

TWENTIETH-CENTURY REVISION OF CANON LAW IN THE CHURCH OF ENGLAND

CANON PETER BOULTON¹

Former Prolocutor to General Synod, Province of York;

Chaplain to H. M. The Queen

INTRODUCTION

This study describes and evaluates the Church of England's revision of its canon law in the twentieth century, concentrating on the period from 1939 to 1969. By way of introduction it should be said that this assessment is but part of a larger study which proceeds on two planes of comparison. In the larger study, revision by the Church of England is laid horizontally alongside another Anglican revision carried out as a result of disestablishment of the Church in Wales in 1920, and also the two revisions of Roman Catholic canon law leading to the promulgation of the *Codex Iuris Canonici* in 1917 and 1983. Vertically, the history of the revision of English canon law over the previous four hundred years gives some idea of what needed revision, and the difficulties in carrying it out under the constraints of being an established church. In this article, however, only the process of revision by the Church of England in the twentieth century is discussed.

I. THE ARCHBISHOPS' COMMISSION ON CANON LAW

(a) *Background*

In the 1947 Preface to a new edition of a book by Canon E. G. Wood, its editor Eric Kemp wrote: 'for nearly 300 years the Church of England has lived in glorious isolation.'² He referred to the long gap between 1662 and 1947 during which the traditional law-making bodies of the church—its Convocations—had not been able to consider a new set of canons appropriate to its modern needs. These words, written when the report of the Archbishops' Commission on Canon Law began to be debated in the Convocations, came from the pen of one of the significant figures involved in the revision. Canon Eric Kemp was secretary and chief spokesman of the Canon Law Steering Committee in the passage of the draft canons through the Convocation of Canterbury and the Church Assembly. The report did not appear out of the blue. From the latter part of the seventeenth century onwards there had been increasing frustration in the church (exacerbated by the doubtfully constitutional inhibition of the Convocations from 1717 to 1852) at its inability to revise the rules of its common life as and when required. The recovery by Convocations of their law-making role was seen, from the eighteenth century, as an issue of justice towards an increasingly self-conscious national church, and by some members of Parliament as a means of removing contentious and time-consuming legislation from an ever-burdened parliamentary agenda. In 1904, the historian Herbert Paul asserted that the restoration

¹ The untimely death of Canon Peter Boulton on 17 November 1998 robbed the Church of England of a dedicated priest and canonist, whose service to the governance of the Church and the functioning of the Ecclesiastical Law Society was immeasurable. As a tribute to him, and with the consent of his widow, the Society here publishes an abridged version of a dissertation submitted by him to the Cardiff Law School as part of the LL. M. in Canon Law, entitled 'Revision of the Canon Law of the Church of England' (University of Wales, Cardiff, 1996). The dissertation, which builds on a paper given by Oswald Clark in 1992, has been edited by Norman Doe, Mark Hill, and Robert Ombres OP.

² E. G. Wood, *The Regal Power of the Church: or, the Fundamentals of Canon Law* (Cambridge, 1888; Westminster, 1948), p. vi.

of these ancient synods was ‘chiefly due to Bishop Wilberforce outside, and Mr Gladstone inside, the Cabinet. The minister prevailed over the indifference of the Premier, and the Bishop conquered the timid resistance of the Primate’.³

As soon as practical (between 1866 and 1873) Convocations applied themselves to producing a revision of the 1603 Canons. Work ceased with the enactment of the unpopular Public Worship Regulation Act 1874. Long delays resulted, and it was not until 1879 that a report and 94 canons appeared, but no action was taken until 1939.⁴ Differences over liturgical practice spawned a series of ecclesiastical and civil actions and led to the Royal Commission of Ecclesiastical Discipline (1904–06) which did little to solve the immediate problems, but placed on the agenda of Convocations the possibility of revising the 1662 Prayer Book and the ecclesiastical courts.⁵

In the meantime much had happened on the broader, but interconnected, front of freeing the church to take responsibility for its own life. The Welsh Church Act 1914 had showed the radicals the folly of allowing disestablishment to become a political football—a prospect against which the Selborne Commission on Church and State had set its face. It was this commission’s report,⁶ and the popular Life and Liberty Movement’s demand (led by William Temple) for a degree of autonomy within the establishment, that led quickly to the Church of England Assembly (Powers) Act 1919. With the broader battle won, the Lower House of Canterbury Convocation asked for a joint committee to report on ‘the whole question of the revision and codification of the canon law’, but the ever cautious Archbishop Davidson temporised.⁷

In fact, the longdrawn-out and unwise attempt to obtain direct parliamentary approval for the revision of the 1662 Prayer Book by means of the 1928 Prayer Book Measure effectively shelved the suggestion. However, its rejection certainly moved the bishops’ minds towards canonical reform as the primary objective, so that through it liturgical reform would be achieved. Whilst principles enunciated in an Act of Convocation resolved the question for most clergy and parishes,⁸ there remained a general unhappiness about the outdated laws which still governed the church’s common life and to which there could be an appeal in case of ecclesiastical or civil action by a litigant. Archbishop Davidson’s *quietus* on the resolution had not killed it. One sign of this was the publication in 1929 of a translation of the canons contained in Lyndwood’s *Provinciale*, in which reference was made to a petition to the new Archbishop of York (Temple) requesting the appointment of a committee to ‘provide an exposition of the canon law’, for which the translation was intended to be an aid.⁹ The petition seems to have disappeared, but Archbishop Temple was persuaded of the need for canonical revision. The Archbishop also reflected on the nature of canon law:

‘I think one of the greatest calamities which has befallen the church is the assimilation of canon law to statute law. Strictly speaking a canon is not a law at all. It is a rule – expressing the general mind of the church for the guidance of its officers

³ H. Paul, *A History of Modern England* (London, 1904) (5 vols), II, 394.

⁴ The new Archbishops’ Commission acknowledged its debt to its predecessors: *The Canon Law of the Church of England, being a Report of the Archbishops’ Commission on Canon Law* (London, 1947), p. 87 (hereafter referred to as the Canon Law Report).

⁵ The Report declared: ‘the law of public worship in the Church of England is too narrow’, and ‘the system of ecclesiastical courts has broken down’.

⁶ The Archbishops’ Commission on Church and State, chaired by Lord Selborne, reported in 1916.

⁷ G. K. A. Bell, *Randall Davidson* (London, 1935) (2 vols): ‘I am sure there is a great deal to be said before we can decide that such a committee should go seriously to work’.

