

ARTICLE

Anti-Catholic/Jewish discrimination, appointing Church of England bishops, and the vexed case of Boris Johnson

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Abstract

For centuries, English law discriminated against Catholics and Jews. Those rules were mostly repealed in the 19th century, but surprisingly the law still says that a Catholic or Jewish person cannot advise the King on appointments within the Church of England or Church of Scotland. Ordinarily, new Church of England bishops are nominated by the King on the advice of the Prime Minister, but a Catholic or Jewish Prime Minister could not exercise that function; it would have to devolve on another Minister of the Crown. The article analyses the impact of this rule today, and, drawing on two interviews, considers how this rule was applied when Boris Johnson was Prime Minister. The article argues that the discriminatory rule should be repealed, allowing any Prime Minister, regardless of their faith or lack thereof, to carry out their duties in full.

Keywords: appointment; bishops; Church of England; constitutional law; discrimination

Part I: Introduction

Since the 16th century, the Church of England (the Church) has been the established state religion in England, with the Monarch serving both as Head of State and as Supreme Governor of the Church. England today is an outlier in Western democracies by still retaining a formal constitutional link between the Church, the government, and Parliament. The senior bishops sit as legislators in the House of Lords and government ministers have various roles relating to the governance of the Church. It is a constitutional settlement that has both its supporters and detractors.

This article looks at the Prime Minister's role in appointing senior clergy in the Church, focusing on the appointment of bishops. When a new bishop is being appointed, the Church's Crown Nominations Committee (CNC) will select the nominee, pass the name on to the Prime Minister, who will then advise the King to confirm the nomination. However, between the 16th and 19th centuries, legal restrictions were imposed on the Catholic and Jewish communities across the United

Kingdom, and surprisingly, one such restriction remains on the statute book. Even today, a Prime Minister who ‘professes’ the Jewish or Catholic religions cannot advise His Majesty on any matter ‘touching or concerning the appointment to or disposal of any office or preferment in the Church of England or in the Church of Scotland’.¹ Hence, a Jewish or Catholic Prime Minister cannot advise the King of appointments in the Church of England, and a Jewish or Catholic Prime Minister would have to transfer that power to another Minister of the Crown.

This may seem like a minor issue, but it does raise an important point of principle. The law only restricts two specific religious groups: Jews and Catholics. This is an obvious example of direct religious discrimination happening at the very highest echelons of public life, flying in the face of now well-established legal norms protecting human rights and religious equality.² This matter came to the fore between 2019 and 2022, when Boris Johnson was Prime Minister, on the basis of his baptism and marriage in the Catholic Church. Thus, this article explores two inter-related questions. Firstly, the theoretical: should the appointment process of new bishops be reformed in order to remove this extant discriminatory prohibition? Secondly, the practical: was Boris Johnson affected by the prohibition, and if so, how was the prohibition applied during Johnson’s tenure in Downing Street?

To help answer the two questions, primary research was undertaken. Firstly, a written question about the merit of reform was submitted to seven key respondents in July 2023. The first three respondents were the directly affected religious leaders; namely, the Archbishop of Canterbury, as the spiritual leader of the Church of England; the Archbishop of Westminster, as the leader of the Catholic Church in England; and the Board of Deputies of British Jews, as representatives of the Jewish community in England. The following four respondents were four main political leaders at that time; namely, Rishi Sunak in his capacity as leader of the Conservative Party; Sir Keir Starmer in his capacity as leader of the Labour Party; Sir Ed Davey in his capacity as leader of the Liberal Democrats; and Caroline Nokes in her capacity as Chair of the Women and Equalities Committee of the House of Commons. Secondly, a Freedom of Information Act (FOI) request was submitted to the Cabinet Office, seeking information about the application of the prohibition when Boris Johnson was Prime Minister. Thirdly, two video-conference interviews were conducted in the spring and summer of 2024, the first with a senior Cabinet Office official and the second with a former senior Conservative minister, who both had relevant insight into what had occurred during Johnson’s tenure in Downing Street.

The article is structured in the following way. Part 2 will provide an overview of how bishops are appointed and the role that the Prime Minister plays. Part 3 will analyse the statutory prohibitions that prevents Jewish and Catholic Prime Ministers from advising the King on Church of England and Church of Scotland appointments. Part 4 will analyse the various options for reforming the appointment process in light of the religious prohibition, drawing on the written questions put to the seven respondents. Finally, part 5 will analyse how the prohibition was applied when Boris Johnson was Prime Minister, drawing on the FOI request and the two interviews.

¹ Roman Catholic Relief Act 1829, s 18; Jewish Relief Act 1858, s 4.

² cf. the Human Rights Act 1998 and the Equality Act 2010.

Ultimately, the article will argue that the remaining religious restrictions should be repealed, thus allowing all Prime Ministers, regardless of any religious affiliation, to be able to advise the King on appointments within the Church of England and the Church of Scotland, merely by virtue of holding the office of Prime Minister.

Part 2: The symbiosis between the King, the Prime Minister, the Bishops, and the House of Lords

The Act of Supremacy 1534 abolished papal authority in England and made Henry VIII the Supreme Head of the Church of England. The process was repeated in the Act of Supremacy 1558, through which Elizabeth I decisively severed the link with Rome that her predecessor, Mary I, had tried to restore, and was proclaimed Supreme Governor of the Church of England, the title that all monarchs since have used. Absent the constitutional wobbles during Cromwell's Protectorate during the 1650s, when the Church was disestablished in favour of Presbyterianism, the Church of England has been the official state religion since 1558.

Even in Elizabethan England, the presence of the bishops in the House of Lords was ancient practice. They had sat there since the very early Parliaments and have continued to do so ever since (except for a brief interruption during the Protectorate).³ In 1847 the number of bishops summoned to Parliament was fixed at 26.⁴ Today, only English bishops sit in the House of Lords, following the disestablishments of the Church of Ireland and the Church of Wales.⁵ The Church of Scotland, being Presbyterian, does not have any bishops and has never sent any clerics to Westminster.

It is beyond the scope of this article to consider the arguments for and against the removal of the bishops from the House of Lords, but suffice it to say that there is an ongoing debate, in and out of Parliament, about the merit of having an automatic clerical presence in the legislature. The fact that less than half the United Kingdom's population identified as 'Christian' (let alone Anglican) in the 2021 Census understandably led to further calls to remove the Bishops.⁶ However, various faith leaders have supported the presence of the bishops, stating that they ensure that there is a spiritual and moral component to Parliamentary debates.⁷ Ultimately, the fact that the number of Bishops is capped at 26, in a chamber with a theoretical membership of over 800, means that their influence is going to be rather limited.

