

**THE LEGALITY OF THE USE OF INDIVIDUAL CUPS  
FOR COMMUNION WINE IN THE CHURCH OF ENGLAND**

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**OPINION**

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**A. INTRODUCTION**

1. We are instructed by Mrs Mary Durlacher to provide a legal opinion in light of the answer from the Chair of the House of Bishops to a question that she asked, under the Standing Orders of General Synod, on Saturday 11 July 2020:<sup>1</sup>

**Mrs Mary Durlacher (Chelmsford) to ask the Chair of the House of Bishops:**

**Q68** Will the House of Bishops reconsider the prohibition of use of small individual cups as a valid ‘common sense’ *pro tem* way of sharing the Communion wine while current constraints remain?

*The Bishop of London to reply on behalf of the Chair of the House of Bishops:*

**A** The Legal Advisory Commission has stated “it is contrary to law for individual cups to be used for each communicant” and that “the doctrine of necessity cannot be appealed to in order to justify the use of individual cups even in circumstances where there is a fear of contagion from the use of a common cup. ... the Sacrament Act 1547 makes provision for cases where a necessity not to deliver a common cup arises: in such a case the normal requirement that the sacrament be delivered in both kinds is disapplied by statute. Even if a shared cup cannot be used for medical reasons, the use of individual cups remains contrary to law ... . In such cases reception should be in one kind only.” The House cannot authorise or encourage a practice which would be contrary to law.

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<sup>1</sup> [https://www.churchofengland.org/sites/default/files/2020-07/Questions%20Notice%20Paper%20July%202020\\_0.pdf](https://www.churchofengland.org/sites/default/files/2020-07/Questions%20Notice%20Paper%20July%202020_0.pdf) Question 68 at page 34

2. We are instructed to advise Mrs Durlacher on whether or not the use of individual cups to distribute communion wine is legal in the Church of England.<sup>2</sup>
3. On 10 March 2020, in the context of the present public health emergency, the Archbishops of Canterbury and York wrote to Clergy to advise on the withdrawal of the common cup for administering wine at communion.<sup>3</sup> Use of the common cup, then and now, carries unacceptable public health risks, and would be contrary to Government guidance which provides that communal vessels should not be used in worship.<sup>4</sup>
4. The current position of the House of Bishops, in the answer to Mrs Durlacher’s question under the Synod’s Standing Orders, is that the distribution of wine at Communion in individual cups is illegal. This answer is given on the basis of an opinion of the Legal Advisory Commission of the General Synod (“**the LAC**”) given in 2011 (“**the LAC Opinion**”).<sup>5</sup> This position has also been advanced in a recent document “*Holy Communion and the distribution of the elements*” produced in July 2020 by the Chair of the Liturgical Commission and three others.<sup>6,7</sup>

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<sup>2</sup> We do not accept responsibility to anyone other than Mrs Durlacher in relation to the opinions expressed in this Opinion.

<sup>3</sup> The Archbishops’ letter can be found at:

<https://web.archive.org/web/20200625142657/https://www.churchofengland.org/sites/default/files/2020-03/Coronavirus%20letter%2010th%20March%202020%20-%20Archbishops%20guidance%20on%20common%20cup.pdf>.

The most recent guidance from the House of Bishops can be found here:

<https://www.churchofengland.org/sites/default/files/2020-07/Coronavirus%20Advice%20on%20the%20Administration%20of%20Holy%20Communion%20v3.0.pdf>

<sup>4</sup> COVID-19: Guidance for the safe use of places of worship during the pandemic (updated 4 August 2020) <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july>

<sup>5</sup> The LAC Opinion is at: <https://www.churchofengland.org/sites/default/files/2017-12/reception%20of%20communion.pdf>

<sup>6</sup> *Holy Communion and the distribution of the elements*  
<https://www.churchofengland.org/sites/default/files/2020-07//Holy%20Communion%20%20distribution%20of%20the%20elements.pdf>

<sup>7</sup> Similar guidance was previously given in 2009 during the Swine Flu outbreak. The LAC Opinion has been given in different forms (but with the same conclusion) on several occasions before (including in

5. Therefore, with the common cup withdrawn, the position of the House of Bishops is that communion is to be in one kind only.
6. In our opinion, the LAC Opinion does not accurately reflect the law and therefore the position taken by the House of Bishops is based on an incorrect foundation. We believe that there is no legal barrier to the use of individual cups and that, by the use of individual cups, the distribution of communion in both kinds is lawful.