⁸ Rejection in 1929 drew from both Provincial Houses of Bishops (supported by the Lower Houses) a Statement of Principles to be followed during the present emergency and until further order be taken: see H. Riley and R. J. Graham (eds.), *Acts of the Convocations of Canterbury and York 1921–1970* (London, 1971), pp 65–68.

⁹ J. V. Bullard and H. C. Bell (eds.), *Lyndwood’s Provinciale* (London, 1929), p. xiv.

and members . . . It is to be observed with reverent regard and followed with that freedom of spontaneity which belongs to the spiritual life for the regulation of which it is drawn up. Nothing could more conduce to the true welfare of our church than a recovery of the original sense of canonical authority as something which claims not detailed conformity but reverent loyalty. We need not only a revision of the canons, but a recovery of the true nature of spiritual authority'.¹⁰

The next we hear of the matter is the appointment in 1933 of Joint Committees of both Convocations with terms of reference 'to enquire into the meaning and obligations of the Oath of Canonical Obedience'. From the subsequent report¹¹ we learn that memoranda from Canon Bullard and Dr Sparrow Simpson, and two draft reports by Bishop Kirk of Oxford, had been considered but that no decision was made. However, the York committee continued with the help of notes from Bishop Walter Frere of Truro, and completed a report with motions attached dated 31 May 1934. The brevity of this four-page report belies its erudition and practicality. It could have provided one of the building blocks for the 1939 Commission, yet there is no sign of this. The report and motions were moved by Bishop Burrows of Sheffield in Convocation on 7 June 1934, and carried after a brief and welcoming speech by the President, Dr Temple, who stated:

'I would only say myself that I welcome the resolution personally. I think we are in very great difficulties through the existence of admittedly obsolete canons. Nobody knows which canons can be regarded as operative and which as non-operative, except those which have quite lately been amended and promulgated afresh in amended form. This is a great hindrance to the settlement of many questions that come up for decision. I do not deny that the task is going to be a difficult one, but that this is no reason why we should not begin'.¹²

In the following year the Cecil Commission recommended the appointment of 'an authoritative Commission to undertake what has been long overdue', a revision of the canon law.¹³ The Canterbury Convocation took four more years to respond to this high-powered nudge, but on 24 May 1939 it requested the two presidents for a commission 'to consider the whole question of the revision and codification of the canon law'.¹⁴ Lang and Temple lost no time in appointing the Bishop of Winchester, Cyril Garbett, as its chairman.

(b) *The Commission: Membership, Terms of Reference and Principles of Revision*

The archbishops gave a clear signal of the importance of this work by awarding the chair to a senior and highly experienced bishop, with George Addleshaw, already a knowledgeable canonist and vice-principal of St Chad's College, Durham, as secretary. There were fourteen other members, nine clerical (including a bishop, two deans, an archdeacon, a canon, and two canon-professors),¹⁵ and five lay persons (with legal and academic experience).¹⁶ These formed a scholarly, yet pastorally and professionally experienced, group of which ten held doctorates in divinity or law and

¹⁰ Quoted in Canon J. V. Bullard, *Standing Orders of the Church of England* (London, 1934) (written in 1929), pp v, vi.

¹¹ Convocation of York, *Report of the Joint Committee on the Oath of Canonical Obedience* (1934), no 414.

¹² *York Journal of Convocation*, 7 June 1934, pp 26–29 at p. 29; *Report of the Joint Committee on the Oath of Canonical Obedience* (1934), no. 414, Appendix, pp xxiv–xxvii (see Riley and Graham, p 14).

¹³ Archbishops' Commission on Church and State (1935) (Lord Robert Cecil), p 93.

¹⁴ Riley and Graham, p 14.

¹⁵ Bishop G. Chase of Ripon; Deans E. Mimer-White and E. G. Selwyn; Archdeacon C. J. Grimes; Canon E. W. I. Hellins; Canon-Professors C. Jenkins and R. C. Mortimer; Prebendary A. J. MacDonald; and the Revd P. Ward.

¹⁶ The Hon Sir Harry Vaisey; Chancellor F. H. L. Errington and Mr E. F. Jacob. Later, Professor A. Hamilton-Thompson and Chancellor W. S. Wigglesworth were added.

four others held research degrees. Among them, they had acknowledged experts in biblical, historical, liturgical and moral theology, church history and in canon, ecclesiastical and civil law. Due to wartime restrictions, no full meetings took place until 1943, but much was done by individuals and small groups in Oxford, Cambridge, Durham, London and York. The vital role of co-ordinator was played by Addleshaw—himself a considerable historian of canon law and draftsman of the Canon Law Report and canons. The tone and style of the work was set by Garbett who, as Professor Jacob later testified, was ‘anxious that the historical and theological basis of each new canon should be clearly apparent’, and determined ‘that [their] task and duty was to give the Church of England *a working code of rules*’, seeing ‘his main interest, and the object of his determination, [in] its practical value to the ordinary incumbent as well as to the bishops’. Garbett ‘was a wise and practical Chairman, anxious to make the new canons useful as well as interesting, and to cast them in good literary form without archaic phraseology’.¹⁷

The Convocations’ resolution of May 1939 set out no terms of reference. These were provided later that summer by the primates, bearing all the signs of having been drawn up by Sir Harry Vaisey, their Graces’ principal adviser on matters regarding ecclesiastical law:

‘A. To consider and report on the questions:

(1) What is the present status of Canon Law in England (a) as regards canons in force before the Reformation; (b) as regards canons made and promulgated since the Reformation? and

(2) What method should be followed to determine which canons are to be regarded as obsolete and to provide the Church with a body of canons certainly operative and apart from which none would be operative or reasonably regarded as operative?’

B. To prepare, if after such consideration this seems expedient, a revised body of canons based on the conclusions reached under A above, for submission to the Convocations.’¹⁸

No agreed guidelines were provided, apart from these purely legal and historical terms. From a consideration of Garbett’s own preface and from statements dispersed throughout the text of the Canon Law Report 1946, there appear to emerge seven guiding principles:

1. To preserve the pre-reformation canon law except where expressly otherwise provided with no repeal or abrogation of earlier law (unlike the Roman Catholic *Codices* of 1917 and 1983).

2. To avoid any attempt to rebuild the medieval system or cover every aspect of church life, but only to remedy deficiencies as had happened in 1603.

