

Response of The Christian Institute to “Civil Partnership - A framework for the legal recognition of same-sex couples”

Introduction

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith. We have over twelve thousand supporters throughout the UK, including 2,000 churches and church ministers from almost all the Christian denominations.

We hold traditional, mainstream Christian beliefs about marriage and sexual ethics. In our efforts to promote these beliefs, we have previously contributed to public debates on issues such as divorce law reform and gay rights.

We note that the consultation paper does not invite comment on the principle of creating civil partnerships, but merely on the detail. Given that these proposals constitute a major change in public policy and a fundamental re-writing of family law, we do not think this is appropriate.

We have therefore chosen to comment on the wider issues of principle and to raise issues outside the narrow confines of the questions contained in the consultation paper. We note the Cabinet Office consultation criteria in Annex D of the consultation paper and in particular the requirement that responses be considered “carefully and open-mindedly” and trust that these issues of principle will be fully taken into account.

Our position is that we oppose the Government’s proposals for civil partnerships. Civil partnership as an institution will be virtually identical to marriage and would entitle the partners to the same status as a married couple, even though their relationship did not meet the same criteria. This devalues and undermines the institution of marriage.

We also oppose the deliberate refusal to recognise committed, co-dependent relationships which are not homosexual.

Gay marriage in all but name

Paragraph 1.3 of the consultation paper asserts that civil partnership is not the same thing as gay marriage. However, legally, these proposals would clearly create a state so similar to marriage that the differences would be imperceptible to the ordinary man in the street.

Annex A is a table of comparisons between civil partnerships, as proposed, and marriage. On the 29 points of comparison chosen, there are only 5 clear differences.

To take just one example: the ban on entering into a civil partnership whilst married (or into a marriage whilst in a civil partnership)¹ makes no sense at all unless the two are considered to be alike.

¹ DTI Women & Equality Unit, *Civil Partnership: A framework for the recognition of same-sex couples*, June 2003, Para. 3.3

The Guardian newspaper, which supports the proposals, does not share the Government's embarrassment on this point. On 30 June, after the proposals were announced, it said,

“The tabloids may go wild over ‘gay marriages’ and New Labour will no doubt shrink timidly from the phrase. But in truth, it will be a legal marriage in all but name.”²

Some gay rights groups are calling for full gay marriage in name also.³ In Belgium and the Netherlands, creating a form of civil partnership led to gay marriage within four years.

What marriage really is

Western legal tradition has always held that marriage is a union between one man and one woman. In English law it is “the voluntary union for life of one man and one woman to the exclusion of all others”.⁴

This legal tradition is based on the bible. Quoting from the book of Genesis, Jesus Christ said:

“‘Have you not read that he who made them at the beginning ‘made them male and female’ and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So then, they are no longer two but one flesh.’”⁵

Marriage has a unique status because (1) it is a relationship in which children can be naturally conceived and nurtured and (2) the adults have made an exclusive commitment to each other. Marriage law, for centuries, has simply recognised this objective reality. Homosexual couples cannot fulfil the first criteria and, we will argue, do not wish to fulfil the second.

But creating a form of legal relationship which, legally and procedurally, mirrors marriage on almost every point, creates a form of de facto gay marriage which dispenses with this history.

Since in Christian understanding sex is exclusively for marriage, civil partnership equates holy matrimony with something which is morally wrong. This causes deep offence. Virtually all world religions would take the same view that sex is exclusively for marriage.

Civil partnership takes the privileges of marriage and gives them to couples who do not and cannot meet the requirements of marriage.

Further, we note that civil partnerships will not require monogamy or a life-long commitment. Both of these elements are present in the legal definition of marriage but there is no attempt to include them in the proposals for civil partnership. Despite this lower level of commitment in civil partnership all the privileges of marriage will attach to it.