## **B. THE STATUTORY BACKGROUND**

7. The starting point in matters relating to Communion is in statute.
8. Section 8 of the Sacrament Act 1547 (“**the Act**”) remains in force to this day (the remaining seven sections having been repealed by various Acts of Parliament in the 20<sup>th</sup> Century).<sup>8</sup>
9. Section 8 of the Act provides in relevant part that:

*the saide moste blessed sacrament be hereafter commenie delivered and ministred unto the people, within this Churche of Englande and Irelande and other the Kings Dominions, under bothe the Kyndes, that is to saie of breade and wyne, excepte necessitie otherwise require:*

10. A modernised spelling, provided in the LAC Opinion, is to same effect:

*“... the said most blessed Sacrament be hereafter ... commonly delivered and ministered unto the people within the Church of England ... under both kinds, that is to say, of bread and wine except necessity otherwise require ...”*

11. This is the proper starting point for any enquiry as to the legality of the use of individual cups to distribute communion in both kinds.

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*Legal Opinions Concerning the Church of England*, (eighth edition, London, 2007) and *Legal Opinions Concerning the Church of England* (seventh edition, London, 1994)).

We are aware of the serious and developed critique of the older opinion from the LAC in *Ecclesiastical Law Journal* Vol. 12, Iss. 2, (May 2010) by Rt. Rev. Colin Buchanan. The LAC revised its opinion the following year. As the LAC opinion has developed, we do not consider it further.

<sup>8</sup> A possible approach to the Act is to say that when passed (and when later reinstated *prior* to the 1662 Book of Common Prayer) it has only ever applied to forms of worship which are no longer in use, and does not apply to modern forms of worship. We have not adopted this course of argument as it is not necessary for the conclusion. However, it is noted for completeness.

***What does the Act say?***

12. Section 8 of the Act states that Communion is universally to be delivered in two kinds. The function of section 8 is to mandate that, outside of the exception, delivery in both kinds is mandatory.<sup>9</sup> However, section 8 says nothing as to the method of delivery of either kind.<sup>10</sup>
13. The House of Bishops' position makes much of the final words of the relevant section of the Act: "*except necessity otherwise require*". It is said that because the Act provides for one kind only where required by necessity, the use of individual cups is not permitted.
14. The logic assumes that the Act (or the law more generally) mandates the use of a common cup, such that, where impossible to use a common cup, the only alternative under the Act is Communion in one kind.
15. In "*Holy Communion and the distribution of the elements*" it is put this way, from which the logic is clear:

*It is because ecclesiastical law provides for what is to happen where there is a necessity not to deliver a common cup (i.e. the usual requirement for communion in both kinds is dispensed with) that there is no legal basis for individual clergy to make alternative arrangements such as the adoption of individual cups.*

16. The LAC Opinion puts it similarly:

*the Sacrament Act 1547 makes provision for cases where a necessity not to deliver a common cup arises: in such a case the normal requirement that the sacrament be delivered in both kinds is disapplied by statute*

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<sup>9</sup> The purpose of the statute was to introduce Protestant doctrine and practice into England and Wales. It required that Holy Communion be delivered to the people in both kinds and had the effect of prohibiting the Roman Catholic practice of Holy Communion being delivered solely in one kind, subject to the necessity exception. See Bray's Documents of the English Reformation at p257; Diarmaid MacCulloch's Tudor Church Militant at p76; and Diarmaid MacCulloch's Thomas Cranmer at p378.

<sup>10</sup> The LAC Opinion does not rely on the word "commonly" in section 8 to argue otherwise. As the LAC Opinion states, the word "commenlie" or "commonly" means "universally" or "in a way common to all" and the word is used in relation to both kinds, not in relation to their methods of delivery.

