

# ‘Neither sacred nor profane: the permitted content of civil marriage ceremonies’

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**Abstract:** *Most weddings celebrated in England and Wales now take place in civil ceremonies. While the governing legislation and regulations specify that the proceedings may not be ‘religious in nature’, guidance issued by the Registrar General indicates that incidental religious references may be included. In this article we provide the first empirical evidence of which vows and rituals are requested and permitted in practice, based on two surveys: one of couples who had recently had, or were planning, a civil marriage ceremony, and one of registration officers who conduct such ceremonies. Our findings show that the majority of registration officers are keen to provide a service that is both professional and personal. Most couples were very positive about their experience, and only a few reported that the vows or rituals that they had wished to include had not been permitted. However, while registration officers invariably stated that they would not permit religious content in civil ceremonies, there was considerable variation in practice as to what was categorized, or recognized, as religious. The results suggest that couples wishing to draw on the traditional version of the Church of England marriage service are more likely to be asked to re-word their vows than are those drawing on vows from other religions. We conclude with a number of proposals as to how the existing advice, guidance, regulations, and – ultimately – the law might be reformed.*

**Key words:** civil marriage – religious content – registration officers

## Introduction

Marriage is important. From the viewpoint of the state and society, one of the most important feature of marriage law is certainty, so that it is clear who is entitled to the rights and responsibilities that a valid marriage brings. From the viewpoint of the couple, the content of the ceremony – and in particular the words that they say to each other as they make their lifelong commitment – is of the utmost importance. This article focuses on the permitted content of civil marriage ceremonies in England,<sup>1</sup> presenting empirical results that suggest that

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The raw data from our surveys, with all identifying details removed, is available at <https://doi.org/10.21954/ou.rd.7124960.v1>.

<sup>1</sup> The same laws apply in Wales but for linguistic and geographical reasons our research focused on England.

the law in this area is in urgent need of reform – at a minimum to clarify what is required, and to eliminate inconsistencies in practice, and ideally to permit greater flexibility in what can be included in such ceremonies.

The law, supplemented by official guidance, places constraints on elements that must, elements that may, and elements that may not form part of a civil marriage ceremony. The Marriage Act 1949 requires the couple to repeat prescribed words in the presence of a superintendent registrar, registrar, and two witnesses.<sup>2</sup> Ceremonies may also include music, readings and other elements, but the legislation makes it clear that no religious service can be used,<sup>3</sup> and that any additional material included in the ceremony ‘shall not be religious in nature.’<sup>4</sup>

The Law Commission, reviewing the law in its 2015 scoping paper, noted that ‘there is already a fair degree of scope to personalise the ceremony’,<sup>5</sup> citing instances of registration officers being happy to wear costumes when conducting themed weddings. At the same time, it noted that the most common reason for vetoing a couple’s proposals as to the content of their ceremony was because that content was of a religious nature.<sup>6</sup> Setting out the elements of the law that would need to be examined as part of any future consultation paper, the Commission noted that this would include whether the content of civil marriage ceremonies should either be prescribed or subject to restrictions.<sup>7</sup>

Our empirical project was motivated by a wish to contribute to the evidence base for reform, and inspired by anecdotal evidence of discrepancies in the interpretation of what is regarded as being ‘religious in nature’. One newspaper reported the case of a couple who had agreed with a registrar that they would say the traditional vows – ‘to have and to hold, for better, for worse, in sickness and in health’, etc – to each other. The day before the wedding, a different registrar phoned the bride-to-be and told her that they could not say those words, because they were ‘too religious’, and that they would have to say ‘to hold and to have’ and ‘in sickness and when we are well’ instead.<sup>8</sup> The couple had little choice but to agree, and the resulting ceremony did not

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<sup>2</sup> Marriage Act 1949, s 45(1).

<sup>3</sup> Marriage Act 1949, s 45(2) (register offices) and s 46B(4) (approved premises).

<sup>4</sup> The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005/3168), Sch 2, para 11.

<sup>5</sup> Law Commission, *Getting Married: A Scoping Paper* (2015), [4.28].

<sup>6</sup> *Ibid*, [4.28].

<sup>7</sup> *Ibid*, [4.77].

<sup>8</sup> J Bingham, ‘In sickness and in health? That’s too religious for a civil wedding’ *The Daily Telegraph*, 1 July 2013.

go as smoothly as they had hoped, with the groom stumbling over the unfamiliar words and the bride succumbing to a fit of the giggles.

In this article we first explore the way in which the law has evolved; our chronology shows that the nature and purpose of a civil ceremony has received surprisingly little attention when reforms have been debated. We then dissect the terms of the regulations and guidance, and identify where the latter is more restrictive than required by the former. Having established the constraints within which registration officers<sup>9</sup> are working, we turn to an account of our project and its results, and conclude with a number of proposals as to how the existing advice, guidance, regulations, and – ultimately – the law might be reformed.

## **The legal framework**

### *Legislation governing the content of civil marriages*

The introduction of civil marriage in the Marriage Act 1836<sup>10</sup> was something of an afterthought. In the early nineteenth century, some nonconformists had begun to campaign for the right to be able to marry according to their own rites. At that time, marriages had to be conducted in accordance with the rites of the Church of England, with exceptions only for Jews and Quakers.<sup>11</sup> The campaign intensified in the 1830s, as the major nonconformist denominations also began to call for change.<sup>12</sup> At the same time, there was a desire for greater state oversight of marriage. The recently reformed Poor Law provided an administratively convenient infrastructure for a new centralized civil procedure for registering marriages.<sup>13</sup> During the course of debates it was also suggested that there should be an alternative for those who regarded marriage itself as merely a civil undertaking.

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<sup>9</sup> The term is used here to include superintendent registrars, additional superintendent registrars, and deputy superintendent registrars. There is formally one superintendent registrar per registration district, but given that the presence of a superintendent registrar is required at all civil marriage ceremonies, provision has been made for the appointment of additional and deputy roles. In addition, while superintendent registrars and registrars have distinct roles under the legislation, in practice individuals tend to be appointed as deputy superintendent registrars and registrars so that they can perform either role as needed. The duties and roles of registration officers are set out in the Registration Service Act 1953.

<sup>10</sup> An Act for Marriages in England (6 & 7 William IV c 85).

<sup>11</sup> See further R Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment* (CUP, 2009).

<sup>12</sup> *Ibid*, ch 9.

<sup>13</sup> Parallel legislation was passed to create the General Register Office and the post of Registrar General: An Act for registering Births, Deaths, and Marriages in England (6 & 7 William IV c 86), s 2.

It was a controversial proposal, with some objections on principle to a purely civil ceremony describing it as ‘a gratuitous desecration of the marriage rite’.<sup>14</sup> At the instigation of the Bishop of Exeter, a poorly attended House of Lords voted to require the parties to any such ceremony to make a declaration with no fewer than three references to God.<sup>15</sup> Four days later, however, this decision was reversed on the basis that it ‘would be very objectionable, to many parties, to introduce a civil officer into their chapel for the purpose of taking part in the performance of a somewhat religious ceremony’.<sup>16</sup> There was also a strong feeling that a couple should be required to make a declaration that they had a conscientious objection to being married by a religious ceremony in order to be married in a civil ceremony. Upon its being suggested that nonconformists should also have to state their objection to being married according to the rites of the Church of England, the House of Commons voted to exclude any such declaration altogether.<sup>17</sup> The final form of the Act, which came into force on 1 July 1837, simply included a provision permitting those who objected to marrying in a registered building to solemnize their marriage in the office of the superintendent registrar, without any need for them to state their opposition to religious rites in general or to the Church of England in particular.<sup>18</sup>

It is clear from the debates that the Church of England would have preferred to see the inclusion of religious material in the new civil ceremony, rather than seeking to maintain a sharp distinction between the two. It is also clear that legislators thought that they were catering for a subcategory of nonconformist – ie those who considered marriage to be a civil undertaking – rather than for atheists.<sup>19</sup> This explains why the same basic declarations and vows were thought appropriate for both: those marrying in the superintendent registrar’s office, like those marrying in a registered building, were required to make a simple declaration – ‘I do solemnly declare that I know not of any lawful impediment why I, *AB*, may not be joined in matrimony to *CD*’ – and an equally simple vow – ‘I call upon these persons here present to witness that I, *AB*, do take thee, *CD*, to be my lawful wedded wife (*or* husband)’.