It is the King who controls the appointment of bishops. The Appointment of Bishops Act 1533 authorises the King to issue, firstly, a licence under the Great Seal (known as a *congé d'élire*), which permits the College of Canons of the relevant Cathedral to elect a new bishop, and, secondly, a letter missive which contains the

³ The Church of England Bishops were readmitted to the House of Lords through the Clergy Act 1661.

⁴ Ecclesiastical Commissioners Act 1847, s 2; the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester automatically sit in the Lords; beyond that, the 21 most senior Bishops (based on length of service) sit in the Lords.

⁵ Irish Church Act 1869, s 13; Welsh Church Act 1914, s 2(2).

⁶ M Hatcher, 'Bishops in the House of Lords: Fit for the Future' (2024) 26 Ecc LJ 147, 147.

⁷ House of Lords, 'Joint Committee on the Draft House of Lords Reform Bill – First Report' (26 March 2012), para 277.

name of the prescribed nominee.⁸ A strict interpretation of the Act shows that the King has sole authority to select a nominee. In reality, the King's power is limited by constitutional convention, and the King will only make a nomination on the advice of the Prime Minister, a practice dating back to George I, although before that, monarchs dating back to Henry VIII similarly sought advice from senior government ministers before making clerical appointments.⁹ The fact that the King acts on the advice of his Prime Minister is appropriate in a constitutional monarchy, although it does raise the question of whether the King's involvement serves any meaningful purpose today, beyond being purely a matter of historical formality.

The CNC was formed in the 1970s to give the Church more of a say in who was appointed as a bishop. Prior to that it was the Prime Minister who had the greater say, which undoubtedly became anachronistic in the post-War era.¹⁰ Today it is the CNC that identifies a suitable nominee, and they will forward the name to the Prime Minister, who will confirm the nominee's willingness to be appointed. If so, the Prime Minister will advise the King to formally nominate the nominee for election.

The original procedure was that two names would be sent to the Prime Minister; the Prime Minister would ordinarily choose the first-named person, although they had discretion to choose either, or indeed reject both names.¹¹ Margaret Thatcher on three occasions chose the second-named nominee, and Tony Blair on one occasion rejected both nominees.¹² In 2007, the government recommended that the Prime Minister should no longer take an active role in vetting appointees; rather, it recommended that the CNC should pass on a single name to the Prime Minister, who in turn would pass on that name to the King.¹³ That recommendation has not been legally enacted, although it is reflected in the Standing Orders of the General Synod.¹⁴ That means, as a matter of law, the Prime Minister can still reject the sole nominee they receive from the CNC. However, Gordon Brown voluntarily adopted the recommendation, as have subsequent Prime Ministers, meaning it is now a well-established convention that the Prime Minister will accept the sole nominee and advise the King to formally nominate that person.

The courts are generally unwilling to intervene in procedural matters within a religious community.¹⁵ Hence, it is unclear whether any legal challenge could arise should a Prime Minister today refuse to endorse the sole name given to them by the CNC.¹⁶ It raises the perennially knotty question of the legal status of constitutional

⁸ Appointment of Bishops Act 1533, s 3; the criminal liability imposed on the Canons for not electing the King's nominee was repealed by section 13/Schedule 4 of the Criminal Law Act 1967. See R Dewhurst, 'The King and the Law of the Church of England' (2023) 25 Ecc LJ 139, 146.

⁹ S Coleman, 'The Process of Appointment of Bishops in the Church of England: A Historical and Legal Critique' (2017) 19 Ecc LJ 212, 216.

¹⁰ Coleman (note 9), 217.

¹¹ 'The Governance of Britain' (CM 7170, 2007), para 59.

¹² Freedom of Information Request, Internal Review Decision, Reference IR2023/13394, 4.

¹³ 'The Governance of Britain' (CM 7170, 2007), para 63.

¹⁴ General Synod Standing Order 136(3) and 136(3A).

¹⁵ *R v Chief Rabbi, ex parte Wachmann* [1992] 1 WLR 1036, 1042–43 (Simon Brown J); consider also *President of the Methodist Conference v Preston* [2013] UKSC 29 and *Sharpe v The Bishop of Worcester* [2015] EWCA Civ 399.

¹⁶ Coleman (note 9), 221.

conventions, which are not formally set out in any statute or statutory instrument.¹⁷ Arguably, to better entrench the current practice, the Appointment of Bishops Act 1533 should be amended, to ensure that the appointment process is formally reflected in statute and that the Prime Minister's discretion (if any) is statutorily protected.

A final comment will be made about the Church of Scotland. The Church of Scotland does not have any bishops and the King is not its Supreme Governor. There is only one function where the Prime Minister plays a role. The King appoints, on the Prime Minister's advice, a Lord High Commissioner to represent the King at the annual General Assembly of the Church of Scotland.¹⁸ The Commissioner has no formal role or power, although they will deliver an address on the King's behalf.

Part 3: Restrictions imposed on Jewish and Catholic Prime Ministers

Modern English law protects religious freedom. At its most fundamental level, the right is protected through Article 9 of the European Convention on Human Rights (ECHR). Under the ECHR, a person's right to hold (or not hold) a belief cannot be limited, although the law can impose practical limits on how that belief is exercised; any restrictions can only be imposed where 'necessary in a democratic society in pursuit of a legitimate aim'.¹⁹ Furthermore, a person cannot be discriminated against on the basis of their religious beliefs.²⁰

This commitment to religious freedom, however, is a relatively modern attitude. For a long time, English law actively discriminated against non-Anglicans, with a view of promoting and protecting the Church. Most notable were a collection of 17th century statutes collectively known as the Test and Corporation Acts, which stated that anyone who held public office (such as mayors, aldermen, and magistrates), was a member of the House of Commons or House of Lords, served in the military, or was a student or fellow at a university, or a school teacher, as well as those holding various other roles, had to take the Sacrament in the Church of England.²¹ In effect, this excluded non-Anglicans from public life, although some (but not all) non-conforming Protestants were exempt from the prohibitions.²² The Jewish community, which resettled in England from the 1650s, was also caught up by these prohibitions, merely by not being Christians. The Catholic restrictions were lifted through a series of Acts passed between 1778 and 1926.²³ For the purpose of this article, the key statute is the Roman Catholic Relief Act 1829, which, in broad terms,

¹⁷ Consider *Regina (Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61, para 151.

¹⁸ David Torrance, 'The Relationship Between Church and State in the United Kingdom' (CBP8886, Commons Library Research Briefing, 14 September 2023), 37.

¹⁹ ECHR Art 9(1) and 9(2); see *Lee v Ashers Baking Co Ltd* [2018] UKSC 49, [2020] AC 413, para 55 (Lady Hale).

²⁰ Equality Act 2010, s 10(1).

