

B2 or not B2: that isn't the question

Or: navigating the waves in the wake of the sinking of LLF

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This paper is offered to try to identify what is, and is not, the case following the (provisional) decision of the House of Bishops to progress with a B2 process for the prayers of love and faith. It makes use of several different documents and ideas and should ideally be read in connection with the updated legal advice and papers from FAOC. This paper does not suggest what should be done by clergy under the provisions of Canon B5 but rather offers a reflection on what might be done, and the reasoning underlying these possibilities. It also offers a critical eye on the process currently in play and the apparent decision-making by the House of Bishops.

To start, we need to identify what precisely the purpose of the Living in Love and Faith motion of February 2023 was. Its stated aim as relates to PLF is: "To welcome the response from the College of Bishops and look forward to the House of Bishops further refining, commending and issuing the Prayers of Love and Faith described in GS 2289 and its Annexes."

Further mention is made in the motion of the prayers being 'commended and published'. For completeness, the motion also 'endorse[d] the decision of the College and House of Bishops not to propose any change to the doctrine of marriage, and their intention that the final version of the Prayers of Love and Faith should not be contrary to or indicative of a departure from the doctrine of the Church of England.'

It is well beyond the scope of this paper to detail the twists and turns since this time. Part of this has included the separation of the PLF into two forms – those used as 'part of a regular service' and 'standalone' (later 'bespoke') forms of the PLF – which was not imagined in the initial motion and which is both unfortunate and somewhat indefensible. Our first question, therefore, is what precisely the PLF are for. This is not to discuss whether they are praying for a couple, a relationship, for individuals, and so on, but rather to ask what they contribute to the life of the church.

Much has been made of how they ought to be authorised (of which more below), but in my opinion it is not so much the content of the prayers as the existence of the prayers themselves that is key when understanding what it is that the House of Bishops has attempted to do in the LLF process (and

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given Synodal approval in February 2023). This requires us to ask, first, what has changed with the introduction of the prayers – which is that their introduction is a clear engagement with a series of previous prohibitions, found in 'Civil Partnerships – A pastoral statement from the House of Bishops of the Church of England', which stated:

"In these circumstances it would not be right to produce an authorised public liturgy in connection with the registering of civil partnerships. In addition, the House of Bishops affirms that clergy of the Church of England should not provide services of blessing for those who register a civil partnership.

Where clergy are approached by people asking for prayer in relation to entering into a civil partnership they should respond pastorally and sensitively in the light of the circumstances of each case."

This was further outlined in the 2014 'Valentine's Day' statement on marriage:

"The same approach as commended in the 2005 statement should therefore apply to couples who enter same-sex marriage, on the assumption that any prayer will be accompanied by pastoral discussion of the church's teaching and their reasons for departing from it. Services of blessing should not be provided. Clergy should respond pastorally and sensitively in other ways."

It is clear that, as a result of the issuing and commendation of prayers, there has been an evolution of this position. The accompanying information, following the issuing of the prayers on Sunday 17th December, stated:

"The Prayers of Love and Faith are offered as resources in praying with and for a same-sex couple who love one another and who wish to give thanks for and mark that love in faith before God. To celebrate in God's presence the commitment two people have made to each other is an occasion for rejoicing. The texts are offered to express thanksgiving and hope, with prayer that those who are dedicating their life together to God may grow in faith, love and service as God's blessing rests upon them.

It brings together a variety of liturgical resources in a desire to give thanks

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and praise to God for the gift of a loving relationship between two people, to mark their commitment to one another, and to pray with and for them. Recognising and celebrating the goods in faithful, committed same-sex relationships and seeking God's help and blessing in growing in faith, love and holiness, these prayers seek to help couples grow in holiness."

This marks an unequivocal change in the position of the House in relation to the 2005 and 2014 statements. It is my contention, therefore, that what the commending of these prayers did primarily was to revoke the statement that 'services of blessing should not be provided' and that 'any prayer will be accompanied by pastoral discussion of the church's teaching and their reasons for departing from it'.^[1] In the Pastoral Guidance, it is clearly stated:

"The PLF are not a form of marriage service, nor do they equate the relationships brought before God to Holy Matrimony. Nevertheless, they recognize all that is good, and holy, and faithful in these relationships and enable the people in these relationships to place themselves before God and ask for God's blessing for their journey of love and faith."