17. In our view, this is a complete misreading of the Act, which does not link the necessity provision to the common cup.
18. It is important to distinguish between the elements of communion and their vessels. Both the LAC Opinion and “*Holy Communion and the distribution of the elements*” focus on the necessity not to deliver a *common cup*. But that language is nowhere to be found in the Act. Instead, the Act provides for necessity not in terms of the *cup* but in terms of the *kind (or element)*. Indeed there is no mention of a cup (common or otherwise) in Section 8 of the Act.
19. The common examples of such necessity all relate to the element itself: where there is no wine generally available that can be consecrated;<sup>11</sup> where a communicant is unable to swallow bread because of a health condition; or where an alcoholic is unable to take wine.
20. The necessity provision within the Act is concerned with the requirement for (and therefore the availability of) both kinds and not with the method of their distribution.
21. The present global health pandemic does not give rise to a necessity to cease to distribute wine. The issue is not the element, but the fact that the cup is common.
22. Therefore, unless the use of individual cups is illegal under the Act or on some other basis, the necessity provision of the Act does not arise to be considered.

***Does the Act prohibit individual cups?***

23. Save for a clear requirement that the priest shall, at least one day before, exhort all those who will receive the sacrament to prepare themselves for doing so<sup>12</sup> (a requirement which remains law, but which appears no longer to be practised); the Act

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<sup>11</sup> The LAC Opinion cites Beddoe v Hawkes (1888) 4 TLR 315 as authority for the proposition that the necessity exception does not apply “*where no or insufficient wine or bread has been provided for the celebration of the Holy Communion*”. It is not authority for that proposition. The case was a judgment on the admitted fact that the priest had on one occasion (in something of a panic) used water in place of wine. It was held that he should not have done so; rather, upon finding no wine at the table, he should not have continued with the communion service at all. The Court was not asked to and did not consider the Sacrament Act 1547, the question of necessity, or distribution in one kind only.

<sup>12</sup> “*the preist which shall ministre the same shall at the least one day before exhorte all persons which shalbe present likewise to resorte and prepare themselves to receive the same*”

makes no provision for the practical methods by which the “*blessed Sacrament*” (in two kinds) be “*delivered and ministered*”.

24. In short, there is no prohibition in the Act on the use of individual cups to distribute communion, because the Act is entirely silent on the question of the methods for delivering and ministering communion. It is simply not concerned with the matter.
25. Therefore, unless there is some prohibition elsewhere in either the common law or canon law, there can be no basis for saying that there is a legal bar to the use of individual cups to distribute communion.

### **C. IS THERE A PROHIBITION?**

26. The LAC Opinion suggests three further grounds for a legal prohibition on the use of individual cups in the distribution of communion:
  - 26.1. That the use of a single chalice is a “norm”;
  - 26.2. That the rubric in the Book of Common Prayer envisions that individual cups are not used;
  - 26.3. That Canon F3 of the *Revised Canons Ecclesiastical* does not explicitly provide for individual cups.
27. In “*Holy Communion and the distribution of the elements*” one further consideration is suggested: the need to comply with the liturgy requiring reverent consumption of the remainder of consecrated bread and wine.

#### ***The “norm” of a single chalice***

28. The suggestion that an alleged “norm” should have any relevance to the existence of a prohibition as a matter of law is unpersuasive.
  - 28.1. First, the concept of “norm” being referred to is never explained and is not self-evident. There is no legal concept of “norm” which makes any and every deviation from the “norm” automatically prohibited and illegal.
  - 28.2. Secondly, if something is a “norm” (whatever that may mean) or even a custom, its characterisation as a “norm” could not, without more, make

departure from it illegal. It would then be normal, but that would be very different from being mandatory, compulsory and exclusive.