²¹ Corporation Act 1661, Conventicle Act 1664, Test Act 1673, Test Act 1678.

²² Toleration Act 1688.

²³ In particular, see the Papist Act 1778, Roman Catholic Relief Act 1791, Sacramental Test Act 1828, Roman Catholic Relief Act 1829 and the Roman Catholic Relief Act 1926.

allowed Catholics to return to political life, including being able to sit in Parliament. Similarly, various statutes were passed in the mid-19th century that removed the Christian oaths, thus gradually allowing the Jewish community full legal and social rights.²⁴ Again, the key statute for the purpose of this article is the Jewish Relief Act 1858, which, in broad terms, allowed Jews to enter Parliament.

Whilst the Roman Catholic Relief Act 1829 and the Jewish Relief Act 1858 granted Catholics and Jews broad political rights, they contain one restriction, which remains on the statute book. A Prime Minister professing either faith still cannot advise the King on appointments to the Church of England or the Church of Scotland. Section 18 of the Roman Catholic Relief Act 1829 says the following:

‘It shall not be lawful for any person professing the Roman Catholic religion directly or indirectly to advise his Majesty ... touching or concerning the appointment to or disposal of any office or preferment in the [Church of England],²⁵ or in the Church of Scotland; and if any such person shall offend in the premises he shall, being thereof convicted by due course of law, be deemed guilty of a high misdemeanor, and disabled for ever from holding any office, civil or military, under the Crown.’

Section 4 of the Jewish Relief Act 1858 has the same wording, although replacing ‘Roman Catholic’ with ‘Jewish’. Thus, if the Prime Minister is Catholic or Jewish, they cannot carry out their role relating to clerical appointments. Whilst there is a ‘lack of a contingency plan’, it is reasonable to assume that the function would be transferred either to the Lord Chancellor, who already exercises various functions relating to the Church (including the right of presentation to numerous benefices), or to another Minister, perhaps by identifying one who is an Anglican and thus would be both willing and suitable to act.²⁶

To understand the practical application of the prohibition, it is necessary to explore the sections in more detail.

Professing

Regrettably, the term is not defined in any of the penal or relief Acts, which all use it. The verb ‘to profess’ has many meanings, including referring to teaching.²⁷ The most relevant definition is ‘to affirm or declare one’s faith in or allegiance to’.²⁸ It requires, arguably, that the person formally confirms that they are Roman Catholic or Jewish and takes positive steps to live in accordance with the values and rites of those religions. There is undoubtedly a distinction between actively professing a religion and being a passive member (such as by being baptised as an infant).

²⁴ Sheriffs’ Declaration Act 1835; Religious Disabilities Act 1846; Jewish Relief Act 1858; see Oaths Act 1858; Universities Test Act 1871.

²⁵ Words substituted from 1 August 1871 by virtue of Irish Church Act 1869 (c 42), s 69, and Statute Law Revision (Northern Ireland) Act 1980 (c 59), Sch Pt XIV.

²⁶ Interview with a former senior Conservative minister, 22 July 2024.

²⁷ *Anonymous* (1565) Jenkins 233; 145 ER 162.

²⁸ https://www.oed.com/dictionary/profess_v?tab=meaning_and_use (accessed 10 May 2024).

Who, then, professes the Roman Catholic religion? The Catholic Church regards anyone who is baptised as being ‘fully in the communion’, although that is perhaps not what Parliament had in mind.²⁹ Regrettably, in respect of the old penal Acts, the key cases do not clearly define who is ‘professing’ the Catholic religion.³⁰ The lack of a clear definition has also been queried in Parliament.³¹ The courts did hold that a young child could not profess any religion; a person could only profess the Catholic religion once old enough to make a conscious choice; potentially even at thirteen or fourteen.³² Hence, professing the Catholic faith requires a conscious choice (by a person old enough to make that choice) to publicly confirm their religious adherence; mere baptism as an infant is not enough. The former Conservative minister argued that the key question is whether the person has received confirmation as a Catholic, which would normally be celebrated during adolescence.³³ Furthermore, steps such as attending mass, celebrating marriage in the Catholic Church, or otherwise holding oneself out to be Catholic, could all help prove that a person professes the Catholic religion. These are all public acts through which a person demonstrates their religious adherence.

In the other direction, in old cases concerning converts from Catholicism to the Church of England (or Ireland), the judges demanded ‘regular and complete conformity’, rather than a single act of conversion (such as simply taking the oath prescribed by the Penal Acts), in order for the ex-Catholic to avoid the legal penalties.³⁴ The old cases must, of course, be seen in the context of the specific provisions laid down in the various statutes, and as noted, provide very few answers as to the essential requirements for professing a religion. However, if ‘regular and complete conformity’ was required to profess the Anglican faith, then the same should be true for professing Catholicism. It suggests that to profess the Catholic religion, there must be both a private intention to be a Catholic and a public demonstration of that faith, whether through words spoken (such as saying, ‘I consider myself to be Catholic’) or by religious acts (such as attending mass).

Secondly, it is necessary to consider who is professing the Jewish religion. ‘Jewish’ can refer both to race and religion. Judaism can be defined as a distinct ethnic group.³⁵ However, it is posited that the statute is not referring to race; if so, Benjamin Disraeli, who was born into a Jewish family but converted to the Church of England before embarking on his political career, would have been affected by the prohibition during his two terms as Prime Minister in the 1860s and 1870s. The Cabinet Office has emphasised, in respect of Disraeli, that the UK ‘has not [had] a Prime Minister of Jewish *faith*’ (original emphasis).³⁶ It suggests that the Relief Act only refers to

²⁹ Code of Canon Law 1983, Canon 205.

³⁰ Consider *Roper v Radcliffe* (1712) 9 Mod 181; 88 ER 387.

³¹ Lord Hugh Cecil, HC Debate, 5 July 1910, vol 18 § 1545.

³² *Hill v Filkin* (1722) 2 Peere Williams 6; 24 ER 619, 621 (overturned on appeal on a different point of law, *Hill v Filkin* (1725) Sel Cas Ch 22; 25 ER 200); *Carteret v Carteret* (1723) 2 P Wms 132; 24 ER 670, 671; *His Disability to purchase, &c* (1744) 2 Eq Cas Abr 620; 22 ER 520, 522.

³³ Interview with a former senior Conservative minister, 22 July 2024.

³⁴ *Farrell v Tomlinson* (1761) V Brown 438; 2 ER 782, 784 (Robinson JJ) (on appeal from Ireland).

³⁵ *Regina (E) v Governing Body of JFS* [2010] 2 AC 728, para 4 (Lord Phillips); consider also *Clayton v Ramsden* [1943] AC 320, 327 (Lord Russell). See also *Mandla v Dowell Lee* [1983] 2 AC 548.

