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EDITORIAL

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The question of the attitude of church and society to human sexuality remains one of the defining questions of this generation and one which seems to have been answered, in British public life at least, by the coming into force of the Marriage (Same Sex Couples) Act 2013 this spring. At the same time as this statute was coming into force, legislation in other jurisdictions (eg Uganda and Russia) has shown that not everyone everywhere in the world is moving in the same direction. The topic remains controversial in the churches, not least in the Church of England and wider Anglican Communion.

In this issue of the *Ecclesiastical Law Journal* authors address some of the issues at play. Sir James Munby, President of the Family Division, argues authoritatively that the attitude of the courts towards questions of morality has changed substantially over the course of the last century. While in the past judges had held themselves bound to defend traditional moral, and Christian, views, this is no longer the case.[1] Dr Nicholas Sagovsky looks back into history and finds parallels in the thought of the eighteenth century with the situation he sees developing today.[2]

In the course of his article Dr Sagovsky points out that, with the passing of the Marriage (Same Sex Couples) Act a new situation arises within the economy of marriage law in England and Wales, not seen since the debate surrounding the Deceased Wife's Sister's Marriage Act 1907. Hitherto the Church of England has recognised those married in the eyes of the law as married. While there remains a conscientious opt-out for clergy who do not wish to solemnise in church the marriages of those divorced with a former spouse still living, there is no question about the validity of such a marriage. The situation will now be different. As long as the policy of the Church of England remains that marriage is a union of one man and one woman, then there will be those married according to law whose marriage may not be accepted as valid in the Church. It is too early to see how this will pan out, but there is already precedent for how to deal with such a situation in the law of the Roman Catholic Church. Catholic sacramental law makes clear what is required for a sacramentally valid marriage. Those

1 J Munby, 'Law, morality and religion in the family courts', (2014) 16 Ecc LJ 131–139.
2 N Sagovsky, 'Hooker, Warburton, Coleridge and the "quadruple lock": state and Church in the twenty-first century', (2014) 16 Ecc LJ 140–146.

marriages that do not fulfil such requirements are not deemed valid, but the civil effects of such a marriage are recognised and, for instance, such a marriage is an impediment to attempting another marriage. Whatever policy decisions are made in the Church of England and the Church in Wales, nobody will be able to avoid the fact of legally recognised marriages between persons of the same sex.

The changing landscape has already been noted in parish life in the Church of England. An argument about inclusion of two female parents in the register of the baptism of their child was played out in the press in 2013.[3] Now, when someone contacts a parish church to enquire about the possibility of getting married, it needs to be ascertained that the couple are, indeed, an opposite-sex couple as well as ascertaining their qualification to marry in that church by residence, electoral roll or qualifying connection. This incumbent has yet to find a tactful way of doing this.

On 15 February 2014, in the wake of the meeting of the General Synod the House of Bishops published a pastoral letter to which was appended 'a statement of Pastoral Guidance on Same Sex Marriage'.[4] The statement sets out the traditional understanding of marriage as heterosexual and concludes by continuing to disallow services of blessing after civil partnerships or same-sex marriages, by stating that persons in same-sex marriages may not be ordained as deacons, priests or bishops in the Church of England and by stating that it would 'not be appropriate conduct' for clergy to enter into same-sex marriage. All that said, it is very likely that clergy will be among those contracting same-sex marriages, and much publicity surrounded the announcement by a London vicar that he was intending to do just that. We will need to wait and see whether any bishop will seek to take action against such a cleric under the Clergy Discipline Measure, if such conduct can be seen to fall under the terms of that measure (as conduct unbecoming), or whether complaints will be brought against clergy by parishioners or other interested parties that will have the effect of forcing bishops to decide whether to act or not. It also remains to be seen whether the bishops' statement could be enforced with reference to the oath of canonical obedience. In an article on that oath in this issue, Chancellor Rupert Bursell outlines the great difficulty in achieving a clear definition of the scope of obedience owed.[5] It will probably take a test case to bring clarity to the uncertainty.

The issue of human sexuality is not going to go away. As the impact of legislative change becomes clearer this *Journal* will, without doubt, continue to reflect through articles, comment and case notes on developments and disputes.

3 *Portsmouth News*, 3 September 2013, available at <http://www.portsmouth.co.uk/news/lesbian-couple-s-baptism-fury-after-dispute-with-vicar-1-5448668> accessed 13 February 2014.

4 See <http://www.churchofengland.org/media-centre/news/2014/02/house-of-bishops-pastoral-guidance-on-same-sex-marriage.aspx>, accessed 18 February 2014.

5 R Bursell, 'The oath of canonical obedience', (2014) 16 Ecc LJ 168–186.

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