² The Guardian, 30 June 2003

³ Submission to the present consultation on behalf of the Queer Youth Alliance, July 14, 2003. See <http://www.penwing.net/QYA/response.pdf>

⁴ Hyde v Hyde and Woodmansee [1866] LR1 PD130

⁵ Matthew 19:4-5

Marriage has a proven track record of providing stability in society. Most Christian marriage ceremonies celebrate this fact and social science demonstrates it. This is especially well evidenced in relation to the bringing up of children. The Government itself, in its Green Paper on the family in 1998, has stated,

"Marriage is the surest foundation for raising children and remains the choice of the majority of people in Britain".⁶

There is no evidence that homosexual civil partnership will bring the same benefits.

Low take-up of 'gay marriage'

The evidence is that, in fact, very few homosexual people even wish to enter into such a commitment. The government's prediction is that the take up rate for civil partnerships could be as high as 100% of the marriage rate.⁷ It also cites a Cabinet Office survey in which 86% of lesbian, gay and bisexual respondees said they would 'consider registering a relationship'.⁸

This all seems extremely unlikely given the Danish experience where a full civil partnership scheme was introduced in 1989. In 1998 only 530 people entered into a partnership. By comparison, around 62,000 people per year get married.⁹

In Denmark there are 5 million people. A leading gay academic claims that 5% of Danish people are homosexual. This would mean 250,000 homosexual people. Yet between 1 January 1990 and 1 January 1998 a total of only 4337 registrations took place.¹⁰ This encompasses just 3.5% of all homosexual people in Denmark.

The government's alternative "low take-up" estimate, based on the Danish experience, amongst others, is that, after 10 years, less than 1.5% of the lesbian, gay and bisexual population will have taken advantage of the scheme.¹¹

This seems a much more plausible scenario. Which then begs the question, why, for this tiny number of people, is the Government proposing a wholesale re-writing of family law?

Lesser commitment

Even those who call for a form of homosexual marriage are not calling for a monogamous union, which is clearly the intention behind marriage.

⁶ Supporting Families (Green Paper), The Home Office, 1998, Introduction, paragraph 8

⁷ DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, Appendix A(1)

⁸ DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, Para. 2.5, footnote 8

⁹ Lund-Andersen, I, *The Danish Registered Partnership Act, 1989*, in Wintemute, R and Andanaes, M, (Eds.) *Legal Recognition of Same-Sex Partnerships*, Hart Publishing, 2001, page 419

¹⁰ Lund-Anderson, I, *The Danish Registered Partnership Act, 1989*, in Wintemute, R and Andanaes, M, (Eds.) *Legal Recognition of Same-Sex Partnerships*, Hart, 2001, p. 419

¹¹ DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, Appendix A(1)

Andrew Sullivan must be considered to be one of the leading gay intellectuals. He is probably the most eloquent proponent of gay marriage. In his book *Virtually Normal* Sullivan argues that,

“...at times, among gay male relationships, the openness of the contract makes it more likely to survive than many heterosexual bonds. Some of this is unavailable to the male-female union: there is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman...”¹²

Sullivan is not actually calling for marriage as is traditionally understood i.e. “to the exclusion of all others”.

His approach ties in with the finding of leading homosexual researchers like Ford Hickson and Peter Davies from the SIGMA project. They have found that enduring monogamy amongst gay men is virtually non-existent. Hickson and his colleagues quote a study of monogamy carried out by homosexual researchers. Of 156 homosexual couples studied only 7 had maintained monogamy. Of the 100 couples that had been together for more than five years none had maintained monogamy.¹³

This very much endorses their own research which concludes:

“...non-exclusive relationships are, for many men, simply more fulfilling than monogamous ones...”¹⁴

But the SIGMA researchers go much further. They argue that monogamy is an imposition on gay men. Such “moral guidance” as they put it is to be rejected:

“In terms of the socio-sexual organization of gay men, these data suggest a structure predominantly comprised of regular couples who are also having casual sexual partners”¹⁵

“The endorsement of sexual exclusivity within these relationships is neither realistic nor necessary, and any calls for it must be seen as morally guided.”¹⁶

Injustice and the ‘hard cases’

We have rehearsed our views on the subject of “gay marriage” at some length. Civil partnership creates gay marriage in all but name and there is a very strong feeling among many Christian people that this is offensive.