³⁶ Freedom of Information Request, Internal Review Decision, Reference IR2023/13394, 4.

professing the Jewish religion in a religious context; again, it would suggest a person choosing to publicly confirm their faith (such as through a bar/bat mitzvah) and thereafter taking active steps to live according to the religious beliefs and practices of Judaism.

Advising

The statute makes reference to giving ‘direct’ or ‘indirect’ advice (the distinction is not defined in the Acts). It is clear that this prohibits a Jewish or Catholic Prime Minister from advising the King on any clerical appointment, and this must encompass the current process whereby the Prime Minister merely passes on the sole name given to them by the CNC, which, if not direct advice, can be seen as indirect advice. That is because the Prime Minister can still, in theory at least, reject the sole nominee, so even the act of passing on the name to the King amounts to some form of advice and tacit endorsement of the candidate.

What would be the effect of such advice, if given? One reading of the statute is that the advice is tainted and would nullify the nomination (comparable to the *Miller II* case concerning Boris Johnson’s unlawful advice to the late Queen to prorogue Parliament in 2019).³⁷ However, that is a very expansive reading of the statute, and neither Relief Act says anything about nullifying any appointment. The more restrictive (and perhaps, literal) reading is that whilst the Prime Minister commits an offence by giving the advice, the appointment is valid. That is because the King exercises his statutory authority under the Appointment of Bishops Act 1533 to instruct the College of Canons to hold an election, and the bishop is formally elected by the College. Nothing in the Relief Acts suggests that the statutory process laid down in the Appointment of Bishops Act 1533 is nullified by the unlawful advice.

Penalty

The sanction imposed by the Relief Acts is that a Prime Minister who breaches the prohibitions shall, on conviction, be barred from holding any civil or military office under the Crown; that is, any office to which they are appointed by the King. There would be no bar to remaining as an MP, or being sworn into the House of Lords, as those are not Crown offices. One can only speculate whether the Crown Prosecution Service would consider it in the public interest to bring a prosecution. The discriminatory nature of the offence speaks against a prosecution. However, a Catholic or Jewish Prime Minister who knowingly breaches the prohibition is, regardless of the discrimination, committing a criminal offence, which is serious misconduct from an elected official and should, as a matter of principle, warrant prosecution.

Who is not bound?

A Prime Minister of any other faith, or indeed an atheist Prime Minister (such as Sir Keir Starmer), can advise the King on any clerical appointment. In respect of Rishi Sunak, who professes the Hindu faith, the Cabinet Office made the following

³⁷ *R (on the application of Miller) v The Prime Minister* [2019] UKSC 41, paras 61 and 69 (Lady Hale).

statement in response to correspondence from the author: 'The government can confirm the legal prohibitions to which you refer do not apply to a person who professes the Hindu faith'.³⁸ The fact that the law imposes a restriction on those professing the Catholic and Jewish faith, but not on any other religion, was described already in 1926 as 'absurd'.³⁹ It is a discriminatory practice that completely contradicts modern human rights and equality law. It is therefore necessary to consider whether the law should be changed.

Part 4: Reforming the prohibition preventing Jews and Catholics from advising the King on appointments in the Church of England

This part of the article will consider the options for reform. The first option, of course, is to keep the law as it is. The second option would be to reform the law to say that only an Anglican government minister can advise the King. The third option would be to repeal the specific prohibitions and allow any Prime Minister, regardless of their faith or lack thereof, to carry out the function simply by virtue of holding the office of Prime Minister. The fourth option would be to remove any government involvement in the governance of the Church of England, thus allowing the CNC to pass on their nominee directly to the King.

Canvassing views on the merit for reform – written questions asked in July 2023

To understand whether there is an appetite for change, in the summer of 2023 I sought views from key religious and political leaders. This was achieved by sending a written question via email or online query forms available via the relevant institution's website. The written question summarised the nature of the research project, outlined the legal context, and asked whether the respondent was in favour of any of the options for reform.

First, I asked the three affected religious leaders about their views on the matter, namely, the Archbishop of Canterbury, as the spiritual leader of the Church of England; the Archbishop of Westminster, as the leader of the Catholic Church in England; and the Board of Deputies of British Jews, as representatives of the Jewish community in England.

The office of the Archbishop of Westminster, Cardinal Vincent Nichols, gave the following reply.

'[Cardinal Nichols] would welcome the removal of any remaining legislation discriminating against Catholics or Jews. However, when it comes to the appointment of Church of England bishops, he thinks this is a matter for the Church of England, as the Established Church, the Crown and the Government.'⁴⁰

³⁸ Cabinet Office email to the author, 23 February 2023, Correspondence Reference T02023/01763.

³⁹ George Lansbury MP, HC Debate, 3 December 1926, vol 200 § 1575.

⁴⁰ Email to the author from the office of the Archbishop of Westminster, 12 July 2023.

It is unsurprising to receive a diplomatic response, as the Catholic Church has no interest in commenting on practices within the Church of England. Nonetheless, it is positive that they would ‘welcome’ further legislative change to remove the extant restrictions on the Catholic and Jewish communities in the UK.

The office of the Archbishop of Canterbury, Justin Welby, gave the following reply.

‘Your research is most interesting, however you are asking the Archbishop for an opinion on a matter that is properly a question of policy for His Majesty’s Government. In any matter to do with the governance of the Church of England, the Prime Minister’s role is to advise the Crown, and the Church’s concern is simply that the Crown receives sound and timely advice. How that happens is a matter for the Prime Minister and the government of the day.’⁴¹

From this response, it is clear that Archbishop Welby took the view that this is purely a matter for the government of the day to resolve. Of course, should the law be reformed, the bishops in the House of Lords would have to take a stance on how to vote on a reform Bill, and this response clearly avoids committing the bishops to any particular position, which is regrettable as a firm denouncement of the historical discrimination would only ever be welcomed.

With regard to the Jewish community, I initially contacted the office of the Chief Rabbi, Sir Ephraim Mirvis. His office also referred to the matter as ‘interesting’, but suggested that the Board of Deputies of British Jews would be better placed to provide a comment.⁴² I contacted the Board of Deputies, but they have not replied.

Next, I asked four relevant political leaders for comments. I contacted Rishi Sunak in his capacity as leader of the Conservative Party (which at the time was the government party), but received no reply. I contacted Sir Ed Davey in his capacity as leader of the Liberal Democrats (then the third largest party in England), but received no reply. I contacted Caroline Nokes in her capacity as Chair of the Women and Equalities Committee of the House of Commons, but received no reply. Finally, I contacted Sir Keir Starmer in his capacity as leader of the Labour Party (then the second largest party and the official opposition). His office provided the following response.