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<sup>14</sup> *Hansard*, HC Deb, vol 34 col 492 (13 June 1836), Mr Law.

<sup>15</sup> ‘In the presence of Almighty God and these witnesses I, M., do take thee, N., to be my wedded wife, to live together according to God’s holy ordinance; and I do here, in the presence of God, solemnly promise before these witnesses to be to thee a loving and faithful husband during life’: *Hansard*, HL Deb, vol 35 col 605 (28 July 1836).

<sup>16</sup> *Hansard*, HL Deb vol 35 col 688 (1 August 1836), Viscount Melbourne.

<sup>17</sup> *Hansard*, HC Deb, vol 34 cols 1021-39 (28 June 1836).

<sup>18</sup> Section 21.

<sup>19</sup> The aim, as stated by Lord John Russell, was to cater for those ‘Dissenters who considered marriage a civil ceremony’; atheists do not appear to have been considered: *Hansard*, HC Deb, vol 34 col 492 (13 June 1836).

It was not until 1856 that a specific prohibition on the use of a religious service in a civil ceremony was enshrined in statute. There had been growing concern about some members of the clergy persuading couples who had been married otherwise than according to the rites of the Church of England to go through a second ceremony in church.<sup>20</sup> As the *Bristol Mercury* noted, this was tantamount to ‘declaring illegal and of non-effect a ceremony which the law of England had distinctly legalized.’<sup>21</sup> The Marriage and Registration Act 1856 accordingly sought to draw a sharper distinction between religious and civil marriages. On the one hand, it provided that members of a church or chapel who had married at a register office could, upon production of their marriage certificate, go through a religious marriage ceremony. Although this provided a greater choice for some couples, the last sentence of the same section stipulated that ‘no religious service’ could be used during a marriage in a register office.<sup>22</sup> Again, however, it was members of nonconformist congregations who were the main focus of the debates, with the original Bill even being termed the Dissenters’ Marriages Bill. Those who wanted a purely civil marriage were, once again, an afterthought.

By itself, the prohibition on using any religious service or ceremony in a civil ceremony does not seem unduly prescriptive and the small number choosing to marry in a register office in the mid-nineteenth century were unlikely to contest it, either because they had no religious beliefs or because they were trying to marry as unobtrusively as possible.<sup>23</sup> Over the course of the twentieth century, while the numbers choosing a civil ceremony rose, register offices continued to be the place for a speedy and relatively quiet ceremony. The provision stipulating that no religious service could be used was retained when the various pieces of legislation governing marriage were consolidated in the Marriage Act 1949.<sup>24</sup> Guidance issued by the General Register Office (GRO) in 1986 did not seek to go beyond the terms of the legislation, merely reminding superintendent registrars that they ‘must not, in any circumstances, allow any religious service or ceremony whatever to be used at the celebration of a marriage at the register office’.<sup>25</sup>

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<sup>20</sup> See further R Probert, ‘Civil Rites’ in R Probert and C Barton (eds) *Fifty Years in Family Law: Essays For Stephen Cretney* (Intersentia, 2012).

<sup>21</sup> ‘Puseyite Re-Marriages at Frome’, *Bristol Mercury*, 27 May 1854.

<sup>22</sup> Marriage and Registration Act 1856, s 12.

<sup>23</sup> It is telling that the percentage of bigamous marriages taking place in register offices was significantly higher than the overall percentage of such marriages: R Probert, *Divorced, Bigamist, Bereaved: The family historian’s guide to marital breakdown, separation, widowhood, and remarriage, from 1600 to the 1970s* (Takeaway, 2015), 125.

<sup>24</sup> Marriage Act 1949, s 45(2).

<sup>25</sup> *Handbook for Registration Officers: Marriage* (GRO, 1986), [22].

In 1994, the range of venues in which civil marriages might take place was extended to include ‘approved premises’, and this was responsible for changing both the nature of the civil ceremony and official policy on what could be included in it.<sup>26</sup> The 1949 Act was amended to make it clear that no religious service could be used in the course of a civil ceremony on such premises.<sup>27</sup> The regulations enacted to govern the approval of premises for civil marriage further provided that ‘[a]ny readings, music, words or performance which forms part of a ceremony of marriage celebrated on the premises must be secular in nature.’<sup>28</sup>

The final statutory change affecting the content of civil ceremonies – this time relating to what was prescribed rather than proscribed – was the expansion of the options for the declarations and vows that must be made. In addition to the declaration and vow introduced in 1837, a couple may now declare that they are free to marry by stating ‘I declare that I know of no legal reason why I (*name*) may not be joined in marriage to (*name*)’, or simply by answering ‘I am’ when asked ‘Are you (*name*) free lawfully to marry (*name*)?’. The alternative contracting words are even simpler: ‘I (*name*) take you (*or thee*) (*name*) to be my wedded wife (*or husband*)’.<sup>29</sup> Just as when the original vows were formulated in 1836, the primary focus was the words to be used in marriage ceremonies conducted according to religious rather than civil rites: as the Bishop of Southwark noted when moving the second reading in the House of Lords, liturgical revisions had meant that the ‘style, vocabulary and grammatical construction’ of the words originally prescribed were ‘increasingly found to be discordant with the rest of the rites now used in the Roman Catholic and Free Churches.’<sup>30</sup> It was simply noted, without further discussion, that the changes would also apply to civil ceremonies.

This brief review of the history of civil marriage demonstrates that it has received surprisingly little legislative attention, generally being subordinated to the discussion of non-Anglican religious ceremonies. The only piece of legislation dealing solely with civil ceremonies was the Marriage Act 1994, and the widespread support it received in Parliament meant that there was relatively little detailed discussion of the nature, aims and purposes of such ceremonies. As the next section will show, the expansion of the venues in which a civil marriage might take

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<sup>26</sup> Like register office marriages, such marriages must also take place in the presence of the superintendent registrar, another registrar and two witnesses (Marriage Act 1949, s 46B(1)).

<sup>27</sup> Marriage Act 1949, s 46B(4).

<sup>28</sup> Marriage (Approved Premises) Regulations 1995, SI 1995/510, Sch 2, para 11 (in force from 1 April 1995).

<sup>29</sup> Marriage Act 1949, s 44(3A) as inserted by the Marriage Ceremony (Prescribed Words) Act 1996.

<sup>30</sup> Hansard, HL Deb, vol 572, col 841 (21 May 1996).

place, along with the new regulations requiring that their content be secular, led to greater policing of the boundary between religious and civil ceremonies.

### *Circulars and guidance*

The Registrar General, with the approval of the ‘Secretary of State’ – currently the Home Secretary – may make statutory instruments prescribing the duties of registration officers,<sup>31</sup> and may also issue guidance ‘supplementing the provision made by the regulations’.<sup>32</sup> The principal guidance is contained in the *Handbook for Registration Officers – Marriages* (‘the *Handbook*’). Until 2009, the *Handbook* was posted to Register Offices; the current version is on a password-protected website for registration officers, and it is periodically updated by circulars from the GRO.<sup>33</sup>

In 1995 a circular was issued to registration officers emphasising the need ‘to ensure that any enhancements to a civil marriage ceremony do not amount to an alternative ceremony or quasi-religious ceremony.’<sup>34</sup> To ensure that any material included was ‘secular in nature and content’, the circular explained that:

‘[A] reading which refers to a god or deity, prayer or worship, or church or temple, would not be secular. Moreover, the Registrar General considers that the omission of selective reference from such a piece would not alter its religious nature. Examples of tracts which would not be appropriate... are extracts from ‘The Prophet’ and ‘Howard’s End’.<sup>35</sup>

As the date of the circular – 14 December 1995 – was almost 12 months after the introduction of the option of marrying on approved premises, and eight months after the Regulations had introduced the new criterion of secularity, this strongly suggests those marrying on approved premises had different expectations of the civil ceremony from those marrying in a register office, and that registration officers had been faced with unprecedented and unexpected demands.

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<sup>31</sup> Registration Service Act 1953, s 20.

<sup>32</sup> Marriage Act 1949 s 46A(2)(k).

<sup>33</sup> Official correspondence from the General Register Office, part of Her Majesty’s Passport Office, 22 March 2016. The GRO helpfully supplied us with the relevant pages of the *Handbook* for the purposes of this project.