Here, then, we should turn to the question of why these prayers were commended (with the associated corporate acceptance from the House of Bishops that they are therefore 'neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter' (see below, Canon B5.3), or, indeed, as per the February 2023 motion of General Synod, not 'contrary to or indicative of a departure from the doctrine of the Church of England' (note the fine distinction). To put it another way, must these prayers be used in services of 'recognising and celebrating the goods in faithful, committed same-sex relationships and seeking God's help and blessing in growing in faith, love and holiness'?

The answer to this is relatively simple: no. In commending these prayers for use under Canon B5, the House of Bishops has not said that these prayers are the only vehicle through which such blessing might be communicated, but rather stating that in using these prayers, in the corporate view of the house, this blessing can be communicated without being in contradiction to Canon B5.3. It is therefore conceivable that clergy might make use of

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other prayers with the same level of adherence to Canon B5.3 which are not in the suite of prayers offered in the PLF – all that the bishops are stating is that in their view these particular prayers are consistent with canonical obligations. As we shall see, that argument is not legally watertight – like all arguments untested through legal proceedings.

At this juncture, therefore, we ought to be clear in what was achieved in December 2023 – namely, the apparent prohibition, resulting from the 2005 and 2014 statements, on clergy offering services 'recognising and celebrating the goods in faithful, committed same-sex relationships and seeking God's help and blessing in growing in faith, love and holiness' is officially and corporately lifted by the House of Bishops (and, of course, it is questionable what legal/moral/judicial authority such a direction had in the first place). Clergy are, therefore, free to offer these 'public forms of prayer'. It is pertinent to our discussion that, at the stage of commendation, the associated pastoral guidance stated:

"The commended PLF Resource Section is designed for use in these regular services, but should not be used to offer standalone or special services (hereafter, 'standalone services'). These are services that do not fall within the normal, usual pattern of worship for a parish, and are designed primarily around the PLF."

This is a result of the unfortunate separation of PLF as standalone and as part of a regular service – but what is key here is to note that 'should not' is a request, and not a canonical requirement per se. The canons, as we shall see, have specific restrictions – and as we shall see below, the distinction between standalone and non-standalone, from a canonical perspective, is not clear.[2]

Detailing the B5 and B2 routes

The first question we might ask is why the debate about B2 and B5 has come about. What is referred to in the canons (section B) is the 'form of service'.

This is clearly outlined in Canon B1:

the expression 'form of service' shall be construed as including -

- (i) the prayers known as Collects;
- (ii) the lessons designated in any Table of Lessons;
- (iii) any other matter to be used as part of a service;
- (iv) any Table of rules for regulating a service;
- (v) any Table of Holy Days which expression includes 'A Table of all the Feasts' in The Book of Common Prayer and such other Days as shall be included in any Table approved by the General Synod.

In the context of the PLF so far, it appears that this relates to (iii), in that they are 'any other matter to be used as part of a service'.

The suggestion to date has been that the PLF as commended (itself not a formal B canon matter) may be used under Canon B5:

"The minister who is to conduct the service may in his discretion make and use variations which are not of substantial importance in any form of service authorized by Canon B1 according to particular circumstances."

Of key importance:

"All variations in forms of service and all forms of service used under this Canon shall be reverent and seemly and shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter."

Much has been made in recent years about the importance of 'proper process', and in particular the use of the B2 route for PLF in a standalone service. It is worth briefly noting that the services variously commended under B5 and authorised under B2 are by no means neatly separated by their nature or potential significance.[3] However, two more consequential points ought, also, to be made. Firstly, in relation to standalone services, what precisely is now thought to require being put through the Canon B2 route? Secondly, why has Canon B2 become so important in this discussion?

Legal advice in relation to Canon B2

At this juncture, we should turn to the legal advice in relation to B2. It states: "Approval by the General Synod under Canon B 2 would be the most secure way of bringing bespoke services into use. The final approval by the General Synod of a form of service conclusively determines that the Synod is of the opinion that the form of service is neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter. If a minister uses an authorised form of service for the purpose for which it has been authorised, the minister will be acting lawfully."

It is worth teasing out what is being said here – and why (and how) it is being said. What is being stated, in essence, is that B2 is the method through which it can be 'conclusively' determined that 'the Synod is of the opinion that the form of service is neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter', which will mean that 'the minister will be acting lawfully' if challenged. This does not preclude legal challenge per se but it does provide maximal protection to clergy.