29. No basis has been suggested anywhere by the House of Bishops to conclude that the purported existence of this norm makes the use of individual cups unlawful. This is because there can be no basis in law or in logic to assert that the existence of a norm renders everything other than the norm prohibited in law.
30. Furthermore, that a departure from the norm does not in itself render a practice unlawful is implicitly accepted in paragraphs 4 and 5 of the LAC Opinion in the case of the “*exceptional practice of intinction*”. This practice<sup>13</sup> is described as being “*an alternative to the normal distribution of bread and wine*”, yet its use is not in itself regarded as being unlawful despite the departure from the norm involved.
31. In any event, it is debatable whether there is indeed a norm that a single chalice is and should be used. It is common even in smaller churches (and indeed almost invariably the case in larger churches and cathedrals) that multiple cups are used to ensure that all the communicants can receive in the time available. This is recognised in paragraph 4 of “*Holy Communion and the distribution of the elements*”.
32. If there is a norm, the wide-spread use of multiple cups would represent a significant departure from it. Yet no legal basis has been suggested by the LAC or the authors of “*Holy Communion and the distribution of the elements*” as justifying or explaining such a wide-spread departure from the alleged norm. The only justification which the LAC Opinion and the authors of “*Holy Communion and the distribution of the elements*” can offer is that the number of communicants may permit departing from the ‘norm’ by using multiple cups.
33. In our view, the significance of the wide-spread use of multiple cups is more fundamental: it represents strong evidence that there is no norm that a single cup should be used. If there were such a norm, the use of multiple cups would be an exception to it and the ambit of the exception would be carefully circumscribed. We would expect there to be clarity in relation to at least the following: how much time

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<sup>13</sup> A practice which, while commonly used where there is a higher risk of infection, is judged still too risky in the present pandemic.

for the administration of communion is appropriate using only a single cup; how many congregants are required to attend communion before more than one cup can be used; how many more than one cup can be used; how are the multiple cups to be filled and by whom delivered; who decides whether and when to move from a single cup to multiple cups.

34. In the absence of clear rules in relation to any of these points, the use of multiple cups is not an exception to a clear norm, but clear evidence that there is no norm. Moreover, the absence of clear rules in relation to how many more than one cup can be used means that it is, in effect, left to the discretion of the president what the local practice should be. In other words, it is appropriate for the president to decide to use two cups, or five cups or ten cups – the only constraint being, it seems, that the decision must find some justification in the number of congregants and the time taken to administer the elements (where no benchmark in relation to timing exists). It is then important to note that the nature of the required justification is not theological or otherwise principled, but entirely practical.
35. If it is open to the priest presiding to decide to use multiple cups (with no maximum number being stipulated), it is very difficult to see why individual cups are, or are always, impermissible. If multiple cups are permissible in the ordinary course in the interests of time, why are individual cups not permissible in the midst of a global pandemic in the interests of public health?
36. It is unclear on what possible grounds a global pandemic is not a basis for departing from the norm (if there is a norm) by using multiple individual cups, or *a fortiori* multiple individual cups filled from a single flagon.



## *The Book of Common Prayer*

37. Pursuant to The Act of Uniformity 1662, the rubrics<sup>14</sup> of the Book of Common Prayer had statutory authority.<sup>15</sup> The Church of England (Worship and Doctrine) Measure 1974 (No. 3) (“**the 1974 Measure**”) has altered that position.<sup>16</sup>
38. The 1974 Measure provides at Section 1 that:

*(1) It shall be lawful for the General Synod—*

*(a) to make provision by Canon with respect to worship in the Church of England, including provision for empowering the General Synod to approve, amend, continue or discontinue forms of service;*

*(b) to make provision by Canon or regulations made thereunder for any matter, except the publication of banns of matrimony, to which any of the rubrics contained in the Book of Common Prayer relate;*

*[...]*

*(2) Any Canon making any such provision as is mentioned in subsection (1) of this section, and any regulations made under any such Canon, shall have effect notwithstanding anything inconsistent therewith contained in any of the rubrics in the Book of Common Prayer.*

39. Provision having since been made by Canon for the administration and distribution of Holy Communion, the rubrics of the Book of Common Prayer can no longer be said to be of legal effect in respect of this question. This is a short and complete answer to the reliance on the rubrics in the Book of Common Prayer by the LAC: The rubrics in this matter, no longer having the force of law, cannot (whatever they say) determine the legality of this matter.

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<sup>14</sup> The rubrics are defined as “*all directions and instructions contained in the said book, and all tables, prefaces, rules, calendars and other contents thereof*” (s.5(2) The 1974 Measure).