<sup>34</sup> Circular GRO No 11/1995, [5.2].

<sup>35</sup> *Ibid.*

It was ironic, then, that the requirement that the content of civil ceremonies on approved premises be ‘secular’ was considerably more restrictive than the statutory provision that no religious service be used, which was the only constraint on the content of a marriage in the register office. The subsequent review into the content of civil marriages noted this discrepancy and proposed that a single test should apply to all civil ceremonies.<sup>36</sup> Rather than requiring a civil ceremony to be ‘secular’, the test would be that its content may not be ‘religious in nature’. As explained in the consultation paper, and subsequently set out in new regulations, this would mean that ceremonies could not include extracts from religious marriage services or sacred religious texts, be led by a minister of religion or religious leader, involve one or more religious rituals, or include hymns or religious chants or any form of worship.<sup>37</sup> It was, however, provided that the ceremony could include ‘readings, songs or music that contain an incidental reference to a god or deity in an essentially non-religious context’.<sup>38</sup>

The current *Handbook* for registration officers published by the GRO goes into some detail as to what this might mean in practice. Extracts from *Howard’s End* and *The Prophet* are now deemed acceptable.<sup>39</sup> Permitted music includes Robbie Williams’ ‘Angels’ and the late Aretha Franklin’s ‘I Say a Little Prayer’, the tune (but not the words) of Schubert’s ‘Ave Maria’, and the Wedding Marches composed by Wagner and Mendelssohn, all of these having non-religious origins.<sup>40</sup> Extracts from the Bible or the Koran, by contrast, are not permitted. All of this is consistent with the Regulations. However, in one respect, the *Handbook* goes further than the Regulations in stating that registration officers ‘should to the best of their knowledge avoid the inclusion of any ritual *or symbol* which may have any religious connotation’.<sup>41</sup> While ‘ritual’ implies something active, a symbol could be merely passive, as is clear from the example given of ‘the presence of a canopy for a later religious ceremony’.

The instructions and guidance contained in the *Handbook* and GRO circulars are not statutory; rather, they supplement the Acts and Regulations that control the way in which registration

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<sup>36</sup> GRO, *Content of Civil Marriage Ceremonies: Outcome of Consultation* (November 2005).

<sup>37</sup> The Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI 2005/3168), Sch 2, para 11(2). While these do not apply to marriages in register offices, they effectively replicate the statutory bar on the use of any religious service, and the *Handbook* assumes that the test is the same for both types of civil ceremony.

<sup>38</sup> *Ibid*, para 11(3).

<sup>39</sup> *Handbook*, version dated 24 February 2015, [20(b)].

<sup>40</sup> As the *Handbook* notes, the music for Schubert’s ‘Ave Maria’ was not originally written for the ‘Hail Mary’, and Wagner’s ‘The Wedding March’ originated in his opera *Lohengrin*. Mendelssohn’s ‘Wedding March’ was similarly written as incidental music for *A Midsummer Night’s Dream*.

<sup>41</sup> *Handbook*, above n 39, [20(d)].

officers, who are statutory office-holders, carry out their official duties.<sup>42</sup> The *Handbook* acknowledges that ‘registration officers will not be expert in all world religions’ and requires simply that the guidance ‘should be followed to the best of their knowledge’. Ultimately, therefore, the decision on what to include is left to the discretion of individual registration officers. This makes it important to ascertain how the Regulations and guidance are being interpreted in practice, and how far registration officers are adopting a consistent approach in their interpretation of what is ‘religious in nature’.

## **The project**

### ***Research methods***

There is no academic literature focusing on the content of civil marriage ceremonies, though one article critically reviewed various aspects of the current law within a purely theoretical framework.<sup>43</sup> We therefore decided to use questionnaires to garner as much empirical data as possible within a small project, and adopted the two-pronged approach of asking both couples and registration officers about their views and experiences.

With the benefit of seedcorn funding from the Faculty of Business and Law at The Open University, we were able to engage a research assistant to travel to fifteen English register offices and collect the names and addresses of twenty couples who had given notice of their intention to marry in each location, giving us an initial sample of 300 couples. We chose the register offices to cover as wide a geographic area of England as possible, and they were selected in approximate proportion to the four types of local authority area, which are coterminous with registration districts, as shown in Table 1.

<b>Type of local authority</b>	<b>Number in England</b>	<b>Number in sample</b>
County	27	3
London borough	33	3
Metropolitan borough	37	3

<sup>42</sup> Official correspondence, n 33.

<sup>43</sup> PW Edge and D Corrywright, ‘Including Religion: Reflections on Legal, Religious, and Social Implications of the Developing Ceremonial Law of Marriage and Civil Partnership’ (2011) 26(1) *Journal of Contemporary Religion* 19.

Unitary authority	56	6
<b>Total</b>	<b>153</b>	<b>15</b>

Table 1: Sample register offices by type of local authority

We had to choose one substitute London registration district after our research assistant’s right to take notes was contested at one register office in our initial sample; the reception he received at the other fourteen register offices was generally warm, with some staff indicating a keen interest in our project. We devised a questionnaire that we piloted on six couples, recruited from personal contacts and The Open University’s intranet. Their responses were included in our data, as they met our eligibility criteria, and no questions were changed between the pilot and the main survey.<sup>44</sup> We sent each couple a printed version of our questionnaire, with a reply-paid envelope, and received sixty-three completed questionnaires by post, including four from the pilot study. The printed survey included a Quick Response (QR) code so that couples could access an electronic version of the questionnaire if they preferred. For practical reasons – volume of paper and complexity of ‘skipping’ questions – we restricted the ceremony-related questions on the printed questionnaire to the vows<sup>45</sup> and rituals that couples had requested; the electronic questionnaire included these, in addition to similar questions relating to music and readings. An additional suite of online questions limited to music and readings was available, via a second QR code, to respondents who completed the printed survey, and six couples chose to answer these supplementary questions.

We advertised the project on our respective universities’ social media accounts, and emailed the link to the electronic questionnaire to 44 respondents who emailed us. We received a total of 45 electronic responses, including two from the pilot study. From the geographical locations identified by respondents, it seems likely that 38 were recruited from social media, giving a response rate of 86 percent of the social media enquirers, and that seven responses were from the couples in our initial sample of 306 (300, plus six in the pilot), giving us an overall response rate of 23 percent to the initial postal survey.

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<sup>44</sup> Our social media advertisements included couples who had married since January 2015, or who had met a registration officer to plan to marry, in a civil wedding ceremony in England. The accompanying information letter made it clear that either spouse, or both together, could complete the questionnaire.

<sup>45</sup> Our surveys used the word ‘vows’, although technically the ‘vows’ are the contracting words specified in the Marriage Act 1949, ss 44(3) and 44(3A), and any additional words that the couple wish to say to one another are ‘promises’. We have used ‘vows’ throughout this article, since its main focus is our project.

The couples' responses cover at least 45 of England's 153 registration districts; the exact number is impossible to ascertain because some of the hand-written responses contained ambiguous information, or no information, about the registration district. Of those who answered our question about gender, 90 couples comprised one man and one woman, six comprised two men, four comprised two women, and one comprised two gender-fluid or transgender people.

For registration officers, we devised an electronic questionnaire, with no printed alternative, asking respondents about their policies and practice, and whether they would permit a number of hypothetical vows and rituals. This was piloted on four retired registration officers, recruited via personal contacts; their responses were not included in our final data, as they did not meet our eligibility criterion of currently being entitled to conduct civil marriage ceremonies, and some questions were changed as a result of their comments. A link to the questionnaire was circulated via the GRO's email address list to the contact points for all 153 English registration districts, with a request that it be distributed by the means used to disseminate circulars from the GRO.<sup>46</sup> This meant that it was impossible to know how many copies of our email were forwarded or read. A number of bounce-back emails meant that we had to search for the contact details of a number of registration districts and email them separately. The response was instant and enthusiastic, with 33 responses being received within one working day of the despatch of our initial email. Overall, we received 136 responses, from 60 different registration districts.