3. To make no attempt to teach doctrine but rather to teach the bishops and clergy their duties. Exhortation was out of place, so that the draft canons would ‘contain no challenges, point to no grand ideals . . . and contain as little as possible of the dreams and ideals peculiar to any one age’.

4. To ensure the language of the canons was never verbose, but always sonorous, dignified and in keeping with modern English usage.

5. To reject the request for codification as unattainable, repugnant and unknown to English law, complex and time-consuming.

¹⁷ C. Smyth, *Cyril Forster Garbett, Archbishop of York* (London, 1959), p 370.

¹⁸ Canon Law Report, Introduction, p viii.

6. Recognising that canon law is always provisional in character, Garbett made a strong point of indicating the need in a living church 'to amend existing canons and add to their number as new needs arise'.

7. Continuity with the ancient law of the church being important, to annotate each of the sections of the canons of the new code.

(c) *The Canon Law Report 1946*

The Commission's report, completed by May 1946, was published in January 1947. Chapter I, briefly and tersely, sets out the justification for 'Law in the Church of Christ' by stating its ecclesiology and canonical theory. The former is minimal and relies heavily upon all too unworked and simplistic an identification of the church and kingdom, which fits ill even with the theology of the 1930s and 1940s. The latter, 'the right of the church to make rules and regulations for its members', is well described by appeal to scripture,¹⁹ and *Of the Lawes of Ecclesiastical Polity*,²⁰ from which it is provided with Hooker's distinction between matters of scriptural faith and dominical authority, and those capable of change in new situations of the church's ongoing life. Canon law is stated to be facilitative and prohibitive, and where necessary coercive, with a distinct bias to utility and above all promoting the chief aim of the canon law's existence – *pro salute animae*.

After examining the general canon law under the titles of *Jus Antiquum* and *Jus Novum*, lucidly set out in Chapters II and III, the Commission turned in Chapter IV to the complex post-Reformation period with a view to up-dating Gibson's *Codex Juris Ecclesiastici Anglicani* of 1713. Having rejected that course, the Commission decided to concentrate its efforts on the revision of the 1603 Canons, which would facilitate the approach to Parliament. Indeed, all through the Canon Law Report and the revision process, it seems that the tactical aim of 'tailoring' the final product so as to make rejection by Parliament virtually impossible had almost overtaken the stated aim, that is, to provide the church with an up-to-date set of workable canons. There is no doubt that the rejection of the 1928 Prayer Book had left traumas in the minds of the church's senior administrators and lawyers which they were unwilling to risk re-opening.

Chapter V describes the history and consequences of the 1603 canons, and is followed by a consideration in Chapter VI of the codification requested by the motion of the 1939 Convocations. The Commission preferred the route of providing for the church's immediate needs by up-dating existing canons and adding others, making sure that principles of canonical jurisprudence were preserved by annotation, whilst giving authority to the archbishops to 'interpret and apply any pre-Reformation canons or principles which are not dealt with in the new code'.²¹ This authority, in draft canon VIII and related to draft canons VII and IX, was vital to the whole collection of 134 canons and their use in the ecclesiastical courts, the reform of which was urged so strongly in the last paragraph of the Canon Law Report.²²

The remainder of the Canon Law Report was taken up by the well-produced draft 'Constitutions and Canons Ecclesiastical of the Church of England with Annotations', set out in eight sections under the following headings with their historical notes in the margins:

1. The Church of England (1–11)

2. Divine Service and Administration of the Sacraments (12–51)

¹⁹ Matt 18:18; Matt 16:19 and 19:28; Luke 22:28–30 and 10:16; 1 Cor 11; Acts 15.

²⁰ Hooker, *Of the Lawes of Ecclesiastical Polity* (1594), III.1 and 8.

²¹ Canon Law Report, p 85.

²² Canon Law Report, p 98.

3. Ministers, their Ordination, Function and Charge (52–83)
4. The Order of Deaconesses (84–86)
5. The Lay Officers of the Church of England (87–95)
6. Things Appertaining to Churches (96–111)
7. The Ecclesiastical Courts (112–125)
8. The Synods, Assemblies and Conferences of the Church of England (126–134).

The whole is followed by a memorandum on 'Lawful Authority' by the Hon Mr. Justice Vaisey. The bulk of the Commission's work was completed in three years, achieved with *no periti* for reference nor a well-equipped secretariat to give supporting service.

(d) Attitudes to the Report

Not everyone was happy with the Canon Law Report on its publication, nor with the prospect of revision. Yet it is significant that few such comments surfaced before the process was well on its way. In 1948 the *Crockford's* editorial gave it only a brief glance and made encouraging noises in the 1951–52 edition. It was not until the next edition that the writer (widely assumed to be Dean Matthews of St Paul's) judged that 'to frame laws governing too many activities of the clergy and too many aspects of church life and practice is rather a symptom of moral and spiritual weakness than of vigorous life'.²³ The same dignitary, in the January 1960 Convocation Sermon, queried whether 'legislative zeal had not been too prolific in canon-making', a comment swiftly and comprehensively countered in Geoffrey Fisher's brilliant Presidential Address in which he reminded newly elected proctors of the progress already made on completing the revision, the purpose of which was 'at once pastoral and evangelistic' and vital to the church's life and well-being.²⁴ Histories and biographies of the period have tended to disparage the statement of Dr Iremonger at the end of his biography of William Temple that the church's leaders were right to place the Canon Law Report at the forefront of post-war reform so that the church could be freed to pursue its mission to the country.²⁵ There was in the church a general consensus that Temple's labours in so many departments of life in church and state indicated that this was the way his all too brief primacy was leading. Canon Paul Welsby viewed canon law revision as of 'dubious' relevance, and found it 'an extraordinary feature' of the church's post-war life that such an 'inordinate amount of time' had been devoted to it.²⁶

(e) The Rôle of the Archbishops

In retrospect, the archbishops were, at the time, a good thirty years ahead of Roman Catholic thinking which needed Pope John XXIII and Vatican II to transform it. As to Garbett (Archbishop of York 1942–56), his own writings, his wise leadership of the revision commission, his careful presidency of the York

²³ *Crockford's Clerical Directory 1953–54* (Oxford, 1954), pp xii, xiii.

²⁴ *Chronicle of the Convocation of Canterbury*, 19 January 1960, pp 9, 10.