‘Unfortunately we are currently unable to respond to requests to participate in academic research. However, we appreciate your interest and wish you all the best in your research.’⁴³

It is disappointing that none of these political offices were able to provide a substantive response. Even though this topic is esoteric, the fact that the law still specifically discriminates against Catholic and Jewish Prime Ministers is problematic and should warrant some reaction from all political parties.

⁴¹ Email to the author from the office of the Archbishop of Canterbury, 31 July 2023.

⁴² Email to the author from the office of the Chief Rabbi, 13 July 2023.

⁴³ Email to the author from the office of Sir Keir Starmer MP, 12 September 2023.

In the interview that I conducted with a Senior Official in the Cabinet Office, I was told that this topic is clearly not high on anyone's agenda.⁴⁴ Similarly, in the interview that I conducted with a former Conservative minister, it was also accepted that this is 'not a first order issue'.⁴⁵ It is possible that no reform will take place until and unless the UK does appoint a Prime Minister who professes either the Jewish or Roman Catholic faith, which in itself is problematic, as the prohibitions might deter politicians of those faiths from putting themselves forward, or compel them to keep their faith a secret, which no person should be forced to do. In this context, it is noteworthy that Tony Blair delayed his conversion to Catholicism until after he left office, which in a religiously pluralistic and tolerant society he should not have felt was necessary. On that basis, it is important to consider the options for reform.

Option 1: Maintain the current legal framework

It is submitted that it is not possible to maintain the current legal framework as the law directly contravenes modern legal norms around religious freedom. The law currently only affects Catholic and Jewish ministers, which is a form of direct discrimination. Whilst Article 9 of the ECHR says that the law can limit the exercise of a person's freedom of religion, that can only be done where 'necessary in a democratic society in pursuit of a legitimate aim'.⁴⁶ Continuing to enforce the prohibitions in the Relief Acts cannot be said to be in pursuit of a legitimate aim that is, in today's society, in any way necessary. Equally, enforcing the prohibition would conflict with the Public Sector Equality Duty imposed under the Equality Act 2010.⁴⁷ If the law only allowed Anglican Prime Ministers to advise the King on Church of England appointments, an argument on legitimate aims could perhaps be advanced (namely, that only a member of the Church should be permitted to advise on appointments within that Church), but that is not what the law says. It only imposes a limitation on Catholics and Jews, and whilst that was undoubtedly deemed legitimate in the 19th century, society has changed since then. Given that Rishi Sunak was able to advise the King on appointments (such as the 2023 appointments of Stephen Conway as Bishop of Lincoln and Philip Mounstephen as Bishop of Winchester) without causing any detriment to the Church, any attempt to argue that there remains a 'legitimate aim' to discriminate against Catholics and Jews immediately fails.

Option 2: Reform the law to say that only an Anglican government minister can advise the King

The next option would be to change the law so that only a government minister professing the Anglican faith can advise the King on appointments within the Church. That would mean that if the Prime Minister is not an Anglican the responsibility of advising the King would be transferred to any other government minister who is an Anglican. The difficulty with this approach is the need to find an

⁴⁴ Interview with Senior Official at the Cabinet Office, 10 May 2024.

⁴⁵ Interview with a former senior Conservative minister, 22 July 2024.

⁴⁶ ECHR Art 9(2); see *Lee v Ashers Baking Co Ltd* [2018] UKSC 49, [2020] AC 413, para 55 (Lady Hale).

⁴⁷ Equality Act 2010, s 149.

Anglican minister, or having to appoint a minister merely because of their Anglican faith. That could raise legal challenges, such as arguments of unjustified positive discrimination under the Human Rights Act 1998 or the Equality Act 2010. Whilst the courts have traditionally held that the appointment of government ministers is a non-justiciable exercise by the Prime Minister of the Royal Prerogative, modern cases such as *Miller II* suggests the courts today are more willing to intervene, and may consider the appointment or removal of a minister on purely religious grounds to be sufficiently serious to become justiciable.⁴⁸

That said, one MP is appointed as the Second Church Estates Commissioner, with the responsibility of representing the Church in Parliament. It is arguable that selecting an Anglican MP to serve in that role would be ‘in pursuit of a legitimate aim’, and thus immune from any challenge under the ECHR. The same MP could be designated as the government minister tasked with also advising the King on Church appointments. The courts have held that any religious discrimination faces ‘a strict test of justification’, but that could perhaps be achieved in this specific context.⁴⁹

It would be difficult for a non-Anglican MP to argue that their Article 9 right has been violated by not being appointed to the Commissioner role, and any interference could be justified. The justification for only appointing an Anglican MP to that role (and thus barring any non-Anglican MP from holding that office) would be to protect the interests of the Church in its role as the Established Church for England, and to ensure that the Church is represented in Parliament by one of its members. Such a decision should also be permitted under the Equality Act 2010; whilst the Act generally holds that no discrimination is permitted when appointments are made to public offices, the Act also expressly excludes government ministers from that protection.⁵⁰

This reform option could potentially be an attractive proposition, as it would assign all Church functions to one ministerial post, thus avoiding any concerns where the Prime Minister is not an Anglican. Such reform might help to find a balance between the separation of Church and State, which is arguably a justifiable goal in a secular society, whilst maintaining a pragmatic and democratic link between the two. The latter is justified as long as the Church remains the official state religion and as long as the bishops sit in the House of Lords (of which more is said below).

Option 3: Repeal section 18 and section 4 of the two Relief Acts and allow any Prime Minister to advise the King

It is submitted that the next option is the preferred way forward. The relevant provisions in the two Relief Acts should be repealed, thus allowing any Prime Minister (regardless of their faith, or lack thereof) to advise the King merely by virtue of holding the office of Prime Minister. One would hope that a Bill to that effect would not be met with much (or any) opposition and therefore would not

⁴⁸ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 418 (Lord Roskill); *R (on the application of Miller) v The Prime Minister* [2019] UKSC 41, [2020] AC 373, para 36 (Lady Hale).

⁴⁹ *R (Bowen) v Kent County Council* [2023] EWHC 1261 (Admin), para 80 (Constable J); *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39; [2014] AC 700, para 20 (Lord Sumption) and para 74 (Lord Reed).