Of these 136, 39 described themselves as Superintendent Registrars, eight as Additional Superintendent Registrars, and 69 as Deputy Superintendent Registrars. Forty-three described themselves as Registrars of Births and Deaths, 59 as Deputy Registrars, 29 as Civil Partnership Registrars, and 24 as 'other'. The fact that these numbers add up to considerably more than the 136 respondents – almost exactly twice the number – reflects the fact that most registration officers perform more than one role, sometimes acting as the superintendent registrar conducting the wedding and sometimes as the registrar registering it. The proliferation of titles provides the flexibility to enable them to do so. Almost all – 126 – confirmed that their role

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<sup>46</sup> Each registration district contains only one Register Office (as initially established by the Marriage Act 1836, s 9); premises in registration sub-districts that are informally known as 'register offices' are, strictly speaking, 'service delivery points' (Official correspondence, n 33). In this article, 'register office(s)' will be used in its colloquial sense to denote both the Register Office and other service delivery points.

included conducting civil marriage ceremonies.<sup>47</sup> Only 77 went on to answer the more detailed questions about the guidance that they provided to couples on the required and optional content of civil marriages, and only 57 answered all the questions on the different vows and rituals that would be permitted. One respondent helpfully emailed to explain that the very common internet browser provided by her employer would not permit her to answer the free response questions, and some other respondents made comments to similar effect, so it is likely that technical issues beyond our control were a contributory factor to the relatively low number of complete responses. Even with this attrition, these questionnaires do provide an important insight into the day-to-day working of the system, and the large number of registration districts in which respondents work meant that we were able to test our hypothesis relating to differences in practice.<sup>48</sup>

We asked respondents about their religious background and ethnicity, in order to gauge whether they were likely to be culturally familiar with particular religious marriage services. The question on religious background asked in what faith or denomination respondents had been brought up, as well as enquiring about any current religious beliefs or affiliations. As we asked respondents to tick as many religions as they felt appropriate, the 60 responses do not necessarily equate to 60 respondents. The most common answer (25) was that they had ‘no religion’, followed by Anglican (16), and other Christian denominations (11). Just one identified as Jewish, and one as ‘other’, adding ‘Jedi’. Six respondents indicated that they preferred not to say. The vast majority (45 out of 54) of respondents described themselves as White.<sup>49</sup> Four described themselves as Arab, Black or Black British African, or dual-heritage, while the remaining five preferred not to say. Our sample of registration officers was thus less religiously and ethnically diverse than the population as a whole, being predominantly white Christians or atheists. It is against that background that their recognition of different vows and rituals should be assessed.

### ***Permitted and requested vows***

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<sup>47</sup> The remaining 10 were thanked for their time: the skip logic in the electronic questionnaire meant that they were not able to answer any further questions.

<sup>48</sup> We have not sought to identify which responses came from which registration district, but as most contributed only one response, and only two contributed more than ten responses, even the remaining 58 responses must cover a number of registration districts.

<sup>49</sup> This comprised a number of categories: White British (30), White English (11), White Irish (1), White Welsh (1), White – other (2).

We asked registrars which of the following options best described the vows that they allow a couple to make to one another in a civil marriage ceremony:

- only the pre-set vows suggested by the registration district;
- anything serious and formal that the couple want to say to one another;
- anything serious and formal that the couple want to say to one another, as long as it is not religious in nature;
- anything the couple wish to say to one another;
- anything the couple want to say to one another, as long as it is not religious in nature; ‘other’.

Of the 77 respondents who answered this question, six indicated that they would permit only the pre-set vows suggested by their own registration district. One, by contrast, would be willing to permit anything that the couple wanted to say to each other. The most common response, from 48 respondents, was that they would permit anything that the couple wanted to say to each other provided it was not religious in nature. Ten indicated that they would impose the further condition that the vows be serious and formal. Most of the 12 who answered ‘other’ confirmed that they would permit any vows that did not have religious content. One registration officer helpfully noted that most couples did not ask to include their own vows but added that ‘if they requested to personalise their ceremony with their own choice of promises this would be acceptable as long as we saw them in advance to make sure that the content was appropriate and without religious content.’ These respondents were clearly very conscious of the statutory prohibition on including anything ‘religious in nature’, but most did not see it as part of their role to impose any further constraints on what could be said.

When asked what vows they thought a couple *should* be able to make to each other – assuming any necessary change in the law and guidance could be made – and presented with the same range of options, eight respondents thought that couples should be able to say anything they wanted. Thirty-six would wish to maintain the current exclusion of religious material, though one commented that ‘anything solemn and dignified, including religious content’ should be permitted. Fifteen respondents thought that the vows should be serious and formal, as well as non-religious, compared with the 10 who would impose that requirement under the current law, suggesting that they would like the law to exert tighter control over the content of the ceremony. By contrast, 14 registration officers thought that vows including some religious content should be permitted, and only three thought that couples’ choice should be limited to preset options, so 22 percent of respondents favoured fewer legal constraints than currently exist.

A rather different picture emerged from the 57 responses to our questions about which specific examples of vows the registration officers would permit. We expressly asked respondents not to try to find out whether a particular vow was religious before responding, and simply to give us their instinctive response, but one registration officer stated that this check would always be carried out. The results are telling in what was instantly identified as being religious in nature, and what was not. In addition, while recognition of a particular vow as originating in a religious service invariably resulted in its not being permitted, non-recognition did not always result in its acceptance, with a range of reasons for refusal being given.

There was widespread recognition of the traditional wording of the Anglican *Book of Common Prayer*:

I take you as my wife/husband:  
to have and to hold,  
for better, for worse,  
for richer, for poorer,  
in sickness and in health,  
to love and to cherish,  
for the rest of our lives.

Forty-three respondents said that they would not permit this, and 11 identified its origins specifically, with comments including: ‘this is from the Book of Common Prayer’, ‘too close to the Church of England marriage service’ and ‘too similar to C of E vows’. Given that the *Handbook* quotes part of this vow as an example of material that cannot be included in a civil ceremony, it is more surprising that 14 respondents would have permitted it.

Flipping the order of the words – ‘to hold and to have’ – had relatively little impact, with just one more respondent agreeing to permit such vows. Similarly, the 12 comments focused on the close resemblance to the Church of England marriage service. One noted that ‘this is just a rewording of the Book of Common prayer (*sic*) vow... they have just swapped the order of the words so would give them our alternative form of wording’. Even a fragment of this vow was viewed as problematic by a significant minority, with 33 respondents refusing to permit a vow that included the phrase ‘in sickness and in health’. The majority of those who provided a reason specifically said that it was too close to the *Book of Common Prayer*, although this particular vow was from the Catholic marriage service.

Three key points should be made. First, these words are regarded as ‘religious’ because they appear in sequence in a religious service of marriage. The precise point at which a particular combination of words becomes religious in nature would seem to be both low and variable. One same-sex couple who responded to our survey had asked to be able to promise to take each other ‘to be my lawful wedded wife: to have and to hold, to love and to cherish ...’. This was initially accepted without question, but three weeks before their wedding the couple were told that they could not use it because it had religious connotations, and they chose an alternative from a set of options offered by the register office. However, they added that on their wedding day ‘the registrar had been given our first choice of vows so we were able to use them!’. This response highlighted the variability of what was regarded as religious, even within the same register office.

Even shorter fragments were regarded as problematic by some registration officers. As noted above, a small majority of respondents thought the phrase ‘in sickness and in health’ unproblematic in isolation, yet we highlighted in the Introduction the case of the registrar who, the day before the ceremony, replaced it with ‘in sickness and when we are well’. As with our respondent couple, this reflects differences of view within the same register office. Another couple who responded to our questionnaire reported being asked to replace ‘in sickness and in health’ with ‘in good times and bad’, their final line of ‘until the zombies get us’ going unquestioned. The source of the confusion would seem to be the *Handbook* itself, which states simply that ‘wording such as “to have and to hold, in sickness and in health” should not be used since this is taken from the Church of England’s Book of Common Prayer’.<sup>50</sup> The ambiguity lies in whether this proscribes the entire vow, just these specific words, or any fragment of the vow. As our findings make clear, there is considerable variation in practice, with almost 25 percent of respondents being willing to include the whole vow, but over 40 percent refusing to include even a fragment of it.

