the rigidity or complexity of extensive provisions written within the measure itself. It suffered, however, from two significant downsides.

26. One was that any attempt to seek redress when a bishop had departed from the provisions of the code without a cogent reason would have involved an application to the secular courts by way of judicial review.

27. The other, potentially more difficult, problem was that the final text of the code could not have been known until after the measure had received the Royal Assent and been brought into force. As a result, at final approval no one could know for sure what further arguments and amendments there might be when Synod came to consider the code. There is, therefore, much to be said for trying to avoid this structural difficulty in constructing a new package of proposals.

28. The **fourth and final proposition is arguably the most important and also the most subtle.** From the recent conversations it is clear that any new package needs to try, so far as possible, to achieve two things. While at first sight they appear to be in tension with each other, they may in fact offer a possible way forward.

29. The two objectives are to:

- **Produce a shorter, simpler measure than the one that was defeated;**

- **Provide, through the totality of the elements in the package, a greater sense of security for the minority as having an accepted and valued place in the Church of England while not involving the majority in any new element of compromise on matters of principle.**

Elements of a possible new framework

30. If the four propositions set out in paragraphs 17 – 29 are accepted, various possible approaches which the working group might otherwise have needed to consider will inevitably fall away.

31. Thus, acceptance of proposition one will means that reintroducing something very similar to the previous measure ceases to be an option.

32. Similarly, accepting proposition two will mean that a new legislative approach involving transfers of jurisdiction or some qualification in the jurisdiction exercised by diocesan bishops as the ordinary is not possible.

33. Acceptance of proposition three means that it will be important to avoid producing legislation which had to be supplemented by a further legal instrument which could only be made or approved by the Synod once the legislation had come into force since it would not then be possible to know for sure at final approval what the Synod might subsequently decide.

34. Nevertheless, this still leaves some important choices to be made both over the overall shape of a new package and what its detailed contents might be. The nature of the choice is likely to be determined primarily by the way in which the two objectives in paragraph 29 are to be held in tension.

The choices ahead

35. In the facilitated conversations on 5/6 February those present considered the range of possible approaches to assembling a new package of proposals, including a draft measure and amending canon.

36. In doing so they were helped by some background material explaining the various types of instrument that could in principle be part of any new package. Since this may be of wider interest a copy is attached at **Annex B**.

37. The conversations helped to clarify the spectrum within which the House of Bishops and the Synod would have to choose. At one end of the spectrum would be the simplest possible legislative package**.** This would involve simply making all three orders of ministry open equally to men and women, repealing the 1993 Measure and rescinding the 1993 Act of Synod.

38. This would mean that all provision for those whose theological conviction does not allow them to receive the ministry of women priests and or bishops would be made on a voluntary (and therefore unenforceable) basis. This is what many who have argued all along for what is sometimes described as a "single clause" approach would wish to see.

39. Such an approach would be an embodiment of the principle that there should be more trust and less law. It would also mean that arrangements could vary a good deal from diocese to diocese depending on the local situation and indeed the views of the diocesan bishop and the diocesan synod.

40. One consequence of nothing being enforceable and everything being left to trust and voluntary arrangements would be that any assurances offered nationally about there being a continued place for traditional catholics and conservative evangelicals in the Church of England would in the last analysis be more in the nature of aspirations than commitments.

41. Another consideration is that the last measure failed because, rightly or wrongly, too many people- including some who said that they were not in principle opposed to women as bishops- thought that it did not provide sufficient security for traditional catholics and conservative evangelicals. There is, therefore, a question whether proposals which provided significantly less explicit security than the failed measure would have a better chance of success, whether in the lifetime of this Synod or beyond.

42. At the other end of the spectrum would be a package that included a more substantial measure than the one that was defeated in November. This would mean that instead of relying on a Code of Practice, or other instruments such as an Act of Synod, to supplement the measure, the key relevant provisions would be written into the measure itself.

43. The case for this approach is that there would be clarity before final approval and maximum legal certainty and enforceability once the legislation came into force. All the key provisions would have the same legal status.

44. Such an approach would not, however, sit very easily with the House of Bishops' statement of 11 December – reflecting a widely held strand of opinion in the Church – that elements of any new legislative package will "***need…greater simplicity***".

45. This is not simply a question of seeking to avoid the Church of England's general tendency of going in for too much regulation and prescription. It is also because of a concern that, the more substantial and complex any measure is, the more anguished and hesitant the Church of England risks appearing over a development that, for most people within the Church of England, should be a cause for affirmation and joy.