⁵⁰ Equality Act 2010, s 50(2)(a) and (3), and Schedule 6, para 2.

require any significant amount of Parliamentary time. This was the option favoured by the former Conservative minister during our interview; the former minister argued strongly for retaining the link between the Church and the government, and this reform would be the ‘cleanest way’ of regularising the appointments process, allowing any Prime Minister, regardless of their religious affiliation, to carry out this function.⁵¹

The response from Archbishop Welby, cited above, states that it is important that the King receives ‘sound and timely’ advice. In 1976, Margaret Thatcher asked the then Prime Minister, James Callaghan, about the appointment process; Callaghan emphasised that it was important for the Monarch to receive ‘advice’ on appointments, which had to come from a Minister.⁵² The key rationale is that the senior bishops sit in a legislative capacity in the House of Lords, which means that from a democratic point of view, their appointment is something that concerns the government (thus distinguishing the Church of England from other Anglican Churches). As long as the senior bishops remain in the House of Lords, it might be appropriate for the Prime Minister to continue to play a role in their appointment, even if the role since 2007 is mostly a formality. It was for that reason that the former Conservative minister I interviewed pushed back on the new process, arguing that Prime Ministers should be allowed to exercise discretion and be able to form a view on the suitability of the nominee.⁵³ However, as it is now established practice, it does seem unlikely today for a Prime Minister to intervene with a Church appointment.

There is a fine balance between option 2 (which could see an Anglican being appointed as Second Church Estates Commissioner and take responsibility for advising the King on appointments) and option 3. There is much that is attractive about option 2, as it would move all Church functions to a single government minister, and it would help keep the Prime Minister out of Church affairs. The main practical challenge might be finding an Anglican MP willing to be appointed to the role, which cannot be taken for granted in an increasingly diverse Parliament. Furthermore, the merit of option 3 lies in maintaining the traditional involvement of the Prime Minister, and as long as the bishops remain in the House of Lords, it is right and proper that Prime Minister (at the highest level of government) retains a role in their appointment. That is arguably necessary and justified in a democratic society.

The legislative reform in 2025 to allow Catholics to serve as the King’s Lord High Commissioner to the Church of Scotland further demonstrates that it is no longer a radical suggestion to allow Jewish and Catholic Prime Ministers to advise the King on clerical appointments in the Church of England.⁵⁴ Following the St Margaret Declaration in 2022, establishing ecumenical friendship between the Church of

⁵¹ Interview with a former senior Conservative minister, 22 July 2024.

⁵² James Callaghan, written answer on Ecclesiastical Appointments, HC Deb 8 June 1976, vol 912 col 613.

⁵³ Interview with a former senior Conservative minister, 22 July 2024.

⁵⁴ Church of Scotland (Lord High Commissioner) Act 2025, s 1, amending the Roman Catholic Relief Act 1829, s 12. Section 12 continues to preclude Catholics from serving as regents or guardians of the United Kingdom. Catholics are permitted to serve as Lord Chancellor pursuant to section 1 of the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, although the 1974 Act did not formally amend section 12, which retains its original wording excluding Catholics from that office.

Scotland and the Catholic Church, Sir Kier Starmer advised the King to appoint Lady Elish Angiolini as the Lord High Commissioner in 2025, the first Catholic to assume the role.⁵⁵ The old religious divides are, one by one, being consigned to the history book, where they belong. Regrettably, whilst passing the 2025 Act, the government suggested that it has no current plans on repealing the prohibition imposed on Catholic or Jewish Prime Ministers (instead referring to the 2025 Act as a ‘short and narrowly-focused’ reform), which is a major missed opportunity.⁵⁶ Nonetheless, the hope remains that such reform will happen at some point in the future.

Option 4: Remove any government involvement in the governance of the Church of England

The article is not commenting on the status of the Church as the state religion, although the topic of disestablishment is a recurring feature in political debate.⁵⁷ However, in a modern and increasingly secular society, the involvement of the Prime Minister (or any alternative Minister of the Crown) in advising the King on appointments within the Church could be seen as anachronistic. Hence, the final option for reform is that government’s involvement in the management of the Church should be removed altogether. In terms of appointing bishops, the CNC could be allowed to directly advise the King without any governmental involvement. In other Anglican Churches, such as those of Scotland, Canada and Australia, bishops are elected internally, with no involvement from the Crown or the respective governments (and as those bishops are not legislators, no government involvement is necessary).⁵⁸ Thus election processes for bishops are well-established in the global Anglican community, and could be adopted by the Church of England, with or without amendment to retain a role for the King.

However, trying to disentangle the government from the Church of England would ultimately necessitate major reform, which (in light of the narrow 2025 legislative reform) is clearly not on the government’s current agenda. The article has identified some of the various links that remain between the Church, the government, and Parliament. In the future, such reform might come on the agenda, but it would entail unravelling centuries of practices and conventions, and it is a process that should not be undertaken lightly. Christianity, and the Church of England specifically, has been a cornerstone of the development of modern England, and removing such a foundational pillar comes with its own risks.⁵⁹

⁵⁵ www.churchofscotland.org.uk/news-and-events/news/archive/2022/st-margaret-declaration-officially-signed-at-dunfermline-abbey and www.gov.uk/government/news/legislation-introduced-to-enable-appointment-of-lord-high-commissioner-of-the-general-assembly-of-the-church-of-scotland (accessed 4 March 2025).

⁵⁶ Written response by the Minister for the Cabinet Office (Nick Thomas-Symonds MP) to a written question by Ruth Cadbury MP (reference UIN 29898, 7 February 2025).

⁵⁷ Consider the Disestablishment of the Church of England Bill [HL] 2023–24.

⁵⁸ Canons 3 and 4, Code of Canons 2024 (Scottish Episcopal Church); Canon 3, Constitution of the Anglican Church of Canada; Canon 8, Constitution of the Anglican Church of Australia.

⁵⁹ J H H Weiler, ‘Freedom of Religion and Freedom from Religion: The European Model’ (2013) 65 *Maine Law Review* 759, 776.

On that basis, at least as long as the senior bishops remain in the House of Lords, this article submits that section 18 and section 4 of the respective Relief Acts should be repealed, as the most pragmatic solution, ending centuries of legal discrimination against the Jewish and Catholic communities in the UK.

Part 5: From theory to practice – the case of Boris Johnson

Whilst a person's faith is normally (and rightly) a private matter, that cannot be said of anyone who is appointed to a government position. Beyond concerns that their faith might influence their political decision-making, to ensure compliance with the Relief Acts, the faith of a Prime Minister becomes a matter of public interest. This section will discuss Boris Johnson, who was Prime Minister from 24 July 2019 to 6 September 2022. Johnson's religious status can be summarised as follows, all taken from public records. He was baptised as a child in the Catholic Church. He was later confirmed in the Church of England. In 2020, his child was baptised in the Catholic Church. In 2021, he married Carrie Symonds in the Catholic Cathedral in Westminster. The latter two events were perhaps prompted by his wife, who has confirmed that she is Catholic.⁶⁰ Johnson has said that he was not a 'serious practising Christian' but 'thinks about religion a lot'.⁶¹ This sequence of events necessarily leads to the question of whether Johnson was affected by section 18 of the Roman Catholic Relief Act 1829, on the basis that he was a person who 'professes' the Roman Catholic faith.