<sup>15</sup> See the decision of the Privy Council in Martin v Mackonochie (No 1) (1867-69) L.R. 2 P.C. 365 at 383 citing Westerton v Liddell Moore's Special Rep. p. 187.

<sup>16</sup> See for example, In Re St Thomas, Pennywell [1995] Fam. 50, 65, where the case law which had been decided when the rubrics retained the status conferred by the Act of Uniformity 1662 was held to no longer be binding on the Court: “*The grounds upon which the courts have previously given the rubrics of the Book of Common Prayer such a rigorous interpretation have therefore now been swept away and the judgments set out above (together with the many other cases to like effect) are no longer binding in so far as they are based upon that interpretation.*”

40. Nevertheless, if one considers the rubrics in the Book of Common Prayer relied upon by the LAC it becomes apparent that they provide no basis for a prohibition in any event.

41. The LAC provides two excerpts from the Book of Common Prayer in support of the position that the use of individual cups is unlawful:

41.1. The first is from the ministration of the wine:

*“And the Minister that delivereth the Cup to any one shall say ...”.*

41.2. The second is taken from the rubric concerning further consecration:

*“If the consecrated ... Wine be all spent before all have communicated, the Priest is to consecrate more ....”*

42. It is said that the use of the definite article in the first quotation indicates that individual cups are not envisaged and that this is supported by the provision for further consecration in the second sentence.

43. This falls far short of a prohibition on the use of individual cups. Firstly, the failure to envision something is not the same as legally prohibiting it. Secondly, the failure to envision or refer to something in one specific context dealing with a different matter (*viz.* what the Minister should say when administering to any person whatever cup is used to deliver to them the wine) is not the same as legally prohibiting it altogether. Thirdly, not only is the use of the definite article not obviously inconsistent with individual cups, but when read in context it cannot be taken to refer to only a single cup. Indeed, if it did, it would render the use of multiple cups unlawful, when the LAC Opinion expressly recognises their use to be lawful at paragraph 3(a)(i).

44. Further, the Prayer of Consecration within the Book of Common Prayer (which equally forms part of the rubric) recognises that there may nevertheless be more than one cup:

*“And here to lay his hand upon every vessel (be it chalice or Flagon) in which there is any Wine to be consecrated”.*

45. In light of this statement, it is difficult to see how the conclusion may be reached that there may be more than one cup (the maximum permitted number being unspecified) but it is legally prohibited that there should be as many cups as there are communicants (where the number of congregants must exceed the number of cups, but to an unspecified extent). In our view, the use of the definite article referred to above will not bear the weight which the LAC Opinion seeks to hang on it.
46. The second quotation from the rubric regarding further consecration takes the issue no further: whether there is a single cup, multiple cups or individual cups, more wine would need to be consecrated if insufficient had been consecrated in the first instance. However, that is not inconsistent with either the possibility of individual cups or the use of individual cups. There is no reason at all to think (and no reason suggested by the LAC) that further consecration may not on occasion be necessary where individual cups are used.
47. Therefore, the rubric in the Book of Common Prayer provides no basis for concluding that the provision of wine in individual cups is unlawful.

### ***Canon F 3***

48. Unlike the rubrics in the Book of Common Prayer set out above, Canon F 3 has a legal status. Were Canon F 3 (or any other canon) to prohibit the use of individual cups, that would form the basis of a strong argument that the use of individual cups was unlawful.

49. Canon F 3 of the *Revised Canons Ecclesiastical* provides that:

*1. In every church and chapel there shall be provided, for the celebration of the Holy Communion, a chalice for the wine and a paten or other vessel for the bread, of gold, silver, or other suitable metal. There shall also be provided a basin for the reception of the alms and other devotions of the people, and a convenient cruet or flagon for bringing the wine to the communion table.*

50. The LAC Opinion argues in the following manner in respect of this:

50.1. *“This Canon merely states the bare minimum of that which is to be supplied”*