46. In addition, just as those who voted against the last measure might struggle to support a package that offered no enforceable legal safeguards, so it is far from clear that those who were prepared to support the previous measure-even though they saw it as already being at the limits of acceptable compromise and complexity- would be able to support a measure that was significantly more substantial than the last one. In addition, there is a real risk that Parliament might baulk at approving a measure that seemed too elaborate and hedged about.

47. In the working group's meetings of 3 and 30 January and in the conversations of earlier this week it was recognised that there were in principle other possibilities that lay between the ends of the spectrum. The working group intends to explore these further at its meetings in March.

48. One set of issues that it is having to consider quite carefully is what scope, if any, there might be for securing a simpler legislative package on women bishops if the provision made by the 1993 Measure in relation to women's *priestly* ministry were not swept away in its entirety.

49. On any basis a number of provisions in the 1993 Measure would need to be repealed or amended in the event that the episcopate is opened to women. But there remains a judgement to be reached over whether, as under the defeated measure, the 1993 provisions should be replaced in their entirety by new statutory provisions or, as some would prefer, should be repealed without replacement or should be repealed in part with some left in place (perhaps in an amended form).

50. The issue is complicated by the fact that quite a widespread confusion exists as between the 1993 Measure and the 1993 Act of Synod, which are, legally and conceptually, quite distinct (see footnote below for web links to the texts[1]).

Conclusion

51. The nature and shape of the legislative proposals that the House of Bishops will bring to the Synod in July turn on whether the four propositions in paragraphs 17-29 above are accepted and, if so, on a judgement about where on the spectrum described in paragraphs 37-50 any new package should lie.

52. Much also turns on the extent to which, over the coming weeks and months, further conversation and grappling with difficult dilemmas can sustain the same momentum and willingness to work together on a solution for the whole Church of England as was apparent in this week's conversations.

53. Synod members and others are invited to help the working group in the next phase of its work by:

    (a) Indicating whether they endorse the four propositions in paragraphs 17-29 which have emerged from the recent conversations;

    (b) Offering any initial comments on the spectrum of possibilities sketched out in paragraphs 37-50 (see also Annex B);

    (c) Offering any other comments that they would want the Working Group and the House of Bishops to take into account as they carry this work forward.

WILLIAM FITTALL
Secretary General 8 February 2013

[1] 1993 Measure – http://www.legislation.gov.uk/ukcm/1993/2/contents
Act of Synod – http://www.churchofengland.org/media/51390/episactofsynod.rtf

Women in the Episcopate: Facilitated Discussions ANNEX A

Members of the Working Group
The Right Revd. Nigel Stock
The Right Revd. Dr Martin Warner
The Right Revd. Dr Christopher Cocksworth
The Right Revd. James Langstaff
The Very Revd. Viv Faull
Dr Philip Giddings
Dr Paula Gooder
The Ven. Christine Hardman
The Revd. Dr Rosemarie Mallett
Canon Margaret Swinson

Invited as individuals
The Revd. Janet Appleby
The Revd. Canon Pete Spiers
The Ven. Christine Wilson
The Revd. Dr Mark Chapman
Mr Robert Key
Miss Hannah Page

Forward in Faith and the Catholic Group
The Revd. Canon Simon Killwick
Dr Lindsay Newcombe
Fr. Paul Benfield

NADAWM
The Revd. Rosemary Lain-Priestly

Reform and Church Society
Mrs Susannah Leafe
The Revd. Mike Ovey
The Revd. Preb. Rod Thomas

WATCH
The Revd. Rachel Weir
The Revd. Canon Anne Stevens

Facilitators
Canon David Porter
Dr Cecelia Clegg
Dr Micha Jazz
Mr Bill Marsh

Staff
Mr William Fittall
Mr Stephen Slack

Legislation and other legal instruments **ANNEX B**

1. **The first rule of producing good legislation is to be clear about the policy objectives to be secured**. The lawyers can find ways of achieving just about anything, but they do need clear instructions.

2. There are a few other conceptual points worth teasing out. As the original Manchester Group Report (GS 1685) noted at paragraph 36, when drafting legislation the question is not simply what is to be achieved, but what is to be the status, enforceability, and durability of what is put in place. To quote that report:

   "*the choice of instrument to adopt turns largely on a judgement about the degree of assurance required and the extent to which there is a wish to create rights which will, in the last resort, be legally enforceable*."