Freedom of Information Act (FOI) request

I submitted a request to the Cabinet Office on 6 July 2023, pursuant to the Freedom of Information Act 2000 (statutory references in this part of the article are to this Act). In brief, the request asked for information and documents relevant to any government discussions or decisions on whether Johnson had been bound by the Relief Act, and if so, what alternative measures had been imposed.

Over the following months, the Cabinet Office FOI Team confirmed the existence of relevant information, but sought more time to consider whether the information was exempt from disclosure; firstly under section 35 (which exempts various information, including ministerial communications and advice from the Law Officers), and secondly under section 37 (which exempts various information, including communications with the Sovereign or information relating to the Crown conferring on a person any honour or dignity).⁶²

The final response came on 9 November 2023. In their decision, the FOI Team 'neither confirms nor denies that it holds information you have requested' pursuant to section 42(2).⁶³ Section 42 protects information that is legally privileged, and

⁶⁰ <https://www.theguardian.com/politics/2021/may/30/boris-johnson-carrie-symonds-married-catholic-church> (accessed 13 May 2024).

⁶¹ <https://www.telegraph.co.uk/news/politics/conservative/11378107/Boris-Johnson-I-am-not-a-serious-practicing-Christian.html> (accessed 13 May 2024).

⁶² Freedom of Information Act 2000, ss 35(1) and 37(1).

⁶³ Freedom of Information Request, Decision, Reference FOI2023/08227.

section 42(2) allows the public authority to neither confirm nor deny the existence of any information if the mere act of confirming the existence of information would reveal the content of the privileged information.

I sought an internal review of that decision. The FOI Team concluded the internal review on 20 March 2024.⁶⁴ The FOI Team accepted that it had not been appropriate to rely on section 42(2), not least since their earlier communications had confirmed the existence of the information; nor had it been right to refer to sections 35 and 37. Nonetheless, the FOI Team concluded that it was not going to release any documentation. Firstly, the information that is subject to legal privilege would not be disclosed, as the public interest always very strongly favours protecting the privilege. Secondly, for information that was not legally privileged, the FOI Team said that it was exempt under section 36(2), which exempts information to safeguard 'free and frank' discussions and advice within the government.⁶⁵ In short, it ensures that government officials can advise ministers without the need for self-censorship born from fear that the advice could be disclosed to the public.

Ultimately, there is a balancing act between the public's right to information and the need for public authorities to be able to carry out their duties effectively. On this occasion, the FOI Team resolutely took the view that the public interest did not warrant disclosure of any documentation. Respectfully, I disagree with some of the reasoning provided, but I accepted the decision. I was later informed that my request had been considered at the highest levels, including by a Minister in the Cabinet Office, so I am at least satisfied that the request was taken seriously.⁶⁶

The FOI Team rightly informed me of my right to appeal their decision to the Information Commissioner. They also indicated that a relevant Cabinet Office official would be willing to have an interview with me to discuss the matter further. There was no suggestion of any *quid pro quo* between the two, but I decided to accept the invitation to meet with the official, and I decided not to pursue an appeal to the Information Commissioner.

Interview with Senior Official in the Cabinet Office

On 10 May 2024, I had an online meeting with a Senior Official in the Cabinet Office, who had relevant insight into this matter. At their request, and as is common practice with such interviews with government officials, their anonymity is protected and the information is solely attributed to a Senior Official.

It was a very insightful interview, which provided an opportunity to discuss the Relief Acts in greater detail. The Senior Official was not in a position to comment on whether there had been any discussions about the general suitability of the Relief Act and whether it should have been repealed or reformed.

Importantly, however, the Senior Official was in a position to confirm what had happened when Johnson was Prime Minister. Despite his marriage in the Catholic Church, Johnson had been adamant that his Anglican status (based on his confirmation in the Church of England) had not changed. On that basis, he did not

⁶⁴ Freedom of Information Request, Internal Review Decision, Reference IR2023/13394.

⁶⁵ Freedom of Information Act 2000, s 36(2).

⁶⁶ Interview with Senior Official at the Cabinet Office, 10 May 2024.

consider himself as someone who was professing the Catholic religion and hence the prohibition in the Relief Act did not apply to him. On that basis, the Senior Official confirmed that Johnson continued to advise the late Queen on appointments to the Church of England throughout his tenure as Prime Minister (which would have included multiple appointments, such as Richard Jackson as Bishop of Hereford in 2019, Stephen Cottrell as Archbishop of York in 2020, and Guli Francis-Dehqani as Bishop of Chelmsford in 2021).

Interview with a former senior Conservative minister

On 22 July 2024, I had an online meeting with a former senior Conservative minister, who also had relevant insight into this matter. Again, at their request the interview was conducted on the basis of anonymity.

The former minister emphasised that they had not held any direct conversations with Johnson about this specific matter. Nonetheless, they had privately communicated with the Prime Minister's Office to say that they were willing to assume the functions of advising the late Queen on appointments, given their Anglican status, should Johnson be unable to do so. Of course, as has been stated, Johnson carried out the role himself throughout his time as Prime Minister.

The former minister referred to the situation as 'vexed' and 'chequered', as with so many things that characterised Johnson's time in office. However, the former minister accepted that the situation about Johnson's religious status was 'nuanced', and whilst it was possible to argue that Johnson should have voluntarily declined to advise the late Queen, ultimately Johnson's Confirmation was the key criterion as to whether Johnson was Catholic or Anglican. As Johnson was confirmed in the Anglican Church, the former minister argued that that settled the debate. The former minister also seemed to confirm that Johnson's wedding in the Catholic Church was at his wife's suggestion, and should not be taken as a suggestion of Johnson professing the Catholic faith.

Analysis

There is a serious question at hand, namely whether Johnson was bound by section 18 of the Roman Catholic Relief Act 1829, and whether he acted unlawfully when he continued to advise the late Queen on appointments in the Church. Ultimately, whilst a prudent Prime Minister in these circumstances could have voluntarily transferred these functions to another Minister, there is no suggestion that Johnson actually acted unlawfully.⁶⁷

The question turns on the definition of the word 'professes', and it is unfortunate that there is this degree of uncertainty in the law; indeed, that further emphasises the merit of repealing the prohibitions. As discussed above, there is a need to show both an intention to be a member of that religion and publicly demonstrate that adherence. In respect of the latter point, the old Penal Act cases said that the

⁶⁷ Hurford seems to argue to the contrary; James Hurford, 'The Curious Case of Boris' Bishop: Did the First Catholic Prime Minister Fall Foul of s 18 of the Roman Catholic Relief Act 1829?' (2023) 28 *Judicial Review* 305, 315.

person had to demonstrate ‘regular and complete conformity’, and there is no real suggestion that Boris Johnson satisfied that requirement.⁶⁸

Intention is a crucial aspect of professing a religion. The old case law on the penal statutes imply as much when stating that an infant cannot profess a religion merely by infant baptism; only a person old enough to make a conscious choice can be said to profess a religion.⁶⁹ Exactly when a person is old enough is undoubtedly an individual matter. In respect of Johnson, if he stated that he considered himself an Anglican, then that, on its own, is arguably sufficient to say that he is not professing the Catholic religion, because there is clearly no intent to do so.