50.2. *“Therefore [this Canon] is not entirely definitive”*

- 50.3. *“However, it is most likely that, if individual cups had been envisaged, it would have specifically referred to them.”*
- 50.4. Thereby concluding: *“It follows that it is contrary to law for individual cups to be used for each communicant.”*
51. The logic seems fundamentally flawed: it amounts to asserting that whatever is not referred to is legally prohibited. This is asserted despite the absence of any words stating that it is prohibited to use any chalice other than that provided. Yet if legal prohibition of anything other than the minimum provision were intended, a simple statement to that effect would surely have been made within the Canon.
52. Moreover, the implausibility of the LAC’s conclusion is obvious. The Canon sets out a minimum provision for the celebration of Holy Communion. It does not set out to prescribe what may or may not be utilised and nothing in its wording suggests that it intends to do so. Its omission of mention of individual cups can have no relevance to the question of the legality of their use.
53. Furthermore, the reasoning set out in a quote from the LAC Opinion at paragraph 50.3 above applies equally to multiple cups or chalices. To follow the LAC Opinion’s reasoning on Canon F 3 for individual cups would lead to the inevitable conclusion that multiple cups are also illegal.<sup>17</sup> This is another good reason to consider that the LAC must therefore be in error.
54. There is no way in which a prohibition on the use of individual cups can be read into or derived from Canon F 3.
55. Furthermore, Canons B 12 – B 17A, which set out further rules for the administration of Holy Communion, contain no stipulation for a single cup, and no prohibition of multiple or individual cups. Canon B 17.3 stops short of any canonical requirement on how the wine, having been brought to the table, should be distributed by the president to partakers.

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<sup>17</sup> This makes clear just how odd the LAC’s concept of a prohibition is. The LAC in its analysis of Canon F 3 appears to take the view that unless something is specifically and clearly provided for it is illegal. This is misguided. But it is the unspoken step in its reasoning.

### ***Reverent Consumption***

56. The authors of “*Holy Communion and the distribution of the elements*” also raise a concern regarding what is to happen to leftover wine:

*Furthermore, there are practical problems with their liturgical use in the Church of England. This relates to any consecrated wine that may remain in individual cups after the communicant has received. Common Worship states that ‘Any consecrated bread and wine which is not required for the purposes of communion is consumed at the end of the distribution or after the service’. In the current situation, it would not be possible for any consecrated wine that remains in individual glasses to be consumed safely by anyone other than the communicant.*

57. Even if we assume that the requirement in Common Worship amounts to a legal requirement (and there is no suggestion in “*Holy Communion and the distribution of the elements*” that it does, where the canons create no such legal requirement), this is something of non-objection: individual cups are drunk by individuals. So long as only a small amount of the element is provided, then an individual can be trusted to drink all of it (and indeed can be told to do so).<sup>18</sup> Any cups not touched by individual communicants can be consumed by the priest in the normal fashion.
58. Linked to this, is a concern about the ritual washing of the vessels. There is no canon, rubric or regulation which governs this (and practice is diverse within the Church of England). While it may be a matter of concern for individual clergy or parishes, it is not the basis for a legal prohibition.

### **D. INDIVIDUAL WAFERS AND INDIVIDUAL CUPS**

59. A striking aspect of both the LAC Opinion and the contribution in “*Holy Communion and the distribution of the elements*”, is their acceptance of individual wafers as legal.
60. The LAC Opinion surveys the 19<sup>th</sup> Century case law (case law that exists because the use of wafers was at one time very controversial). The LAC Opinion concludes “*therefore the use of wafers instead of loaves is lawful*”.

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<sup>18</sup> The argument in “*Holy Communion and the distribution of the elements*” appears in fact to be premised on the false equating of “*not required for the purposes of communion*” and “*not fully internalised by the communicant*”.

61. The authors of “*Holy Communion and the distribution of the elements*” do not attempt to argue for the proposition, simply assuming its legality at the start of the third paragraph and repeating the Church of England’s advice dated 1 July 2020 which incorporates the use of wafers.
62. The question that arises then is, on what basis might individual cups be said to be unlawful that would not equally apply to individual wafers?
63. No attempt is made to answer this by either the LAC Opinion or the authors of “*Holy Communion and the distribution of the elements*”. This is because there is no basis to distinguish between the two: wafers similarly detract from the symbolism of the “one bread” in which all share, were not customary,<sup>19</sup> and were not envisioned by the Reformers. The use of a wafer proper was also always contrary to the rubrics of the Book of Common Prayer (from 1662 onwards if not before).<sup>20</sup>
64. There is limited or no basis on which to consider individual cups unlawful which would not equally apply to individual wafers.