However, the government does not have to go down this road.

¹² Sullivan, A, *Virtually Normal* Picador 1995, page 202

¹³ Hickson, F C I et al, Maintenance of open gay relationships: some strategies for prevention against HIV, *AIDS CARE* Vol 4 No 4, 1992, page 412. See also Satinover, J, *Homosexuality and the Politics of Truth*, Baker, 1996, page 55

¹⁴ Hickson, F C I et al, Maintenance of open gay relationships: some strategies for prevention against HIV, *AIDS CARE* Vol 4 No 4, 1992, page 410

¹⁵ Hickson, F C I et al, Maintenance of open gay relationships: some strategies for prevention against HIV, *AIDS CARE* Vol 4 No 4, 1992, page 417

¹⁶ Hickson, F C I et al, Maintenance of open gay relationships: some strategies for prevention against HIV, *AIDS CARE* Vol 4 No 4, 1992, page 418

It is quite clear that the major argument in favour of the introduction of civil partnerships is the “hard cases” i.e. individual cases of disadvantage suffered by homosexual couples in comparison to married couples.

The foreword to the consultation document by the Deputy Minister for Women and Equality relies heavily on emotive scenarios such as “grieving partners... unable to stay in their shared home or to inherit the possessions they have shared for years when one partner dies suddenly...”¹⁷

But the fact is, there are very many other people who face equally distressing situations who also deserve help.

Gay rights groups want to change the law to help homosexual couples deal with the legal problems which arise when one party dies, is ill, or has children.

But many people in greater need face precisely the same problems whenever they live in a relationship of co-dependency. Examples of such households include two sisters, a friend who looks after a disabled person on a long term basis, a daughter living with her elderly mother, two close friends of the same sex who share a house, a nephew living with his auntie, or a grandson living with his grandfather. The law as applied to these sorts of households leads to many hard cases such as:

- A daughter lives with her infirm mother for 20 years. The mother decides to leave everything to her daughter in her will. When the mother dies the daughter has to pay inheritance tax.
- A disabled person has a friend who cares for him for 15 years. If the disabled person dies, his carer can be thrown out of the rented house which they shared since he has no right to inherit the tenancy.
- Two widows who are now without any family of their own decide to share a house in their old age. They live together for 10 years sharing all the bills. If one dies the other has no right to inherit the tenancy.
- Two sisters live together for 40 years in the house that has belonged to the family for generations. One sister leaves her share in the house to the other in her will. The remaining sister has to pay so much inheritance tax that family home has to be sold and she moves into a one bedroom flat.
- Two old ladies share a house. They look at the Government’s civil partnership scheme and they decide to pretend to be lesbians to get all the legal rights of civil partners.

Co-dependency

The proposals for civil partnerships end the few remaining legal and tax benefits that uniquely apply to the institution of marriage. We would rather the law be left as it is. (It would be better still to restore the married couples allowance and the other benefits that used to apply to marriage.)

¹⁷ DTI Women & Equality Unit, *Civil Partnership: A framework for the recognition of same-sex couples*, June 2003, p.9

The only other option which does not destroy the status of marriage is to create a legal status of “co-dependency” which carries with it certain rights addressing the economic and social dependency which exists.

There are many people who provide care and companionship for one another who are not in a sexual relationship. Two unmarried sisters may spend their lives together, sharing a home and all its expenses, nursing one another during illness and providing companionship. Yet this dependency would not be recognised under the civil partnerships scheme.

Many would feel sympathy for people who care for each other on a long term basis and who appear to suffer through the failure of the legal system to recognise that care. But civil partnership does nothing to help the vast majority of situations where this is likely to arise.

Siblings or friends who provide each other with a lifetime of care would be left out of the scheme. Whereas two men who have known each other for just a few weeks could benefit.