Taking active steps to live in accordance with the religion must also be considered a key aspect of professing that religion, although exactly what that entails can be debated. Catholic baptism, Catholic marriage, and baptising one’s own children in the Catholic Church would arguably be strong indicators that a person is professing the Catholic faith. That said, a person can undoubtedly consider themselves to be Catholic (or, as the case may be, Jewish) without attending religious services or following every precept of their religion, but the law might be hard-pressed to say that a person is professing a religion if they have no engagement with its rituals, practices, or rules (especially if the courts look for ‘regular and complete conformity’). That is why intention must also be an integral part of the test. If a person holds themselves out as being Catholic or Jewish, then they could legally be considered to be professing that religion. In respect of Johnson, he may well argue that the Catholic marriage was held at the behest of his wife.⁷⁰ If Johnson was not the driving force behind that decision, that would accord with his stated assertion that he still considered himself an Anglican and had no intention of professing the Catholic faith.

There is clearly a contradiction between a person who claims to be Anglican yet celebrates key sacraments (such as marriage and baptism) in the Catholic Church. In the 19th century, when the Roman Catholic Relief Act 1829 was passed, such a duality would probably have been socially impossible, or at least unlikely. In the contemporary world, where religion has become more private and less public, and arguably more flexible, that contradiction is perhaps less acute and less problematic. In terms of Johnson, ultimately only he knows whether he is Catholic or not, and if he says that he is not, we should, without any clear evidence to the contrary, take him at his word. However, as with so many other events that marked his tumultuous premiership, one could argue that he played fast and loose with section 18 of the Roman Catholic Relief Act 1829, and that on this occasion, the ambiguity in the statutory language has worked in his favour.

Since my FOI request was denied, it is not clear whether the Church of England sought any reassurances from Johnson, or whether Johnson provided any such reassurances. The broader question that emerges is what representations should be made by non-Anglican Prime Ministers (and, indeed, other ministers with ecclesiastical functions) to the Church to assure them that clerical appointments will

⁶⁸ *Farrell v Tomlinson* (1761) V Brown 438; 2 ER 782, 784 (Robinson J) (on appeal from Ireland).

⁶⁹ *Hill v Filkin* (1722) 2 Peere Williams 6; 24 ER 619.

⁷⁰ <https://www.theguardian.com/politics/2021/may/30/boris-johnson-carrie-symmonds-married-catholic-church> (accessed 13 May 2024).

be handled sensitively, and what assurances (if any) the Church should seek from the government when non-Anglicans are appointed to those ministerial roles. It leads to the much more complex question of what the relationship between the Church and the government should be, which is beyond the scope of this article.

Part 6: Conclusion

During the religiously turbulent Tudor and Stuart eras, English law introduced far-reaching restrictions on Catholics and non-conformist Protestants. The burgeoning Jewish community was caught up by those restrictions. The underlying aim of those laws was to protect and promote the Church of England, which since the days of Elizabeth I has been the established state religion. Changing social circumstances ensured that the penal laws were gradually dismantled, starting in the late 18th century.

Nonetheless, a mish mash of anti-Catholic and anti-Jewish rules have been allowed to linger on the statute book. The prohibition imposed by section 18 of the Roman Catholic Relief Act 1829 and section 4 of the Jewish Relief Act 1858 were undoubtedly retained because Parliament saw a need to keep protecting the Church of England. It was unthinkable that any Catholic or Jewish Prime Minister should have any say in the running of the Anglican Church. That probably reflected the best thinking of the time, and even today it is perhaps unlikely that any Catholic or Jewish Prime Minister would actually want to advise the King on appointments within the Anglican Church.

The problem with the law is that it targets only two religious groups, even though that can be explained for historical reasons. That is the very essence of discrimination, which cannot be considered acceptable today, regardless of the historical origins of the rules. The law must change, and the article has considered various options for reform.

The first option is to keep the law as is, but that cannot be recommended. The second option is only allowing an Anglican Minister to carry out the advisory function. It could be justifiable to appoint an Anglican MP to the role of Second Church Estates Commissioner, and allow that person to take responsibility for advising the King on appointments as well. The third option, which the article submits is the most convenient and practical way forward, would be to repeal section 18 and section 4 of the two Relief Acts, to allow any Prime Minister, regardless of their faith, to advise the King. Rishi Sunak, who professes the Hindu faith, was able to carry out that function throughout his premiership, and that has not caused any detriment to the Church of England, or any actual negative public reaction. It shows how much society has changed. The former Conservative minister whom I interviewed posited that people would 'rightly' be 'bemused' and 'incredulous' to learn about these prohibitions, but there would not be any real opposition to a repeal.⁷¹ The fourth option, more radical but in a secular society perhaps an increasingly viable one, would be to remove any role of government ministers in

⁷¹ Interview with a former senior Conservative minister, 22 July 2024.

the governance of the Church of England, or even to disestablish the Church. Today, when the Prime Minister's advisory role has, in practice, been reduced to nothing more than a formality, there is no particular reason why the CNC could not directly pass on their nominee to the King. However, as long as the senior bishops sit in the House of Lords, it does seem democratically justified to ensure that the Prime Minister continues to have some involvement, however much of a formality, in their appointment. The necessary follow-up question is whether the bishops should remain in the House of Lords, but that is a debate for another time.

The article has shown that the ambiguity in the prohibitions can make them difficult to enforce. Johnson undoubtedly acted within the letter of the law, but perhaps not within its spirit; 19th century parliamentarians might express surprise that someone baptised and married in the Catholic Church felt able to carry on advising the Crown. Even in a hypothetical scenario where a Catholic or Jewish Prime Minister knowingly breaches the statute, the antiquated and discriminatory nature of the offence makes it questionable whether the Crown Prosecution Service would feel it was in the public interest to prosecute. That reinforces the argument that the prohibitions should be repealed.

It remains to be seen what, if anything, will be done about these statutory prohibitions. Some 100 years after the last one (the Roman Catholic Relief Act 1926) this article argues that it is time for one last Catholic and Jewish Relief Bill to be presented to Parliament, to allow all Prime Ministers, Lord Chancellors, and indeed any Minister of the Crown, to fully carry out their duties regardless of their religious or non-religious beliefs.

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