²⁵ F. A. Iremonger, *William Temple* (Oxford, 1948), p 357.

²⁶ P. A. Welsby, *A History of the Church of England 1945–1980* (Oxford, 1984), pp 41–44. Welsby became a proctor in the Canterbury Convocation four years after Fisher's retirement, by which time most of the canons had received the royal assent. The remainder, promulgated in 1969, being more controversial, took up a large amount of his first five years, perhaps leaving him with a one-sided view of the whole project. In A. Hastings, *A History of English Christianity 1920–1985* (London, 1987), pp 150, 151, 439, only two sentences are devoted to the revision process, whereas the Roman Catholic Code of 1917 merits a full page of his racy account of the period.

Convocation, and until 1956 his loyal support for his brother primate, provide adequate testimony to his own enthusiasm for the revision and its successful completion. Geoffrey Fisher (Archbishop of Canterbury 1945–61) harboured no doubts about the value that a fresh canon law would bring to the life and work of the church. Welsby observes that Fisher was ‘never happier than when he was spending long hours in drafting canons in exact phraseology’.²⁷ Intended as a criticism, to those who knew Fisher it becomes a compliment to his utter devotion to the task of presiding over a working assembly as it struggled to encapsulate its oratory into brief canonical statements. He had been a headmaster, known throughout the church by that epithet, and brought the mind and talents of a headmaster to restore order and relevance to the church’s life and mission. From him there came a leadership of vision, clarity, confidence and authority. As early as 1947, he affirmed his belief that reform ‘will restore, as nothing else can, essential habits of good order and good conscience within the church’.²⁸ From him, this project was no irrelevance compared with the great challenges facing post-war church and nation. It was part and parcel of these same challenges by enabling its people to see ‘what God is demanding of them in the setting of their citizenship’.²⁹

Time and time again, as some became weary, confused or dejected, Fisher rallied the Convocation, the Church Assembly and the church at large; ‘We are engaged in a great work’, he said in 1957, ‘by which, I am certain, God means to increase yet more the unity of the family [of God], that with one mind and one mouth we may glorify God’.³⁰ Fisher was convinced that canon law could remove uncertainty, confusion and conflict in the church (his London experience had taught him hard lessons about their destructiveness) by providing ‘a statement of the norm of family regulations to which Bishops, Priests and Deacons can willingly conform . . . and by which the laity can be secured in their domestic liberties and protected from disturbance of their rights’.³¹ Fisher was also aware of three other issues which, if ignored, could jeopardise the whole exercise. First, the need for enforcement and sanctions was feared by some of the clergy. To them he spoke of the need for family discipline to deal with the inevitable eccentrics and potential schismatics whose disloyalty must be contained only by ‘what may be universally accepted as the norm, to be administered and obeyed by normal people, with, as its normal penalty, where a penalty is required, that of admonition’.³² Secondly, concerning the church/state relationship, and that of ecclesiastical and statute law, he warned the church legislators against seeing revision as an exercise in rivalry but rather as an extension of the present partnership with the state. Thirdly, the need for a means of continuing revision and interpretation, since canon law must never again be allowed to get out of date, or be seen as ‘inflexible’ for want of a knowledgeable and experienced body of experts to guide the church.

Fisher had caught the vision of Temple and Garbett, and was just the man to carry through this reform to provide the church with a modern canonical framework in spite of criticism. He, who described the project as ‘the most absorbing and all-embracing topic of my whole archiepiscopate’,³³ was ill-served by his biographer, Edward Carpenter, who devoted only ten out of the 820 pages to this story. However, Carpenter had long before betrayed his conviction that the revision had been a diversion from the more important post-war issues when in 1960 he had said ‘Lawful

²⁷ Welsby, p 42.

²⁸ *Chronicle of the Convocation of Canterbury*, 20 May 1947, p 35.

²⁹ *Chronicle of the Convocation of Canterbury*, 20 May 1947, p 34; Welsby, p 42.

³⁰ *Chronicle of the Convocation of Canterbury*, 21 May 1957, p 8.

³¹ *Chronicle of the Convocation of Canterbury*, 19 January 1960, p 9.

³² *Chronicle of the Convocation of Canterbury*, 10 January 1960, p 9. He reminded us that Psalm 23 in the Book of Common Prayer is headed ‘*Dominus regit me*’.

³³ W. Purcell, *Fisher of Lambeth: A Portrait from Life* (London, 1969), p 206.

authority will not help the Church to be born anew in the society in which it lives'.³⁴ The biographer's unrevised beliefs will have to be measured against longer-term evaluations of his more distinguished subject of whom his successor as primate and former Repton pupil could write:

'Fisher's gifts of mind were remarkable. With a skill in administration equal to that of anyone in any walk of life in the country, he brought into administration that care for people which gave the tone to all his work. So he led the way in practical reforms in the church, like . . . the reshaping of the church's canon law and the taking of the first steps towards the sharing together of bishops, clergy and laity in the church's government'.³⁵

The attitude of Michael Ramsey (Archbishop of Canterbury 1961–74) to the revision was never better expressed than at the joint meeting of Convocations called on 18 February 1960 to hasten the process:

'After all, law can never have more than a subordinate place within the whole mission and the activity of the Church of God. It would be misleading if ever an impression were given that the Church's chief preoccupation is the making of its own rules. . . . The agenda for today opens a new chapter. If the Convocations agree to the proposals concerning lawful authority and if the result receives the Royal Assent, then the Convocations will have in their hands new powers for the revision of our forms of worship . . . [and] gain a fresh enlivening of their work . . . I am happy that we proceed with the agenda'.³⁶

This indicates that his concern that the new legislative freedom should be used for liturgical renewal, so the apparent neglect in the Ramsey biography by Owen Chadwick is amply compensated by its emphasis on the archbishop's concern for lawful liturgy and worship. He had been ordained in 1928 at the height of the battle and the disappointment over the revised Prayer Book. He longed for the day when the church recovered its freedom to create its own forms of worship. So it gave him the greatest satisfaction not only to have set the Prayer Book (Alternative and Other Services) Measure 1965 on its parliamentary course, but even more that one of his last primatial duties, on his 70th birthday, was to move successfully and unopposed in the House of Lords the passage into law of the Church of England (Worship and Doctrine) Measure 1974. Under this, the canons and regulations for all subsequent liturgical revision, notably the Alternative Service Book 1980, further experimental services and forms of assent were freed from parliamentary control.³⁷

My personal assessment of this period, as a former pupil in the Durham Theology School and a York proctor at the time, is that in 1960 Ramsey accepted that the work of canon law revision was well on its way to completion and skilfully handled by Canons Kemp and Addleshaw in the Convocations. This enabled him to pursue the 'lawful authority' issue raised by the Vaisey memorandum³⁸ on a much broader canvas. The renewal of liturgy was so much nearer his own theological and spiritual interests,³⁹ and the church's practical needs, as he saw them through the eyes of the younger clergy (many of whom he had taught at Lincoln, Durham and Cambridge)

³⁴ F. F. Carpenter, 'Canons and Character' in *Theology* 63 (1960) 397–402 at p 402.