Second, taken in themselves, the words do not have any particular religious connotations. There is no reference to any deity, afterlife or to marriage being in any way sacred: they simply express that marriage is not a contingent commitment. This may have been in the mind of the registrar who commented that:

‘I like these words personally but as they are taken from the Common book of prayer (*sic*) we are asked not to use them but we offer them an alternative. Personally, I would like to see

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<sup>50</sup> *Handbook*, above n 39, [20(d)].

these words used in a civil ceremony but I understand it is the church who have asked us not to use them.’

Indeed, the responses from the couples suggest that the cultural familiarity of the words has stripped them of religious significance for many.<sup>51</sup> A number had wanted to use these vows, but not necessarily because they regarded themselves as members of the Church of England. One couple did express their disappointment that they were not allowed any religious references in their readings, but another reported that they had found these words on a humanist website, which they thought guaranteed that they could not be regarded as ‘religious’. A third had wanted what they termed ‘traditional’ vows, but were informed that the Church of England did not allow them to be used in civil ceremonies. It is clear that what Farrimond has described as the ‘ritual conservatism’ of couples in relation to their wedding<sup>52</sup> can be seen in civil ceremonies as well as Anglican ones.

Third, there is a widespread lack of awareness of any religious vows *other* than those in the *Book of Common Prayer*. This Hindu vow would have been permitted by 53 of the 57 respondents:

A circle is the symbol of the sun and the earth and the universe.  
It is a symbol of perfection and peace.  
I give you this ring as a symbol of unity  
in which our lives are now joined in one unbroken circle,  
in which, wherever we go,  
we will always return to one another  
and to our togetherness.

Material from other religious services was similarly not identified as such but often not permitted for other reasons. Some respondents were clearly mindful of their duties under the Equality Act 2010. There were a number of comments on a modified version of a Baha’i vow referring to humanity as having wings of different genders:

The world of humanity has two wings—  
one is women and the other men.  
Not until both wings are equally developed  
can the bird fly.  
Should one wing remain weak,  
flight is impossible.  
I [name] promise that I will always  
regard you [name] as the other wing of our marriage

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<sup>51</sup> This was reinforced by one registration officer, who commented that ‘many couples see the content of a marriage ceremony which includes words from a Christian/church marriage ceremony as traditional rather than religious per se and are surprised that they cannot say “to have and to hold, in sickness and in health” etc.’.

<sup>52</sup> S Farrimond, ‘Church of England Weddings and Ritual Symbolism’ in J Miles, P Mody and R Probert (eds) *Marriage Rites and Rights* (Hart, 2015), 212.

so that we may soar to the heights of love  
for as long as we both live.

While this would have been permitted by 45 respondents, three indicated that they would not permit it because it would be unsuitable for same-sex marriages. Comments to this effect included ‘too flowery and unsuitable for single sex marriages’, ‘equality issues’, and ‘no consideration for same sex couples’.

Similarly, a promise from a Jewish ketubah to ‘cherish, honour, support and maintain you faithfully... [and] give you your food, clothing and necessities, and live with you as husband and wife’, was regarded by 21 respondents as unacceptable for various reasons. The seven comments indicated that it was unsuitable for same-sex marriages, or could be regarded as sexist, while others identified the implications of inequality in the relationship, suggesting that it ‘indicates weakness and reliance by one party’, ‘sounds too controlling’ and was ‘a bit possessive’.

There was evidence that even Anglican services other than the *Book of Common Prayer* do not attract instant recognition. This vow was suggested by one local authority on its website,<sup>53</sup> and we included it to ascertain whether it would be accepted by registration officers.

I give you this ring as a symbol of our love.  
All that I am I give to you  
and all that I have I share with you.  
I promise to love you  
to be faithful and loyal  
in good times and bad.  
May this ring remind you always  
of the words we have spoken today.

It commanded almost universal acceptance, with 51 respondents saying that they would permit its inclusion. This is particularly intriguing because it mirrors the wording used in the updated Anglican marriage service, from the book *Common Worship*,<sup>54</sup> with the words in italics being identical.

*N, I give you this ring*  
as a sign of our marriage.  
With my body I honour you,  
*all that I am I give to you,*  
*and all that I have I share with you,*  
within the love of God,

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<sup>53</sup> [https://www.haringey.gov.uk/sites/haringeygovuk/files/wedding\\_scripts.pdf](https://www.haringey.gov.uk/sites/haringeygovuk/files/wedding_scripts.pdf) (Accessed 20 September 2018).

<sup>54</sup> For discussion of the evolution of the Anglican liturgy see Farrimond, n 52.

Father, Son and Holy Spirit.

The number of registration officers who refused to permit this vow was much smaller than the number refusing to permit 'in sickness and in health'. Of the six who did, one identified it as being 'from a religious ceremony' while another, significantly, thought that it was 'similar to C of E Common Book of Prayer wording'.

None of the couples who responded to our questionnaire reported having asked to include any material from non-Anglican religious services in their wedding ceremony. This means that it is impossible to ascertain whether registration officers would be more likely to identify a requested vow as being, for example, Hindu, Muslim, or Sikh if the parties presenting to be married were of South Asian origin. It may simply be that the issue does not arise because those who belong to a particular religious faith group either marry in a registered building according to their own religious rites, or have chosen the civil ceremony in addition to a non-legally-binding religious marriage elsewhere and see the civil rite as nothing more than a legal formality.

There were, however, certain trigger words that were seen as having religious connotations. Ironically, these were ones that were sourced from secular sources rather than forming part of any religious service of which we were aware. One vow – found on a wedding website – involved a declaration that:

[Name], today I stand here in front of our family and friends,  
I make a promise to love you eternally,  
and be by your side whatever life has in store for us,  
to share our hopes and dreams, and to be kind and understanding,  
to offer support and comfort when times are trying,  
to always be open and honest with you,  
but above all, I promise to love you without reservation  
and, as I give you my heart,  
I trust you will keep it safe always.<sup>55</sup>

While 53 respondents would have permitted this, four would not, with one respondent commenting that s/he was 'not sure eternally is non religious, would need to check otherwise this would be acceptable as additional vows to the legal ones'. Another vow, from a website offering suggestions for humanist weddings, would not have been permitted by 21 respondents:

I, [name] give to you, [name] my vow of sacred matrimony. I acknowledge our individuality and respect the natural space that will reside comfortably between us.

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<sup>55</sup> <http://www.youandyourwedding.co.uk/forum/the-ceremony/civil-ceremony-vows---how-do-yours-go/97481.html> (Accessed 20 September 2018).

I promise to bridge that space with open communication, silent understanding and heartfelt compassion.

I promise to act loving so as to be loving.

I promise to love passionately, argue fairly and support you unfailingly.

I gladly accept the responsibilities that come with our relationship.

I love you and pledge my fidelity all the days of our lives.<sup>56</sup>

Six respondents indicated that ‘sacred’ was an indication of religious content: as one respondent put it, there was a ‘bit of a religious twinge in sacred’. Another saw it as more than a ‘twinge’, suggesting that it ‘implies a sacrament’. A third noted that they would ‘ask the couple to remove the “sacred matrimony” and replace it with marriage (*sic*)’.

There were also some non-religious vows that respondents would not have permitted on other grounds. We invented a vow including ‘I love you so bloody much that it hurts’; this would not have been permitted by 22 respondents. Twelve comments identified the swear word as the problematic element as guests might be offended, or simply because they felt no swearing should be allowed. Several indicated that would only ask the couple to remove the ‘bloody’. Twenty-eight respondents would have permitted another invented vow in which couples committed to love each other ‘for the rest of our lives, or until we no longer make one another happy’, with the six comments emphasizing that the vows should ‘be for the rest of their lives’ and assume the permanency of the union. One possibly jaded respondent added that the wording was ‘quite negative, although admittedly realistic’.

By contrast, 45 respondents would have permitted a light-hearted promise ‘to learn to cook something other than beans on toast, not to hog the bathroom and use all the hot water, and never to ask “does my bum look big in this?” and expect an honest answer’. One registration officer would not have permitted this on the basis that it ‘would indicate that the vows are not serious.’ Others commented that they would work with the couple to adapt this particular option. One indicated that they ‘would explain that the promises should be more serious, and perhaps extend the humorous words to go on with something more meaningful’, but added that they would ‘probably talk them out of it’. Another suggested that it would work better as a reading, noting that ‘there is a poem that couples include about leaving toilet seats up which is very similar’ – suggesting that the acceptability of certain content may also depend on its role within the ceremony.