However, the question should arise as to whether this is the purpose of Canon B2 (both its intended purpose, and its historical use under the canons). Canon B2 as a process is being used here effectively to make a ruling on the presence or absence of doctrinal deviance – which, one could argue, is not its (primary) purpose. Indeed, whilst following the route of Canon B2 can indeed reveal a settled view of General Synod on this question, that does not make that view correct in a legal sense – it merely changes the legal implications. Thus, to return to what is meant by 'form of service' under the B canons, it is questionable whether there is indeed a 'right' mechanism by which the PLF ought to be tested – or, indeed, whether the PLF can be easily separated into standalone and non-standalone for progress through any such route.

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Which brings us back to the first half of the question raised above, which is 'what precisely' is being put through B2? This remains entirely unclear, including in the FAOC paper 'The doctrine of marriage and the prayers of love and faith: texts and contexts'. To quote:

"The central claim is simple: in public worship, text, context, and symbolic action together communicate the Church's belief. When the PLF are used publicly, and especially when they are used in a bespoke or occasional service, they may be seen by some to communicate ecclesial endorsement of a couple's relationship as a whole, including its sexual dimension. This is true even though the actual words avoid nuptial or sacramental formulae. Whereas private prayer enables such matters to be specified and addressed in a careful, pastoral conversation, public worship does not allow such nuance. Moreover, when the Church speaks and acts as the Church, what is done must be neither contrary to, nor indicative of a departure from, its doctrine in any essential matter.'

Meaning in public rituals of all kinds is read as much from what is seen as from what is said. The actions, gestures and vesture used in a service involving the PLF, generate strong signals for various audiences—the couple, those in attendance, the media and the wider public, ecumenical partners and the wider Anglican Communion. Explanatory prefaces may help, but most people will remember the enactment more than any caveat. This paper explores the nature of symbolic actions, indicating what can and cannot be defined and prescribed in this area. The paper maintains there are some symbolic actions that would (if permitted) communicate more than doctrine will allow (e.g., exchange of rings), but there is far more that cannot be specified under a general rule.[4]"

The FAOC paper explores, in a sense quite helpfully, the different contextual, 'symbolic actions' involved in any service of blessing that might impact upon the use of these prayers under Canon B5. Clergy are routinely required to attend to these facts when undertaking liturgical action under the provisions of Canon B5, and (much of) this paper is a helpful pointer towards what might best be considered in the context of PLF.[5] Two specific questions are offered:

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"To what degree is a liturgical text's silence on a topic an acceptable way to indicate agreement with present teaching? Asked otherwise, should a liturgical text—in what it states and in what it omits—be required to rule out interpretations of it as contrary to or indicative of departure from doctrine in any essential matter?

Recognizing the importance of symbolic actions, and a minister's agency over them, what symbolic actions should be proscribed and/or prescribed in order to ensure the PLF cohere with the Church's doctrine of marriage?"

It is from here onwards that a failure to attend to what the B2 process is, and is not, becomes clear. For unless there is a service to be authorised, rather than the vague 'bespoke services' then this question cannot be answered, except through legal proceedings brought relating to misuse of Canon B5. To date, no such service – with its associated elements and non-elements – has been produced for authorisation through B2.[6] The paper continues:

"Aware of the impossibility of identifying and addressing the plethora of scenarios raised by custom and practice, local context, and pastoral situatedness, what level of communal authorisation is required to engender confidence that ministerial discretion in use of the PLF will not create doctrinal plurality."

This is, unfortunately, a category error – for several reasons. Firstly, and not engaged with further here, the B canons are not necessarily intended as the 'level of communal authorisation' as detailed in FAOC's 'The Nature of Doctrine and the Living God'. Secondly, the B canons are not able to play the part of authorisation of specific 'symbolic actions' – this is rightly managed under Canon B5 and there is no precedent (let alone practical possibility) to make use of B2 for this purpose. Thus, the mention of 'maximum authorisation' under 'a canon B2 process of approval', unless referring to a specific 'bespoke' act of worship (including possible variations within it), is logically inconsistent.

Indeed, the so-described 'minimal authorisation' for 'bespoke services' is actually the only canonically consistent method, with the agreement that 'the additional challenges posed by the 'occasionality', form, and symbolic actions likely to occur in a bespoke service are also suitably governed

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by commendation through a Canon B4 or Canon B5 process of approval.' This is because of the fundamental difference between what is possible through the two canons.