³⁵ M. Ramsey, *Canterbury Pilgrim* (London, 1974), p 174.

³⁶ *York Journal of Convocation*, January–February 1960, p 133.

³⁷ See D. Gray, 'The Revision of Canon Law and its Application to Liturgical Revision in the Recent History of the Church of England' in *The Jurist* 48 (1988) 638–652, where the full story is told by my friend Donald Gray, Canon of Westminster and one-time member of the Liturgical Commission.

³⁸ Canon Law Report, pp 215–223.

³⁹ A. M. Ramsey, *The Gospel and the Catholic Church* (2nd edn) (London, 1956), chs 7 and 8, and *The Glory of God and the Transfiguration of Christ* (London, 1949), chs 9 and 13.

now working in the new towns, housing estates and industrial areas among the young families of post-war England.⁴⁰

In sum, the factors which brought about revision were genuinely demanded by the needs and growing self-awareness of the church and its leaders, supported by the Convocations and the House of Laity; all the primates from Temple to Ramsey during the crucial period from 1939 to 1974 were sure that this was the church's next step in pursuit of its post-war aims and were ready to give unstinting leadership for its achievement. The Commission had produced a well-based report which, limited only by the general desire of the church to bring about change within the establishment, was ready to provide the church with a modern collection of useful canons; and draft canons had been produced with due regard for traditional principles of canon law, taking into account statute and case-law since the Reformation. The way was well-prepared for the legislative stage to proceed.

II. THE LEGISLATIVE STAGE OF THE REVISION

(a) *Presentation of the Commission's Report to Convocations*

The Canon Law Report was introduced into a joint meeting of the two Full Synods of the Convocations of Canterbury and York on 20 May 1947 with the Primate of All England presiding. In his Presidential Address, Dr Fisher referred to matters of moment to the church and nation. The main part of his address was devoted to the report and to the prospect of the church possessing an authoritative body of canons to which obedience could be required and whose content had to be tested against the common mind of the church, its final form not contrary to statute law, and its acceptability manifest to the church's laity.

Fifty years on, it is possible to see presaged in these sentiments, not only the passage into law of the revised canons, but also the Ecclesiastical Jurisdiction Measure 1963, the Synodical Government Measure 1969, the Worship and Doctrine Measure 1974, the Crown Appointments Commission procedure for the appointment of diocesan bishops, and other modifications of the church's position *vis-à-vis* the establishment. All this has been done, in C. P. Scott's words to William Temple, 'from within'.

Both primates, as Temple had done, saw canon law revision as a first step in the freeing of the church for its mission to England, and enabling it to work for that end more closely with other churches as equal partners. In this they were massively supported in the recent Convocations and Church Assembly elections of 1945. The resolution after debate on May 20th was positive and immediate:

- (a) That the report of the Canon Law Commission be received.
- (b) That Convocation shall give consideration to the Canons proposed in the report, with a view to producing a revised body of Canons.
- (c) That his Grace the President be requested to appoint a joint committee of both Houses whose duty it shall be to bring the proposed Canons before Convocation in the most convenient order and to advise Convocation as to methods of procedure in dealing with them.
- (d) That the joint committee shall be empowered to consult with any similar committee appointed in the Convocation of Canterbury/York with a view to co-ordinating the actions of the two Convocations in this matter'.⁴¹

⁴⁰ M. Ramsey, *Canterbury Pilgrim*, pp 9, 10: 'The Canterbury pilgrim rejoices to have seen the Church of England use its powers for liturgical reform in recent years in such a way as to help people with greater understanding to *do* the liturgy and to *be* the Church.'

⁴¹ Riley and Graham, p 14.

(b) *The Legislative Process*

The legislative process should not be seen as an easy transition into law from the carefully prepared draft canons of the Commission. Their content had to be tested against the common mind of the church in its synods and in a form not contrary to the laws and customs of the state.⁴² This meant that the process itself threw up the need for two further criteria of acceptability as Fisher had indicated.

First was the recognition of the place of the laity in the revision. Dr Fisher made his point on the long-term importance of associating the laity with Convocation and in doing so laid the foundation for the Synodical Government Measure 1969 and Canon H I. Whilst insisting on the authority of Convocations in legislating for doctrine, liturgy and church order, nevertheless he regarded it as '... unwholesome and contrary to new ideas ... that the clergy should exercise an authority over canon law without reference to the laity'.⁴³ Moreover, although the reference of canons to the Church Assembly was unsuitable and unconstitutional, it was agreed that as an 'act of grace' the House of Laity should be taken into 'full partnership' so that its observations could be considered before the canons were given final approval by the Convocations.

Second was the adequacy of Convocation procedures. These had to be sufficient to satisfy the stringent requirements of Home Office lawyers for creating measures capable of amending – even repealing – statute laws. The Ecclesiastical Committee of Parliament required not only to see that the canons were acceptable to a democratically elected House of Laity, but also that they could not be faulted on the grounds of improper process or unconstitutional action. With his accustomed thoroughness, Fisher had foreseen these potential problems in good time, had prepared the case for revising the canons, and had submitted it as a memorandum to the Lord Chancellor, the Prime Minister and the Home Secretary. In it he stated that the Convocations proposed to go ahead on their own authority and would approach the Crown at a later stage in order to ensure that their actions were consistent with the requirements of Parliament. A subsequent approach to Mr Attlee resulted in a committee comprising Sir Thomas Barnes (Solicitor-General), Sir Alan Ellis (the parliamentary draftsman) and Chancellor Walter Wigglesworth (Vicar-General of the Province of York), hereafter the Barnes Committee.