3. One of the reasons that the previous measure fell was because **too many people thought that the mechanism of diocesan scheme and code of practice provided insufficient assurance over consistency of approach - both as between individual bishops and dioceses and over time.**

4. The Manchester Report went on to list 5 different kinds of instruments that, in theory, could be used individually or in combination. The first is a **measure.** Resolutions A and B are provided for under the 1993 Measure and, as a result, parishes have a statutory right to pass them and know clearly what their effect will be.

5. The irreducible minimum of a measure to enable women to become bishops is to remove the present legal obstacle to that so that the canons of the Church can make it possible for people of both genders to become bishops.

6. Beyond that, additional legislative provisions are needed only to the extent that it is desired to amend or repeal the 1993 Measure, and/or to the extent that such new arrangements as are made to cater for those with theological difficulties about female bishops are judged to need the level of assurance that can only be provided by legislation.

7. People sometimes talk of placing material in a "**schedule**" as if that were somehow different from placing it in the measure itself. It isn't. The schedules to a measure have exactly the same legal force as the clauses. The arrangement as between clauses and schedules is merely one of the manifestations of the draftsman's art.

8. There has also been some interest in the possibility of a "**preamble**" to the measure. Preambles used to be quite popular in parliamentary and synodical legislation (just as they still are in international treaties and conventions). But they have rather fallen out of favour, not least because of uncertainties over their legal status and unpredictability as to their effect. Further thought can be given to the possibility of a preamble to the new legislation but it is not a magic bullet.

9. Secondly there are **rules / regulations / orders** made by virtue of an enabling provision in a measure. Fees orders and the clergy discipline rules are examples of secondary legislation of this kind. The defeated measure did not contain an order making power and it is not clear that it would help with the political problems if a new measure were to do so.

10. Indeed, the need to pass secondary legislation under the measure would run directly against the general desire for the content of the "whole package" to be known when the Synod comes to vote on final approval, since any secondary legislation can only be made after the measure has received final approval and the Royal Assent. Instruments made under a Measure require the approval of the General Synod and, if they affect legal rights, also have to be laid before Parliament and be subject to approval, or at least annulment, in each House.

11. Thirdly, there are **Canons.** These are part of the laws ecclesiastical and require approval by Synod and the Royal Assent and Licence of the Crown though not parliamentary approval. Canons are binding on bishops and the clergy but in general are not directly enforceable against the laity.

12. We shall, once again, need an amending canon as well as a measure. It would in principle be possible to explore whether the amending canon bear more weight than last time.

13. For example, there are precedents for making regulations and directions under Canons (as opposed to Measures). Such regulations are part of the ecclesiastical law but, unlike regulations and other instruments made under Measures, there is no generally prescribed procedure for making them. Instead, the particular Canon under which such regulations, directions etc. are made prescribes the procedure for making them.

14. There is scope for a certain amount of flexibility with instruments made under Canons that does not exist with instruments made under Measures. Nor do the Synod's standing orders require instruments made under canons to be approved by the Synod or laid before Parliament.

15. Fourthly, there are **Codes of Practice.** These can either be statutory as was envisaged in the defeated legislation (there are also statutory codes under the Clergy Discipline Measure and the Diocese Pastoral and Mission Measure) or they can be voluntary codes.

16. Codes do not create directly enforceable, legally binding obligations in the same way as measures, regulations or canons, though actions that do not have regard to the provisions of statutory codes may be invalidated by the courts. The uncertainties around the enforceability of the statutory code – as well as uncertainties over what its provisions would eventually be – undoubtedly played a part in the defeat of the legislation.

17. Finally there are **Acts of Synod.** They are not, in fact, a form of legislation at all and cannot create legally enforceable rights or duties. They have strong persuasive

force, having been “affirmed and proclaimed” as “the embodiment of the will or opinion of the Church of England as expressed by the whole body of the Synod”.

18. As a statement of policy, an Act of Synod might give rise to legitimate expectations in terms of the process that is to be followed in certain situations. That, however, is a rather different thing from directly enforceable rights and certainty of outcomes.

19. **One possible key to unlocking the present deadlock is to try to fashion a different combination of legal instruments from what was proposed in the defeated package**.

20. For example, to the extent that there is a commitment to provide episcopal ministry in a particular way for certain parishes there is no intrinsic need to include the provision for that in a measure; what is required is something that embodies the will of the House of Bishops in an instrument that binds individual bishops but no one else.