Canon B2's role (in this regard) is to 'enable General Synod to approve forms of services for use in the Church of England and to amend any form of service approved by the General Synod under this paragraph... and any form of service or amendment thereof approved by the General Synod under this paragraph shall be such as in the opinion of the General Synod is neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter.'

Canon B5, however, states that 'the minister who is to conduct the service may in his discretion make and use variations which are not of substantial importance in any form of service authorized by Canon B 1 according to particular circumstances... All variations in forms of service and all forms of service used under this Canon shall be reverent and seemly and shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter.' It is therefore clear that the appropriate form of canonical process as relates to 'symbolic action', unless a specific service is created (rather than the generic idea of bespoke services), is Canon B5.

Legal advice in relation to Canon B5

At this juncture, it is worth identifying what the legal advice presented to the House of Bishops suggested about the Canon B5 route in full:

"There is no formal procedure for the 'commendation' of forms of service by the House of Bishops. Commendation of forms of services is simply a practice which has been adopted by the House of Bishops over the past few decades.[7]

'Commendation' by the House of Bishops does not confer any canonical or other legal authority on a form of service; it simply makes it clear to ministers that the House of Bishops is of the opinion that its use would be compatible with the requirements of Canon B 5.2 and 5.3. The use of such a form of service remains the personal responsibility of the minister and he or she must be satisfied that the relevant canonical requirements are met.

The fact that a form of service has been commended by the House of Bishops does not therefore determine the question of whether its use is lawful. A member of the clergy who uses a commended form of service (as opposed to an authorised form of service) could be subject to proceedings under the Ecclesiastical Jurisdiction Measure 1963. Such proceedings would be likely to allege that the priest or deacon had used a form of service which was not authorised and which could not lawfully be used pursuant to Canon B5 because it was either contrary to, or indicative of a departure from, the doctrine of the Church of England in an essential matter. (As such proceedings would allege "the commission of an offence against the laws ecclesiastical involving matter of doctrine, ritual or ceremonial" the matter would fall to be determined under the 1963 Measure and not under the Clergy Discipline Measure 2003 (or the forthcoming Clergy Conduct Measure).

The potential exposure of the clergy to such proceedings is an issue that has been repeatedly raised. The lawfulness of a commended form of service could only be definitively determined by the ecclesiastical courts. In the absence of decided authority on the specific questions that arise here, it is not possible to predict with certainty what the outcome of such proceedings would be. Such judicial authority as there is on the question suggests it is unlikely that an accused who uses a commended form of service will be found to have acted unlawfully.

However, where a form of service is commended only by a majority of the House of the Bishops, with significant dissent, the position is less clear.

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Commendation of forms of service has conventionally been by the unanimous decision (or at least a decision from which no bishop actively dissented) of the House of Bishops. Where – as was the case with the PLF Resources – a significant number of bishops dissent, it cannot be said that the episcopate is of a common mind that a form of service meets the requirement that it is “neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter”. In those circumstances, a court might consider that less weight should be given to the fact that the form of service had been commended in determining its lawfulness.

The route by which the Prayers are made available for use will determine who the potential “accused” might be in any proceedings. If a form of service is commended for use in the minister’s discretion under Canon B5, it is the minister with cure of souls who would stand accused. If the Prayers were instead approved by the Synod under Canon B2, or approved for experimental use under Canon B 5A, they would be authorised forms of service and individual ministers who used them according to the applicable rubrics should not be at risk of proceedings.[8]”

It is clear from this legal position that ‘the lawfulness of a commended form of service could only be definitively determined by the ecclesiastical courts’. Unless there is a specific authorised form of bespoke PLF, it is hard to see how this situation would change – and at present there appears to be no specific form of service to be authorised (including ‘symbolic actions’) – indeed, were the ‘symbolic actions’ not to be clearly stated, then even were such an authorised service put through B2, clergy would remain open to challenge under the EJM and Canon B5.

What can we do?