(c) *The Procedure*

On the advice of the Barnes Committee, each draft canon was considered in three stages. First, the Preliminary Stage being a 'free for all' debate in each of the Convocations with amendments accepted from the floor without notice. Secondly, the Formative Stage when all amended versions were reconsidered in the light of comments from the Steering Committee and the Barnes Committee. Amendments were then accepted only after notice with a view to producing a single text in near final form. Thereafter, the Final Stage at which a final form was then produced for agreement as for Royal Assent.

(d) *The Constitutional Position*

The constitutional position was scrupulously observed throughout the whole process in accord with Archbishop Fisher's first approach to the Prime Minister in 1947, so as to minimise any tussles with Parliament. In May 1953, the revision process was formalised by the archbishops seeking the Royal Licence. What the new Queen Elizabeth thought of it is not recorded, but it was granted in April 1954 for the Convocations to confer and constitute new canons because, as the Royal Licence quaintly but accurately stated, 'the effluxion of time and divers changes of circum-

⁴² Submission of the Clergy Act 1533, s 3.

⁴³ *Chronicle of the Convocation of Canterbury*, October 1947, p 182.

stances' has meant that the existing canons are 'neither well known nor so well observed and held in reverence as is meet, nor convenient whereby doubts have arisen and do arise to the hindrance of the Church of England'. Thus new and amended canons could now be made 'for the honour and service of Almighty God, the good and quiet of the Church, and the better government thereof'.⁴⁴

(e) *Canonical Language and its Purpose*

Canonical language and its purpose did present problems both in vocabulary and style. The Commission wanted it to be dignified but not archaic, insisting that 'Law, like good liturgy, should be restrained, impersonal, and contain as little as possible of the dreams and ideals peculiar to any one age'.⁴⁵ Bishop Spencer-Leeson, speaking of the burial canon said, 'the object of a canon is to make law, not to declare belief or to write history', so it commands, prohibits, or declares factually what the law is. Fisher responded that there were occasions when 'a canon can be a regulation designed to encourage a course without making it compulsory'. Later, Canon Eric Kemp wrote that the objection to certain canons being exhortation and thus not law 'is based upon a grave misunderstanding of canon law'.⁴⁶ Some canons, even at Nicaea, are explicit enactments with penalties, but others are concerned with norms of conduct and indicate standards 'which the church thought ought to be observed but was not prepared to enforce by action at law'. In his view there was a need to recover the fullness of the ancient inheritance of the church's jurisprudence. This was in fact what Fisher was trying to teach the church's synods *in via*.

(f) *Progress in Canon-Making*

The Commission's draft canons stood up remarkably well to intensive debate in the Convocations and House of Laity. Occasionally, when events had overtaken them they to be replaced.⁴⁷ However, ten years after the 1954 Royal Licence for the revision was granted, 28 canons in sections A, D and G (later A, D and F) were promulgated in St Margaret's Westminster, the parish church of Parliament, and 22 of the 1603 Canons declared repealed.

(g) *Potential Areas of Difficulty*

By October 1966, only four canons stood out from those ready for the Royal Assent. Of these, three were potential minefields as the Home Office and the Ecclesiastical Committee of Parliament were specifically concerned to ensure that no canons were presented which infringed the rights or citizens or were contrary to statute. They were dealt with in this way:

Admission to Holy Communion: draft Canon XXIV awaited the Archbishops' Commission on Intercommunion (Tomkins) which reported in May 1968 offering a measure and canon in Appendix V. This was rejected after a long debate in favour of Canon B 15A moved by Canon Professor Geoffrey Lampe.

The Seal of the Confessional: it had been represented to the archbishops by their advisers, Wigglesworth and Willinck in addition to Sir Thomas Barnes, that the law of evidence was so firmly set against any legal privilege for priest/penitent communications (despite the existence of Canon 113 of 1603 and continuity of practice under the 1662 Book of Common Prayer) that Parliament would reject even a reasoned request for its belated recognition as a statutory privilege. Moving the deletion of the offending clause 5 of the interim Canon 35,⁴⁸ Canon Kemp observed that as the law

⁴⁴ *Chronicle of the Convocation of Canterbury*, 11 May 1954, p 3.

⁴⁵ Canon Law Report, p 88.

⁴⁶ E. W. Kemp, *An Introduction to Canon Law in the Church of England* (London, 1957), pp 81, 82.

⁴⁷ Those on marriage, for example, were affected by the Marriage Act 1949 and the Matrimonial Causes Act 1957.

and practice of the courts did not recognise the seal of confession as in any way absolute, to go ahead would require legislation in Parliament. 'That' he remarked drily 'obviously raised very grave questions'. Continuing, he outlined 'what might be called more properly political advice' which was 'that there would be the very strongest opposition in Parliament to any attempt to get the law changed in this respect'. After a very contentious debate on the interim Canon 35 in which Fr Michael Bruce threatened to move 'that the Convocation do no longer continue with canon law revision if Clause 5 was withdrawn', it was agreed to replace the clause with the 1603 proviso and pass an Act of Convocation establishing the principle of the seal of confession for added emphasis. In his presidential address at the next meeting of Canterbury Convocation,⁴⁹ Dr Fisher, ever ready with a workable solution, gave a brilliant resume of the case for the legal privilege and the difficulty of presenting Parliament with a *fait accompli*, but supported the idea of the Act of Convocation as a solemn statement of the church's obligation to penitents. The very next day both Convocations, meeting in full synod, passed the necessary resolutions.⁵⁰

Marriage of the Divorced in Church: draft Canon XXXVI sought not only to state the lifelong and indissoluble union of Christian marriage in its preamble, but also to provide for a declaration of nullity by the bishop with his chancellor, if they decided there were good grounds for a secular divorce to be so described. This would then have enabled either party to contract a further lawful marriage *coram ecclesiae*. Garbett, Jacob and Jenkins had dissented from this in the Commission. Mortimer argued against it in May 1953 on the ground that there was no appropriate machinery in the church courts for declaring a marriage null and void. Bishop George Bell supported its intention but could not offer a practical solution. At this point (May 1956 and October 1957) Fisher was at his most comprehensively practical by suggesting the omission of the nullity clause, and providing for a new canon (now Canon B30) of three clauses largely in the language of the 1928 Prayer Book, stating what marriage is in the teaching of Christ and the church; that this is to be found in the marriage service; and that there remains an obligation upon the clergy to prepare couples on the basis of this doctrine. This was agreed with the back-up of another Act of Convocation of October 1957, yet in spite of many attempts since that date the church still has no agreed method of dealing with those wishing to be married after divorce in the civil courts.