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<sup>56</sup> <https://www.leapofhumanity.com/resources/wedding-vow-suggestions/> (Accessed 20 October 2016).

These responses are consistent with the results from the survey of couples. Those wishing to incorporate vows that they had written themselves and which had more personal and humorous elements were generally more fortunate than those asking to include the vows from the *Book of Common Prayer*. One promised ‘to smile when you surprise me with flowers, and grin from ear to ear when you surprise me with chocolate or ice cream’. Others spoke at length about what they appreciated in their partner. Time remained an important factor in some places, with one couple reporting that when they submitted the vows they wanted to include via the online form, they received an error message stating that the vows were too long. The register office was more accommodating, suggesting that they email them instead, but after discussion the couple decided to write the words to each other in cards to be opened on the morning of the wedding, thus making these vows privately rather than as part of a public declaration. Their experience nonetheless shows how the inherent constraints of a civil wedding may determine its content.

### ***Permitted and requested rituals***

Registration officers showed greater recognition of non-Anglican customs than of vows. Five of our 57 respondents commented that they would check the symbolism of one or more of the rituals before making a decision.

Forty-four respondents – a significant majority – would not have permitted the Jewish customs of the groom breaking a glass by stamping on it. The six comments were equally divided between the religious nature of the custom and health and safety considerations. A typical comment was ‘this is a Jewish custom and therefore inappropriate in a civil ceremony’. Interestingly, one respondent noted, in respect of health and safety, that ‘it is a matter for each of the venues to consider and some we attend do allow this’, underlining the differences that can exist within a single registration district. Another, after noting that ‘health and safety would never go for this!’ added that they had conducted a ceremony ‘where the groom made a symbolic gesture after the ceremony was complete with something similar to do with shoes. But it was not part of the ceremony and he asked first’. Another respondent drew a similar distinction between what was part of the ceremony and what was not, indicating that ‘at the very end of the ceremony – once our civil ceremony is complete – then this is fine’. A slightly smaller majority – 35 respondents – would not have permitted the bride to circle the groom seven times. While six respondents thought this was a religious rite, none specifically identified

it as Jewish. Some were clearly unsure, with one noting ‘I would always try and check the symbolism of each ritual before making a decision – but this is slightly unusual and would need a bit more investigation’. One, however, refused on the basis that it would be ‘time-consuming’.

The Hindu ritual of the father of the bride washing her future spouse’s feet was something the majority (45) of registration officers would not have allowed. A few stated without elaboration that it was ‘inappropriate for a civil marriage ceremony’ or, on one case, ‘culturally inappropriate’. Six identified it as having religious connotations, but none specifically identified it as Hindu, although one did comment that it ‘sounds like an Indian wedding’. Another, however, thought it had ‘connotations of washing the feet that takes place on Maundy Thursday in Catholic churches’. Others thought it was too time-consuming and impractical, and disliked the idea of having basins of water in the room: and one trenchantly commented that it would be ‘messy, time-consuming and embarrassing for me to watch’.

The question of whether they would be willing to place a ceremonial scarf around the new spouses’ hands divided respondents almost equally, with 29 saying that they would not permit this. One commented tersely: ‘not my job to be involved in cultural rituals’. Interestingly, although four comments identified this as a religious ritual, none specifically identified its origins in the Anglican wedding service, and another four saw it as a form of ‘handfasting’. As one noted, ‘we have been asked not to allow “handfasting” rituals in our ceremonies’. The *Handbook* states that registration officers should avoid any reference to ‘handfasting’, describing it as ‘an ancient pagan ritual’.<sup>57</sup>

Similarly, a small majority (31 respondents) would not have permitted the couple to jump over a broomstick, which was perceived by nine respondents as likely to be a ‘pagan’ practice.<sup>58</sup> Comments included ‘smacks of pagan practice’, ‘sounds Pagan or Wicca’, ‘might be perceived a pagan ritual’, ‘pagan rite – not permitted under current marriage guidance handbook’ and ‘this seems a bit like “witchcraft” to me and not necessary’. One indicated that they would

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<sup>57</sup> The evidence suggests that it has rather more recent origins: see Probert, n 11, ch 3.

<sup>58</sup> Again, the evidence suggests that the idea that it was possible to marry by jumping over a broomstick was a nineteenth-century misunderstanding, the term ‘broomstick’ originally being used as an adjective to denote something sham or dodgy: Probert, *ibid*.

check with their superintendent registrar, but that they would be ‘concerned about the health and safety risks of this, never mind any religious/witchcraft connotations’.

However, other traditional ritual elements of the Anglican service were not seen as problematic. All except three respondents would have permitted the wearing of a traditional bridal veil, although one said that this was ‘providing the veil was lifted at the start of the ceremony’. Most (46) respondents would have been willing to ask the person who had escorted the bride or brides into the room whether they were willing to give that bride’s hand in marriage. Two indicated that they would use different wording, such as ‘who presents this woman to be married to this man’, with one noting that it was ‘usually the brides who do not wish certain words to be used’. Another added ‘we have the giving away of the bride in our ceremonies – but not asking for permission’. One ritual that has been included in Anglican and Catholic marriage services – involving each spouse lighting a candle and together lighting a larger, decorated candle – would have been permitted by 44 respondents. One refused on the basis that it was a religious practice, while another was happy to accept it ‘as long as no religious connotation or words said’. Two, however, would have refused this because it was a fire hazard.

We invented a few rituals to test registration officers’ reactions. All of these would have been permitted by the majority of the 57 respondents: 47 would have allowed the couple to place a garland of flowers around each other’s neck; 44 would have allowed the couple to place a crown on each other’s heads; 41 would have allowed the couple to ritually kiss each other five times (on the forehead, throat, the back of each hand and the lips);<sup>59</sup> and 33 would have allowed the couple to place gold coins in a bowl.<sup>60</sup> A few thought that these were religious rituals and refused their inclusion accordingly. A number emphasized they would generally ask couples whether any requested ritual was religious. In relation to the kissing ritual, for example, one noted ‘I would have asked why. If religious then No.’ Another expressed uncertainty: ‘not sure, I would have to seek advice, does it signify the father, son and holy spirit?’. Again, there were some refusals to allow certain rituals for reasons other than their supposed religious content, with one respondent disallowing the kissing ritual on the basis that ‘I would not know where to look’.

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<sup>59</sup> Comments on this particular ritual also included ‘slightly unusual but seems ok’ and ‘we allow kissing after the ceremony is complete, so providing its afterwards not during this would be ok’.

<sup>60</sup> One commented ‘would want reason why’ and another ‘would need to check symbolism’. A third commented that ‘I would need more information about this before allowing’ – adding, understandably, ‘not come across this one’.

Only a few couples asked if they could include any special rituals or customs in their ceremony. One wanted their dogs to be involved in the ceremony, and were waiting to hear whether this would be permitted. The only couple to request any ritual similar to those in our questionnaire had asked to hold hands crossed over ‘similar to Irish wedding, but we didn’t want to use the ribbon’. This was refused on the basis that it was religious.

More couples sought to personalize their ceremony through their choice of readings and music, and all of their suggested readings and music were permitted. Some were familiar choices: two chose the same excerpt from *Captain Corelli’s Mandolin* about the difference between being in love and love, and two chose Shakespeare’s Sonnet 116 (‘Let me not to the marriage of true minds admit impediment’). Extracts from Khalil Gibran’s *The Prophet* were also popular. The only couple who experienced any problems with their chosen reading were asked on the day to remove the word ‘blessing’ from their chosen poem because of its religious connotations. All the requested music – which encompassed pop, classical and film soundtracks – was permitted by registrars. Several couples specifically praised the flexibility of the registrars they had worked with, and one even queried our use of the word ‘permission’ as they felt that this did not reflect their experience of the wedding-planning process at all.

The fact that our respondents’ requested readings and music were permitted does not mean that this would invariably be the case. While we did not ask registration officers about readings and music, one commented that they would ‘regularly check readings’ only ‘to find that there is inappropriate content, including swearing, explicit sexual references or disrespectful humour’. These, they explained, ‘are either edited or declined completely’ (suggesting that they may be appropriate for the reception). This particular registrar would also have been unsympathetic to the desire of the couple mentioned above to have their dogs involved in the ceremony, noting that requests had been received for owls, donkeys and dogs to take part in the ceremony but: ‘Our Authority does not allow animals to be part of the ceremony’.