According to Government figures 0.2 per cent of households comprise a same-sex couple – that is 50,000 couples¹⁸ but there are around 3 million people living in households where there is no sexual relationship between them.¹⁹ Virtually all the hard cases apply in both types of household.²⁰

According to *Social Trends* some 3% of households comprise two or more unrelated adults. This must be at least 1.44 million adults. In addition 1% of households are “multi-family households” which will include a large proportion which could suffer a ‘hard case’ problem. So there must be at least 15 times as many hard cases amongst those in a non-sexual platonic relationship than amongst homosexual couples.²¹

Pressure from gay rights activists for gay marriage has led to proposals for creation of a marriage-like state. Instead, the government could address a wide range of circumstances in which people who provide care for one another suffer injustice - regardless of whether there is a sexual relationship between them.

We note that the consultation paper refers very briefly indeed to people in scenarios like those outlined here. It says the government has “considered the position” of “other people who live together in a close supportive household environment” and that it “believes that these situations are significantly different” from that of same-sex

¹⁸ House of Commons, Hansard, 11 May 2000, col. 471 wa

¹⁹ *Social Trends* 32, Office for National Statistics, 2002, Table 2.3; 5% of a total population 57.2 million is 2.86 million people living in the category of ‘other households’.

²⁰ Homosexual couples have the right to inherit a tenancy that unrelated adults do not have. On the other hand related adults have next of kin rights which, though probably irrelevant today for hospital visiting, are still important in the area of consent for medical treatment where the patient is incapacitated. The issue of consent can be dealt with by enduring power of attorney and the separate Government proposals for mental incapacity.

²¹ *Social Trends* 32 *Op Cit.*, Table 2.

couples.²² It then rather dismissively says, “there are currently no plans to change the law in that area”.²³

We think these issues are deserving of much greater consideration than the Government seems willing to give them.

Helping all families - not just gay couples

The vast bulk of all the ‘hard cases’ occur in ordinary families and amongst friends in platonic relationships. They have a relationship of co-dependency yet they will not be helped at all by the Government’s proposals. We believe that the Government could address many of these hard cases without destroying the special status of marriage. Perhaps there is a case for doing this given the scale of family breakdown and the increasing cost of housing. A legal status of ‘co-dependency’ could be created which would deal with many of the problems without creating something which mimics the institution of marriage.

Even without civil partnerships, homosexual couples have already got many of the legal rights which they are seeking. For example, litigation by gay rights groups has led to the Appeal Courts giving the right to inherit a tenancy to the surviving “partner” of a long term homosexual couple. Friends who share a house would not have this right. Many of the other changes which are sought by gay rights groups could be provided through other means, for example through making a will.

Failing to provide for people in these other situations may even lead to a Human Rights Act challenge. Those in non-sexual domestic arrangements could make out a case that the government is breaching their Article 8 right to privacy. They may live with a person in just the same circumstances of dependency as a homosexual couple yet, because they are not in a sexual relationship, they are not entitled to register a partnership and obtain the benefits that flow from it.

“Culture change”

The Government is very up front about the fact that it is using this legal change to attempt to force culture change.²⁴

The largest and most reliable study of sexual attitudes to date was published in 1994.²⁵ It covered 18,000 people aged 16-59. It found that 70% of men believe that homosexual acts are always or mostly wrong.²⁶

What the government fails to recognise is this that disagreement with homosexual practice is based on moral and religious views. It is not merely ‘cultural’. Most people who think that homosexual relationships are wrong do not hate homosexual people.

²² DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, Para. 1.4

²³ DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, Para. 2.9

²⁴ DTI Women & Equality Unit, *Civil Partnership: A framework for the legal recognition of same-sex couples*, June 2003, E.g. Page 9, para. 1.5, para. 2.1

²⁵ Johnson, A M, Wellings, K, et al, *Sexual Attitudes and Lifestyles*, Blackwell, 1994. The paperback version was published as Wellings, K et al, *Sexual Behaviour in Britain*, Penguin, 1994.

²⁶ Wellings, K et al, *Sexual Behaviour in Britain*, page 271

They simply think what they do is wrong. It is a respectable moral view in the same category as the belief that sexual relations between siblings and bigamy are wrong.

It is therefore offensive to use the law to seek to force people to shed their moral convictions.