The first key thing to note is that the spectre of B2 has been presented dishonestly throughout. For clarity's sake:

1. At present, there is no single 'bespoke' service of prayer and blessing that has been recommended for authorisation through B2. It is not relevant to talk in generalities about 'services that place the PLF as the key element' without due attention to the wider 'symbolic actions'.
2. Whilst the FAOC advice suggests that 'symbolic actions' need to be considered, there is no evidence whatsoever that simply holding a 'bespoke service' would be against Canon B5. This remains the case whether or not a specific authorised service is taken through the B2 route.
3. Any route through Canon B2 is permissive not restrictive – i.e. the provisions of Canon B5 remain.
4. Clergy remain at liberty to in their 'discretion make and use variations which are not of substantial importance in any form of service authorized by Canon B 1 according to particular circumstances' provided that they are 'reverent and seemly and shall be neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter'.

To quote the legal advice:

"The use of such a form of service remains the personal responsibility of the minister and he or she must be satisfied that the relevant canonical requirements are met."

Therefore, there is no reason that bespoke services of PLF are forbidden, as there is no reason that they would be 'contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter'. Similarly, clergy do not need to use the PLF or be bound by them. The key is to offer pastoral possibilities within the wider framework of what is now possible, without opening oneself to censure or legal challenge – unless, of course, such a position is welcomed.

It is here that clergy need to take back the initiative, and act under the provisions of Canon B5. The FAOC paper on the PLF is helpful in this regard to aid clergy in their curating services that are in keeping with the requirements of canon B5.[9] It is not necessary that such services be

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provided in the context of regular worship, provided that 'symbolic actions' are duly taken into account.

"The material in Prayers of Love and Faith (including the rite for the Blessing of a Home as well as material drawn from Common Worship and New Patterns for Worship) has been commended by the House of Bishops of the General Synod for use by the minister in exercise of his or her discretion under Canon B 5 of the Canons of the Church of England."

The current debates around B5 and B2, and particularly as evidenced in the material from the House of Bishops, are muddled and unhelpful. This paper has – hopefully – made clear that clergy can continue to exercise their pastoral responsibilities under the B canons – and that to do so is not only acceptable, but right.

[1] It is a matter of fact that such services were being celebrated despite this episcopal direction, often with the express permission of the ordinary.

[2] The pertinent element here is Canon B5.4: 4. If any question is raised concerning the observance of the provisions of this Canon it may be referred to the bishop in order that he may give such pastoral guidance, advice or directions as he may think fit, but such reference shall be without prejudice to the matter in question being made the subject matter of proceedings under the Ecclesiastical Jurisdiction Measure 1963. It is unclear as to how this might be applied in this case and it is likely that the determining process, were it to get to this stage, would be the Court of Ecclesiastical Causes Reserved. For our purposes here, it remains contested whether an episcopal direction not to use 'standalone PLF' exercised under Canon B5.4 would be in any way binding.

[3] Detailed here, under Supplementary Material <https://www.churchofengland.org/about/leadership-and-governance/legal-resources/canons-church-england/supplementary-material#p186>. Readers may be interested in GS Misc 1359 for the history of this debate.

[4] It is notable that Church of England practice has consistently been to mandate all but the absolute minimum of liturgical action as a rule, in order

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to enable the theological diversity of the church (for example, as seen in the removal of many rubrics related to posture in Common Worship). It would seem a strange development to apply a higher liturgical standard to the PLF than to the celebration of the Eucharist. Once again, this highlights why Canon B5 exists, and the centrality of the authority of the clergy to determine appropriateness of offered divine worship and to do so with integrity in the context of the Church of England.

[5] Here I move slightly away from the idea that PLF on a Sunday morning are entirely different to PLF in a standalone service – but I do not suggest that there is an inevitable, absolute difference. The role of ‘symbolic actions’ is key here. A service, for example, that is pretending to be a wedding is much more problematic than one that is not – but a standalone service is not necessarily pretending to be a marriage, and not might others pretend that it is.

[6] Although a draft was created at an earlier stage of the process – though this was not a novel act of worship but rather the adaptation of currently available acts with permissible variations, which, it is arguable would be best managed through a B5 process.

[7] As detailed above.

[8] What is particularly interesting here is what is not said. Being authorised does not make such services legal – it shifts the legally responsible person.

[9] ‘That this House, having agreed at its meeting of 9 October to commend the PLF Resource Section (‘PLF RS’) for use in the minister’s discretion under Canon B 5, now resolve that the PLF RS be commended with effect from December 17 2023 and published accordingly’

<https://www.churchofengland.org/media/press-releases/prayers-love-and-faith-be-made-available-use-sunday>