### **Suggestions for reform**

The overwhelming impression from the responses was that most registration officers take their role very seriously, are keen to accommodate couples’ wishes wherever possible, and want to do a good job. At the same time, it is clear that registration officers had varying conceptions of

their role. When given the opportunity to comment at the end of the survey, some stressed that the ceremony they were conducting was a purely civil rite, with one commenting that ‘I think couples forget that we conduct a civil wedding’, and expressing some disquiet at being asked ‘to be part of their entertainment’. Some therefore saw their role as being to police the boundaries of the ceremony and prohibit inappropriate content. Others, however, emphasized how closely they worked with couples to provide the ceremony that they wanted:

We try to give couples as much choice as possible as long as there is no religious content. Its (*sic*) their day!

We work with our couples to ensure they have the ceremony they want. We offer wedding chats with the Registrar who will be conducting their ceremony and also personalise the ceremony for them at no extra cost. Couples respond really well to this.

In [town], the Registrar who is going to be conducting the ceremony will always contact the couple about 6 weeks before their ceremony to discuss choices. Couples are given the option to choose one of our vows and promises or to write their own. As long as there is no religious contents (*sic*) to words we are always open to suggestions and work very closely with our couples.

We offer a highly personalised service which aims to ensure ceremonies are a positive and fulfilling occasion for our couples....

The findings of our study indicate that these conflicting conceptions of the role of the registration officer – the policing and the facilitating – are leading to different approaches in practice. In this final section we put forward a number of different proposals for reform, each tailored to a different conception of the problem: the expectations of couples, the inconsistencies in practice, the differential exclusion of religious content dependent on its recognizability, and the restrictive nature of the current law.

### ***Better advice?***

A number of respondents noted that they received a number of requests from couples that they were unable to accommodate. One somewhat disgruntled registration officer noted that:

Couples are getting more demanding, even wanting to rewrite contracting words. I think because they are paying so much for their marriage they are under the impression that they can do what they want, forgetting totally that we are conducting a legal process.

If the problem is perceived to be couples’ expectations of what they should be able to include in the marriage service, one obvious way of addressing this would be to provide better guidance. The information provided on the gov.uk website about the content of civil marriage ceremonies is sparse to the point of unhelpfulness:

You must exchange some formal wording if you’re getting married.

Discuss any other wording you want in the ceremony with the person conducting it.

Civil ceremonies can include readings, songs or music, but must not include anything that's religious, eg hymns or readings from the Bible.<sup>61</sup>

The task of providing advice is left to individual registration districts, with a predictably wide range of formats and guidance. The fact that the *Handbook* is now only available on a password-protected website has significantly restricted its availability for consultation. As this is a public document, affecting every couple choosing to marry in a civil ceremony – or indeed in any ceremony involving a registrar – it should be publicly accessible so that individuals can check the official guidance for themselves.

### ***Better guidance?***

This leads on to the issue of consistency, where our questions received 57 responses. Forty-six respondents were confident that they always complied with the relevant legal and advisory constraints when deciding whether specific vows, rituals, readings and music would be permitted. The vast majority also reported that they were assiduous in keeping up-to-date with any new information or guidance issued by the GRO.<sup>62</sup> Nineteen said that they would follow this up as soon as possible once they had been notified that it was available, interrupting any non-urgent task to do so. Another 20 indicated that they would do so at least on the same day, and a further six within a week. Three thought that it might be a month before they would do so, but six said that they would only check if they encountered a question that they thought the new guidance might answer. This diligence was also reflected in the high numbers regularly signing in to the GRO's website to access guidance or information relating to civil marriage ceremonies: eight respondents reported doing so every day, and a further 17 at least once per week.<sup>63</sup> When asked when they had last done so, 19 reported that it was less than a day earlier, and a further 10 said that it was less than a week. Only three gave a period of more than three months, although five reported that they could not remember precisely. Forty respondents

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<sup>61</sup> <https://www.gov.uk/marriages-civil-partnerships/weddings-and-civil-partnership-ceremonies> (Accessed 20 September 2018).

<sup>62</sup> As noted above, the *Handbook* is now available on a password-protected website for registration officers. Each local authority's designated contact is notified by email when a new *Handbook* or circular is published on the website, and it is for each local authority to decide how to circulate the information with its area (Official correspondence, n 33).

<sup>63</sup> One explained that this was generally 'to check that a venue is licensed for marriages when I am registering a marriage outside of this district'.

confirmed that they had found the information or guidance that they were seeking when they visited the website.

Understandably, therefore, very few respondents suggested anything that would help to improve their understanding of the legal and advisory constraints when they were deciding whether specific vows or rituals should be permitted. Two indicated that they would welcome additional training about those constraints, and two favoured clearer law, whether in the form of legislation or regulations. Four thought that there could be clearer guidance in the *Handbook* or other GRO publications, and one commented that ‘a document detailing marriage rituals from each religion’ would be useful. While most registration officers were reluctant to criticize the current law, one would have welcomed a more flexible approach, noting that ‘the nature of LA<sup>64</sup> managers is to say “No” for no particular reason’; this, the respondent felt, was ‘very frustrating, so much so that I am considering leaving the LA to practice independently’.

Our findings demonstrate that the majority of registration officers have a good awareness of the guidance as set out in the *Handbook*, with the majority – although by no means all – of responses being consistent with the examples that it includes. Yet, as noted above, even some of the specific examples are a little ambiguous, and there are few references to non-Anglican religious rites. If the current restrictions are to remain, the suggestion of ‘a document detailing marriage rituals from each religion’ would be a useful addition to the guidance. At least one respondent expressed disquiet with the delegation of the decision to the local level:

I find that when I ask GRO about anything – they inform me that it is the decision of the Superintendent Registrar so I make the decision based on my own research and common sense. However, I am aware that this causes real inconsistency across England and Wales because I will allow some things that other districts will not eg playing of certain music at weddings.

The issue is not merely one of consistency but also the avoidance of inadvertent discrimination. A blanket exclusion on religious content could be enforced only if every superintendent registrar in England were able to recognize every element and phrase from every marriage ceremony of every religion. As our findings demonstrate, registration officers were far less likely to recognize words or practices from non-Anglican marriage services. The criterion for vetoing content proposed by a couple is thus effectively its *recognizability* as religious, rather

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<sup>64</sup> Local authority.

than the fact that it forms part of any religious service. The right to marry and found a family, subject to national laws, is protected by Article 12 of the European Convention on Human Rights. Its only permissible limitation is national law, which governs such issues as the age and gender of the parties, and any prohibitions on blood relationships between them. The right does not expressly include the right to marry in accordance with any religious or cultural ritual of the couple's choice, but it is subject to the general provision in Article 14 that the substantive rights should be available to all, without discrimination. The fact that some elements of non-Anglican and non-Christian marriage services are being deemed acceptable while more readily recognizable Anglican forms are vetoed constitutes some evidence of unintentional discrimination against couples with the protected characteristic of Christianity.<sup>65</sup>

### *A change in the regulations?*

The blanket exclusion from civil ceremonies of material that is 'religious in nature' has, rightly, been criticized as anachronous, contravening the interests of the couple and ignoring the private and social role of marriage.<sup>66</sup> While a superintendent registrar should not be expected to conduct a religious service, the legal constraint that underlies the veto on content that is 'religious in nature' is difficult to justify. Removing this paragraph would permit couples to say whatever they wished to one another, including invoking any deity/ies in whom they believed. It would also enable them to perform rituals based on their religion or culture, subject to practical and safety constraints; family members would doubtless be honoured to take on the role of any necessary third party.

It is unclear why any religious authority would object to a couple saying religious words that are meaningful to them: most religions encourage adherents to pray privately, so there is no obvious reason why prayers or other religious references cannot be said in front of two registration officers and a number of witnesses. Clearly, no one other than an appropriately empowered religious leader could declare the couple to be married in the eyes of any deity or religious body, but it is hard to see why less significant religious content should be excluded from civil marriage ceremonies. This is supported by the finding of the Law Commission that

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<sup>65</sup> Equality Act 2010, ss 4, 10.

<sup>66</sup> Edge and Corrywright, above n 43.