The Marriage of the Unbaptised: draft Canon XXXVII was much discussed, especially in August 1959. Under pressure from the Home Office on the rights of the citizen it was removed from Canon B 32 in 1966, but was placed on the agenda of the Chadwick Commission on church and state in 1966 for further consideration. It felt that a pastoral discretion for the parish priest would produce the best solutions if a regulation were required. The matter is still open and uncertain.

(h) *The Canon Law Standing Commission*

On 10 October 1966, by resolution moved by Bishop Gerald Ellison and Canon Eric Kemp, both Convocations requested their presidents 'to appoint a Standing Canon Law Revision Commission on which both clergy and laity shall be represented to keep under review the state of the canon law . . .'. In reply to the debate Ellison said 'It had always been in the minds of those who were principally concerned with canon law revision that means should be provided, once the main task was completed, whereby a continual watch was kept of the situation so that canon law never again

⁴⁸ *Chronicle of the Convocation of Canterbury*, 1 October 1958, p 250.

⁴⁹ *Chronicle of the Convocation of Canterbury*, 28 April 1959, pp 157–161, and 29 April 1959, p 231.

⁵⁰ Riley and Graham, p 111.

became so hopelessly out of date and irrelevant'.⁵¹ It was carried in all four Houses. This was the commitment promised by Dr Fisher at the outset of the revision.

The Commission survived the transition into synodical government which voted to make it a permanent Commission of the Synod in November 1970.⁵² Remarkably, in the 1975 Report on the Boards and Councils Structure of the General Synod,⁵³ and the debate upon it on 30 June 1975, the demise of the Commission passed without comment on the basis of the report's assertion that it would be better and cheaper to treat canon law in the same way as other measures, i.e. within the secretariat. The only remaining sign of the Commission's responsibilities was 'an episcopal or clerical member of the Standing Committee to have an overall responsibility for overseeing the preparation of draft canons'.⁵⁴ The person was almost certainly Bishop Ellison, then Bishop of London and spokesman for the House of Bishops on matters of canonical and constitutional law, but of any mention of his successors there is no trace in the archives. The question as to whether the synod and the church as a whole now needs to revive the Commission, particularly in the light of the 'Turnbull' proposals, is addressed below.

(j) *Completion of the 1947 Revision*

On 6 May 1969, the second tranche of 84 canons received the Royal Assent and Licence and the remainder of the 1603 Canons, except for the proviso to Canon 113, were repealed. Thus in front of a joint meeting of both Convocations, the 112 canons of the revision were finally promulgated after 22 years to replace the original 141 of 1603. The Instrument of Enactment was signed by the archbishop and bishops present and subscribed by the prolocutors for the Lower Houses, of whom one was the Secretary of the Revision Commission, George Addleshaw, by then the Dean of Chester.

III. CRITIQUE OF THE CANON LAW REVISION AND ITS RECEPTION INTO THE CHURCH'S LIFE

In 1947 the draft canons of the Canon Law Report seemed comprehensive enough but in the light of fifty years' experience the present collection has some remarkable omissions in terms of practical, pastoral and theological issues. Nor is it possible to separate these matters into neat categories. An appropriate example of this is the position of the laity in the church. At the end of the revision there remained, and still remain, seven outstanding issues all of which affect the laity, but the first four are fundamental to any kind of canonical rules and concern the whole church.

(a) *The Ecclesiology of the Canon Law*

There is no preamble stating the ecclesiology basic to and interpretative of the canon law of the Church of England. The Canon Law Report's first chapter 'Law in the Church of Christ', is where one might expect to find an ecclesiology, but of it there is nothing apart from two quotations from Hooker regarding canonical theory and the statement 'the Church, being a society which is the Kingdom of Christ...'. The biblical basis is given only on two pages, and the bibliography includes no substantial work on the theology either of the church or the Kingdom. It is perhaps indicative of the low standing of canon law in the hierarchy of Anglican theological truths that no ARCIC document exists to show that the two churches share a tradition of an ordered common life inspired by a biblically and patristically based ecclesiology.

⁵¹ *York Journal of Convocation*, 10 October 1956, pp 243–245.

⁵² General Synod, *Report of Proceedings*, 5 November 1970, pp 74, 75.

⁵³ GS 254.

⁵⁴ GS 254, paras. 11, 12. Cf General Synod, *Report of Proceedings*, 30 June 1975, p 321.

(b) A Summary of the Elements of Church Law

No canon or canons exist to summarise the elements of the law of the Church of England as intended by draft Canons VII and VIII. These draft canons attracted such opposition from Home Office lawyers that they were withdrawn, leaving the church with no authoritative statement of its legal position *vis-à-vis* the state. This was recently tested in the civil courts in two separate motions for judicial review of the draft Priests (Ordination of Women) Measure 1993 and the Canon C 4B under it.⁵⁵ It is said that during the revision the state lawyers would have preferred to see the status and authority of canon law expounded in a preface or introduction to the canons, but the primates' Introduction made no mention of it.

(c) Obedience of the Laity to the Canon Law

The only obligation of general obedience to the constitutions and canons of the church lies upon the clergy and lay office-holders, even though draft Canon IX was intended to provide this by the additional phrase, 'and all other of the laity claiming the benefit of any of the ministrations of the Church'. The Home Office lawyers claimed it to be ineffective since it purported to bind the laity when only statute or common law could do that, so it was omitted leaving a large gap. From 1947, every effort was made to ensure lay participation in the revision; Dr Fisher affirmed it and the Addleshaw motion made it mandatory upon Convocations. Whatever may now be the standing of Lord Hardwicke's 1736 judgment and of *Bishop of Exeter v Marshall*,⁵⁶ it would seem that the case for obligation upon the laity of canons agreed since the establishment of General Synod in 1970 is unassailable.

(d) Dispensatory Powers within the Canon Law

Dispensatory powers are present among the canons, but there is no attempt to give them a rationale or summary. In the Canon Law Report there is a historical note on the dispensing powers of the Archbishop of Canterbury on the basis of the Ecclesiastical Licences Act 1533 to which Canon C 17, para 7, refers.⁵⁷ It appears the reference in the Act to dispensations given by the Archbishop of York and 'any other bishop or prelate of this realm' were discounted in the revision owing to lack of evidence. It beggars belief that no attention was paid to the Dispensation Commission appointed in 1935.⁵⁸ Canon C 18, para 2, states that the diocesan bishop has Ordinary jurisdiction, and Canon C 18, para 3, that he can delegate it, but 'nowhere is there a collection of all the scattered licences, faculties, discretions and permissions, most of which are really dispensations.