Registrars - Conscientious objections

We have a further concern which relates to the Registrars who will be required to perform civil partnerships. What of those who, for deeply held moral or religious reasons, do not wish to take part in formalising a homosexual union?

Currently registrars are office holders.²⁷ We have already been contacted by a registrar who is anxious that he might be removed from office for refusing to carry out a civil partnership.

We are also concerned about the prospects if and when the law is changed yet further to legalise religious ceremonies for civil partnerships. Would churches be compelled to perform “gay weddings”?

We note the situation in the Netherlands where a Christian registrar who refused to perform a gay marriage ceremony was forced to complain to the Human Rights Commission who decided that her employer had discriminated against her on the basis of her faith for refusing to recognise her conscientious objections.²⁸

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²⁷ The General Register Office is currently consulting on proposals to make registrars employees of the local authority: *Civil Registration: Delivering Vital Change*, Office for National Statistics, 2003

²⁸ Decision of the Dutch Human Rights Commission in the case of Nynke Eringa-Boomgaardt v City of Leeuwarden, 15 March 2002

Appendix A

Civil Partnership - “gay marriage” in all but name?

	Marriage	Civil Partnership	Same?	
Eligibility requirements	One man and one woman	Two men/two women	✗	1.
	Neither party is in an existing marriage	Neither party is in an existing marriage (or partnership)	✓	2.
	Not closely related ('prohibited degrees')	Not closely related ('prohibited degrees')	✓	3.
	Over 16 years old (parental consent required for under 18s)	Over 16 years old (parental consent required for under 18s)	✓	4.
Registration	At Registry Office	At Registry Office	✓	5.
	Must give 15 clear days notice	Must give 15 clear days notice	✓	6.
	Register is signed in presence of registrar and two witnesses	Register is signed in presence of registrar and two witnesses	✓	7.
	Must repeat statutory wording in presence of registrar and two witnesses	Not known	?	8.
	Legal definition says “life-long”	Consultation paper says “long term” and “intended to be permanent”	✗	9.
	Legal definition says is “exclusive”.	No requirement of exclusivity.	✗	10.
Dissolution	Can dissolve the marriage for adultery	No express provision for adultery. (Although should be possible under “unreasonable behaviour” provisions in certain circumstances.)	✗	11.
	Can dissolve the marriage for desertion.	No express provision for desertion. (Although should be possible under “unreasonable behaviour” provisions in certain circumstances.)	✗	12.
	Can dissolve the marriage after two years separation where both parties consent.	Can dissolve the partnership after two years separation where both parties consent.	✓	13.
	Can dissolve the marriage after five years separation where the other party does not consent.	Can dissolve the partnership after five years separation where the other party does not consent.	✓	14.

	Can dissolve the marriage for “unreasonable behaviour”	Can dissolve the partnership for “unreasonable behaviour”	✓	15.
Benefits while the relationship subsists	Joint treatment for income related benefits	Joint treatment for income related benefits	✓	16.
	Joint treatment for joint state pension benefits	Joint treatment for joint state pension benefits	✓	17.
	Ability to gain parental responsibility for each other’s children	Ability to gain parental responsibility for each other’s children`	✓	18.
	Recognition for immigration purposes	Recognition for immigration purposes	✓	19.
	Recognition as next of kin	Recognition as next of kin	✓	20.
	Exemption from testifying against each other in court.	Exemption from testifying against each other in court.	✓	21.
Consequences on death	Right to register death of spouse	Right to register death of partner	✓	22.
	Right to claim survivor pension	Right to claim survivor pension	✓	23.
	Eligibility for bereavement benefits	Eligibility for bereavement benefits	✓	24.
	Compensation for fatal accidents	Compensation for fatal accidents	✓	25.
	Compensation for criminal injuries	Compensation for criminal injuries	✓	26.
	Recognition under inheritance rules	Recognition under inheritance rules	✓	27.
	Recognition under intestacy rules	Recognition under intestacy rules	✓	28.
	Tenancy succession rights	Tenancy succession rights	✓	29.