‘religious groups generally (although not invariably) favour[ed] a relaxation of the current restriction on incorporating religious material into a civil ceremony’.<sup>67</sup>

The Commission did, however, go on to note that some – although not all – registration officers favoured the exclusion of religious material.<sup>68</sup> As noted above, 51 of our 77 respondents were in favour of the exclusion of religious material, although 14 would prefer religious content to be permissible. The regulations would need to be carefully crafted to ensure that no registration officer would be expected to conduct a religious service. In order to protect the purely ‘civil’ nature of their role, this proposal would require no registration officer to do anything more than observe religious words being said, or rituals performed, as registrars already do in the context of marriages in registered buildings.<sup>69</sup> And it is worth noting that one respondent expressed considerable enthusiasm for a more relaxed approach:

We find that many couples really wish to include some ‘religious’ parts into their ceremonies – certainly those who are marrying second time around. It would be lovely to be able to include hymns in a civil ceremony.

Rather than excluding material that is religious, we suggest that the regulations should simply emphasize that the optional content of the ceremony must not in any way detract from the dignity and solemnity of the occasion. This would not preclude some more light-hearted material, but would go some way to meet the concerns of registration officers about being asked to include material that is unduly frivolous, insulting, or profane.

### *A change in the law?*

The individual reforms suggested above all speak to different perceptions of what the problem is. The debates about the content of civil ceremonies, however, must be seen against a backdrop of wider discontent with the current law, and so it is appropriate that we advance a number of more ambitious proposals for change.

As we noted in the Introduction, there has been relatively little legislative debate as to the purpose of a civil marriage ceremony. With over three-quarters of all marriages now being celebrated according to civil rites, and around two-thirds on approved premises<sup>70</sup>, the range of purposes being served by a civil ceremony is greater than ever before. At one end of the scale

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<sup>67</sup> Law Commission, above n 5, [4.44].

<sup>68</sup> Ibid.

<sup>69</sup> Marriage Act 1949, s 44.

<sup>70</sup> ONS, ‘Marriages in England and Wales: 2015’ (28 February 2018).

there are those for whom it is merely a matter of complying with the legal formalities. This encompasses those who may have ideological objections to marriage and who are marrying purely for the legal rights it brings. It also encompasses those who are planning to have, or may already have had, a marriage ceremony outside the current legal framework. These different constituencies are likely to want a ceremony that is as pared down as possible and as yet it remains uncertain how the Government will respond to the Supreme Court's decision in *R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) (Respondent)*<sup>71</sup> that the current inequality of treatment afforded to same-sex and mixed-sex couples contravenes the European Convention on Human Rights. No words need to be spoken for a civil partnership, which comes into effect simply when the two parties sign the relevant register, so this approach would avoid the parties having to exchange vows that effectively negated the existence of an earlier religious-only marriage ceremony. One registration officer raised this issue specifically, noting that 'we cater for a lot of different nationalities in our borough and they always want less wording than more'.<sup>72</sup> Another respondent noted continuing difficulties with the statutory wording used in civil marriage ceremonies:

We are (rightly) being challenged from the trans, intersex and non-binary community that the requirement to state 'husband' or 'wife' as part of the statutory declarations is discriminatory. A gender neutral option should be introduced ('spouse') for those who are uncomfortable being a 'husband' or a 'wife'.

There is an argument that the civil ceremony should be just about the formalities, and that couples who want a religious wedding have other options. But this may not be true for inter-faith couples, same-sex couples, or those who are divorced. The first are dependent on a minister of one particular faith proving willing to accommodate the other. The second can marry in a religious ceremony only if those responsible for that particular registered building have opted in, and few have done so.<sup>73</sup> The third may be precluded from remarrying according to religious rites depending on the approach taken by their particular faith or denomination.

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<sup>71</sup> [2018] UKSC 32.

<sup>72</sup> The change they suggested was to 'impress on these couples that the civil ceremony should be completed first, to be followed by a religious ceremony if required'. For many young Muslim couples, however, a religious ceremony may be an essential precursor in the eyes of their community to them having any kind of relationship.

<sup>73</sup> See P Johnson, RM Vanderbeck, and S Falcetta, *Religious marriage of same-sex couples: A report on places of worship in England and Wales registered for the solemnization of same-sex marriage* (University of York and University of Leeds, 2017).

At the other end of the scale, some couples hold their religious ceremony at the same approved premises where the civil marriage is intended to take place. The *Handbook* makes it clear that this is acceptable as long as the two ceremonies are clearly differentiated. Some registration officers have, however, required the two ceremonies to take place on different days,<sup>74</sup> which may pose practical problems for those involved, and lead to additional cost.

Rather than trying to create different forms of civil marriage to cater for these different demands and desires, the law governing marriages should be made as simple as possible in order to encompass the widest possible range of ceremonies. This was the conclusion of the Law Commission in its 2015 scoping paper. Once the legal regulations are pared down to the minimum necessary, the form of the ceremony can largely be a matter of individual choice. Probert has set out elsewhere how that minimum core might consist of a requirement that couples marry in the place specified in their notice of marriage,<sup>75</sup> and in the presence of a civil registration officer or individual appointed by a place registered for either worship or belief.<sup>76</sup> Under this system, religious or other belief-based marriages could take place in any location specified by the parties and agreed in advance. Since the marriage would be evidenced by their signing of the register, there would be no need for any specific vows unless the parties so wished.

## Conclusion

What is regarded as ‘religious in nature’ changes over time, and from place to place. Sixteenth-century Puritans regarded the giving and receiving of a ring as a ‘popish’ tradition.<sup>77</sup> The *Handbook*, however, identifies this as acceptable, being ‘a commonly-recognised and acceptable feature of civil as well as religious weddings’.<sup>78</sup> Our forebears would be as shocked by the suggestion that exchanging rings did not have religious connotations as they would have been baffled by the idea that jumping over a broomstick constituted a pagan ritual. In a similar vein, Farrimond has suggested that the standard choreography of the church wedding ‘forms as much a part of the Church of England wedding as do the authorized texts.’<sup>79</sup> It has, to a large

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<sup>74</sup> See R Probert and S Saleem, ‘The legal treatment of Islamic marriage ceremonies’ (2018) *Oxford Journal of Law and Religion* (forthcoming).

<sup>75</sup> There would be a system of universal civil preliminaries to facilitate this.

<sup>76</sup> R Probert, ‘A Uniform Marriage Law for England and Wales?’ [2018] CFLQ 259.

<sup>77</sup> ‘A View of Popish Abuses Yet Remaining in the English Church, 1572’ in D Cressy and LA Ferrell (eds) *Religion and Society in Early Modern England* (Routledge, 2<sup>nd</sup> ed 2005).

<sup>78</sup> *Handbook*, above n 39, [20(d)].

<sup>79</sup> Farrimond, above n 52, 215.

extent, formed a template for many civil marriages in that most brides still walk down an aisle on the arm of their father or other relative, to a groom waiting at the front of the room. Such elements are no longer identified as ‘religious’ but simply part of a traditional English wedding. As one respondent to Walliss’s survey noted in describing her marriage on approved premises: ‘[i]f you can imagine the church wedding, but without the religious element, that’s what I feel I got.’<sup>80</sup> For those from other cultures, though, these elements may well seem odd or unnecessary.

As we noted above, our study suggests that there is not, in practice, an instinctive exclusion of material that is religious in nature but merely of those – principally Anglican – elements that are recognized as being religious in nature. The reality may be more nuanced, since five registration officers stated that they would check whether a vow or ritual were religious before deciding whether to permit it, and many more may do so in practice but not have stated this because we asked for their instinctive responses. The issue of recognizability assumes rather different importance under the pared-down scheme set out above. If the range of places where marriages can be celebrated is widened – beyond places of worship and even the expanded range of approved premises – then the importance of the ceremony taking a form that will be recognisable as a wedding by those involved will be even more important. To that end, it would be important for our proposal for reform of the regulations to be part of a broader proposal for reform of the law governing marriage.

As one registration officer commented: ‘the intention on the marriage day should be “forever”’: it is surely appropriate that every couple should be able to address one another using words that they regard as creating a covenant between them, whether secular or sacred.

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<sup>80</sup> J Walliss, “Loved the wedding, Invite me to the Marriage”: The Secularisation of Weddings in Contemporary Britain’ (2002) 7(4) *Sociological Research Online*.