(e) The Re-Appointment of a Permanent Canon Law Commission

Although a permanent Canon Law Commission was regarded as indispensable to a living canon law and was appointed at the end of the revision, it no longer exists in any recognisable form. Until 1972 the intentions were respected of the primates from Temple to Ramsey who took canon law seriously. The abolition of the commission in 1975, and from 1981 the disappearance of any cleric to follow Gerald Ellison on the Standing Committee, betrayed a serious misunderstanding of the purpose of canon law and its place in the common life of the church, as Bishop Ellison foresaw.

⁵⁵ *R v Ecclesiastical Committee of the Houses of Parliament, ex parte The Church Society* (1993) *The Times*, 4 November, CA; *R v Archbishops of Canterbury and York, ex parte Williamson* (1994) *The Times*, 9 March, CA. Earlier the Court of Appeal had rejected appeals over the ratification of Canon C 4, stating 'there is no jurisdiction in the Court to enquire into the legislative processes of the General Synod any more than the legislative processes of Parliament: *Brown v Runcie* (1991) *The Times*, 20 February, CA, affirming (1990) *The Times*, 26 June.

⁵⁶ *Middleton v Crofts* (1736) 2 Atk 650; *Bishop of Exeter v Marshall* (1868) LR 3 HL 17.

⁵⁷ Canon Law Report, App II, pp 69, 70.

⁵⁸ *Dispensation in Practice and Theory* (London, 1944).

A permanent commission is still necessary for all the reasons adduced in 1966. It is needed to deal with, among other things: the interpretation of existing church law;⁵⁹ responsibility for authorisation of publications; consolidation and review of ecclesiastical statutes; collaborating with the General Synod and its departments; and helping the church as a whole to see canon law in its christian context.

(f) *The Spiritual Discipline of the Laity*

Guidance for the laity in spiritual discipline is an obvious *lacuna*. There was much debate in 1948–50 about a canon on this and in October 1948 both Convocations requested a statement of the obligations of church membership. There being no response because of the difficulty of defining ‘membership’, in 1953 both Convocations produced a full statement, headed ‘The Duties of Church Membership’, as an Act of Convocation.⁶⁰ By May 1954 this had become a resolution of the three Houses of the Church Assembly and later in the same year the archbishops issued a shorter version of the ‘Duties’.

(g) *Religious Societies in the Church of England*

No attempt was made in the revision, or since then, to include general rules for religious communities and societies purporting to be part of the common life of the Church of England and as to how far they should observe the canon law. The Canon Law Report reflected the Commission view that in 1939–46 it was premature and perhaps impossible to include a canon on the religious orders and communities.⁶¹ With fifty years of full experience, and the proliferation of societies following a religious rule and others voluntarily associated with a specific christian objective, there could now be a place for a group of canons of this kind.

CONCLUSIONS AND PROPOSALS FOR FURTHER REFORM

In writing this dissertation on canon law revisions, I have to admit to mixed feelings. In terms of the Church of England, disappointment with its efforts at law reform is mixed with the esteem in which I hold so many of those involved in it. Despite, and perhaps because of, the immense amount of work done to bring the canons up to date and still in accord with English law, they seem to have more of the nature of legality than spirituality. This is due to the small attempt made by the Commissioners to give them a theological dimension (an ecclesiology) which would root them into the church’s common life at every level. I am aware that Archbishop Temple could have done this, and Archbishop Fisher gave stalwart leadership to this end, but this failure most probably accounts for the lack of interest in the canons by clergy and laity.

I offer a number of suggestions which, if in some way adopted by the church, might give our carefully crafted canons the dynamic they need and deserve. My suggestions would in fact grow out of the critique made above in seven points, and they can be deduced from those criticisms. Some of the concrete outcomes of my proposals would include a permanent preamble to the canons, a definition by canon on the lines of draft Canons VII and VIII, a canon declaring the duty of all church people to be bound by the canon law, together with a carefully balanced polity of the rights and duties, a canon or set of canons on dispensation, and the reappointment of a permanent Canon Law Commission. The Archbishops’ *Guide to the Duties of Church*

⁵⁹ This is at present carried out by the Legal Advisory Commission of the General Synod but with no authority or personnel to prepare revisions or additions to the canon law, or to consider wider interfaces between such matters as law and ecclesiology.

⁶⁰ Riley and Graham, pp 132, 133.

⁶¹ See the Canon Law Report, p 86 and note 1.

Membership might be revised and issued as an exhortatory canon and, finally, the religious orders and societies might be approached again with a view to bringing them within the canonical structure of the church.

Canon law is about providing a structure for the life and work of the church in the world under the inspiration of the New Testament idea of *koinonia* or *communio*. The continual reshaping and updating of the church's canon law should have a high, but not overriding, priority so as to express and expedite an orderly dynamism across the whole of its organic life.

LONDON LECTURES

The Ecclesiastical Law Society is holding a series of lectures to be held in Lincoln's Inn in the year 2000. All members of the Society are invited.

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| Date and time | Wednesday, 23 February 2000, 5.30–6.30 pm |
| Speaker | Sheila Cameron QC, Chancellor of the Dioceses of London and Chelmsford |
| Subject | Re-ordering historic churches |
| Date and time | Wednesday, 5 April 2000, 5.30–6.30 pm |
| Speaker | Tom Culver, barrister |
| Subject | Exclusion from communion: Canon B16 |
| Date and time | Wednesday, 7 June 2000, 5.30–6.30 pm |
| Speaker | Fr Jonathan Redvers Harris, Vicar of Houghton Regis |
| Subject | Living in suspense: problems and solutions with suspension of the right of presentation |
| Date and time | Wednesday, 13 September 2000, 5.30–6.30 pm |
| Speaker | James Behrens, barrister |
| Subject | The Churchwardens Measure |

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For further details, and to let Serle Court Chambers know you will be attending, please contact James Behrens at Serle Court Chambers, 6 New Square, Lincoln's Inn, London WC2A 3QS. (Document exchange: LDE 1025. Tel: 020-7242 6105, Fax: 020-7405 4004).