## **E. PRACTICAL AND THEOLOGICAL CONSIDERATIONS**

65. Even with the use of individual cups, there would be important public health considerations, to ensure that communicants do not contaminate the cups of other communicants. Much is made of this in “*Holy Communion and the distribution of the elements*”.

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<sup>19</sup> The Privy Council noted in Ridsdale v Clifton (No.2), (1877) 2 P.D. 276, 349 that: “*The practice of using fine wheat bread such as is usual to be eaten, and not cake or wafer, appears to have been universal throughout the Church of England from the alteration of the rubric in 1662, till 1840, or later.*”

<sup>20</sup> The LAC Opinion obfuscates the effect of the case law on this point, but the decision of the Privy Council in Ridsdale v Clifton (No.2), (1877) 2 P.D. 276, which the LAC Opinion cites for the proposition that the form of a wafer is permissible, is clear that wafers proper were illegal.

The decision in that matter was that because “*there is no averment that the wafer, as distinguished from bread ordinarily eaten, was used... [the charge being] consistent with the possibility of it having been the fact that bread “such as is usual to be eaten,” “but circular, and having such a degree of thinness as might justify its being termed wafers”*”, the Privy Council could not find an improper use.

However, the judgment was clear that (page 349): “*if it had been averred and proved that the wafer, properly so called, had been used by the appellant, it would have been illegal.*”

66. This concern is practical rather than theological or sacramental. The authors of “*Holy Communion and the distribution of the elements*” recognise this by referring at paragraph 17 to the need for specific guidance from Public Health England. However, the practical and public health questions raised by the use of individual cups are not readily distinguishable from those which arise when considering individual cups of the non-sacramental sort. That individual vessels are used in public throughout the country still should indicate that concerns here are likely to be surmountable.
67. The authors of “*Holy Communion and the distribution of the elements*” also raise points of theological importance. Their position is that “*Drinking from a common cup is a strong symbol of unity, and of a Christian’s belonging to, and responsibility towards, others and, not least, Christ. [...] In the current situation, there appears to be no obvious adaptation of the way in which the consecrated wine is administered that permits this key symbolic association to be expressed*”.
68. This is not a legal argument and does not itself lead to a conclusion that using individual cups is illegal. Nevertheless, it should be clear that suitable words could easily be found to place in the minds of communicants the expression of the doctrine where the symbolic association is not possible.
69. Furthermore, the consecration of a single flagon from which the individual cups are filled would not only be entirely safe from a public health perspective, but would maintain the symbolism by providing a clear common source of the wine. Such practice would in fact accord with the rubric of the Book of Common Prayer which provides in the Prayer of Consecration that the priest shall: “*lay his hand upon every vessel (be it chalice or flagon) in which there is any wine to be consecrated*”, and with Canon B 17 which provides that “*The bread shall be brought to the communion table in a paten or convenient box and the wine in a convenient cruets or flagon.*”

## **F. CONCLUSION**

70. In our opinion,

- 70.1. There is no bar in the Sacrament Act 1547 to the use of individual cups when distributing communion in both kinds, and

- 70.2. Neither the Canons of the Church of England nor the rubrics of the Book of Common Prayer contain or impose any prohibition.
- 70.3. Consequently, there are no grounds for concluding that the use of individual cups at communion is contrary to the law.
71. The conclusion that individual cups are legal is a conclusion which is reached, as a matter of law, independent of the present public health emergency. They were legal before the first case of Covid-19, they are currently legal, and they will continue to be legal when the pandemic is over.
72. The House of Bishops' present position that the use of individual cups for distributing communion is illegal is incorrect as a matter of law. There is no legal barrier to the use of individual cups.
73. It follows that we believe it is lawful to use individual cups.

**STEPHEN HOFMEYR QC**

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*Wednesday, 12 August 2020*