

GENERAL SYNOD

LEGAL OFFICERS (ANNUAL FEES) ORDER 2012 ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2012

Explanatory Memorandum

INTRODUCTION

1. The Fees Advisory Commission is a statutory body constituted under the Ecclesiastical Fees Measure 1986 (“the 1986 Measure”). In May 2011, the Ecclesiastical Fees (Amendment) Measure (“the Amendment Measure”) received the Royal Assent, and the Measure is now fully in force.
2. Section 3 of the Amendment Measure made provision for the reconstitution of the Commission, by the substitution of a new section 4 in the 1986 Measure. The composition of the new Commission is different from that of the previous Commission, although its role is substantially the same, ie to recommend to the Synod the level of fees to be paid to ecclesiastical judges, legal officers and others for performing certain duties and functions and to prepare annual Orders to give effect to those recommendations. However, section 3 of the Amendment Measure also amended section 5 of the 1986 Measure by requiring the Commission to ‘inform itself’ of the duties undertaken by ecclesiastical judges and registrars, so effectively giving it a more proactive role in considering how those duties should be remunerated.
3. The aim in reconstituting the membership of the Commission was to equip it more effectively to fulfil its role. To that end it now comprises three members representing the providers of legal services within the Church, three members representing the users and funders of such services and three independent members (from whom the Commission’s Chair must be drawn). The Commission was reconstituted in late 2011. Its membership is:

Mr John Alpass (Chair) (Nominated by the Appointments Committee)

Mr Howard Dellar (Nominated by the Ecclesiastical Law Society)

The Rt Revd Colin Fletcher (Nominated by the Standing Committee of the House of Bishops)

Mrs Madelaine Goddard (Nominated by the Appointments Committee)

The Revd Canon Joyce Jones (Nominated by the Appointments Committee)

The Revd Canon John Rees (Nominated with the agreement of the Provincial Registrar for York)

Canon Elizabeth Renshaw MBE (Nominated by the Inter-Diocesan Finance Forum)

Mr Geoffrey Tattersall QC (Nominated by the Ecclesiastical Judges Association)

Mr Timothy Walker (Nominated by the Church Commissioners)

LEGAL OFFICERS (ANNUAL FEES) ORDER 2012

4. The Legal Officers (Annual Fees) Orders, made under section 5 of the 1986 Measure, prescribes the annual fee payable to each diocesan registrar for the professional services specified in Schedule 2 to the Order.
5. The evidence supplied to the Commission by registrars over a substantial period has consistently suggested that the amount paid to the registrars by way of annual fees falls some

way short of what would be reasonable remuneration for their work. In 1996 the Commission therefore informed the Synod that it proposed “*that in 1997 and in subsequent years if the information which registrars supply annually ... continues to reveal a substantial shortfall, it will ask the Synod to agree to an increase of 2% on top of that which is calculated in accordance with the usual inflationary formula*”.¹ (The term ‘usual inflationary formula’ was used at that time to refer to a combination of the increases in the Retail Price Index (‘RPI’) (25% weighting) and the Average Earnings Index (‘AEI’) (75% weighting) for the previous year.)

6. Each year between 1997 and 2002 the Synod approved draft Orders that increased the total amount paid to all diocesan registrars by the ‘usual inflationary formula’ plus a further additional increase. In each year between 1997 and 2000 the additional increase was 2%, while in both of the years 2001 and 2002 the additional increase was 1%². In 2003 the Synod approved a draft Order that provided for an increase by inflation, as measured by RPI alone, with no additional upgrade.
7. In May 2004 the Commission agreed, by a majority of those present, to recommend to the Synod a draft Order that was again calculated using RPI alone, with no additional upgrade.³ The motion for the approval of this draft Order was defeated at the July 2004 group of sessions. In October 2004 the Commission agreed to recommend a revised draft Order calculated using the ‘usual inflationary formula’.⁴ The motion for the approval of this Order (to come into force with effect from 1st January 2005) was carried at the February 2005 group of sessions. At each July group of sessions in the years 2005 – 2010, draft Orders were again approved providing for an increase by the usual inflationary formula alone, with no additional upgrade.
8. In the course of 2010, AEI was discontinued and was replaced by the Average Weekly Earnings statistic (‘AWE’) as the lead measure of short term changes in average earnings in Great Britain. In May 2011, the Commission agreed that the figure to be used to calculate the level of fees contained in the Legal Officers (Annual Fees) Order 2011 (to come into force on 1st January 2012) should be an inflationary formula based on 25% RPI and 75% AWE with no additional upgrade – a formula directly comparable to the ‘usual inflationary formula’ used in previous years.
9. The Commission has agreed that the same formula should be applied this year, and thus the fees detailed in the 2012 Order have been increased using an inflationary formula of 25% RPI (4.8% for 2011) and 75% AWE (1.9% for 2011). The level of increase that has been applied is therefore 2.625%. As in previous years, this increase is applied to the total sum payable under the Order currently in force, which is then divided amongst the dioceses in accordance with a weighted formula which takes account of both the number of parishes in a diocese and the number of clergy of incumbent status and above (excluding cathedral clergy).
10. Each year, in support of its proposals, the Commission sets out a sequence of supporting statistics that have been gathered and analysed by the Research and Statistics Department of the Archbishops’ Council, the latest of which (for 2011) is annexed. The Commission considered that it would again be helpful for Synod members to have additional information which, without breaching confidentiality, would demonstrate the apparent unfairness as between registrars produced by the current means of apportioning the retainer. The statistical report therefore

¹ See GS 1225X.

² This lower figure was agreed by the Commission in response to the financial constraints facing the Church (and with the support of the registrars’ consultants).

³ See GS 1537X.

⁴ See GS 1562X.

contains, in addition to the usual table based on the concept of a 'median' diocese, a table showing the retainer (expressed as a percentage of the value of work done) in a number of bands, together with an indication of how many registrars fall within each of these percentage bands.

11. The figures given in the statistical analysis are based on the figures provided by the registrars themselves. These figures show significant variations between the time spent and the hourly rates charged by registrars and their staff, albeit in dioceses of similar size. These variations may be attributable to a number of factors, including regional charge-out rates and varying levels of demand from the diocesan bishop and diocesan officers. The Commission recognises that those whose retainer represents a relatively small percentage of value are not necessarily working inefficiently. In particular, the additional resources required to deliver the work in larger dioceses are not always adequately accounted for in the apportionment formula.

REVIEW OF THE BASIS ON WHICH REGISTRARS ARE REMUNERATED

12. Although the new Commission has only been in office a short time, it has concluded that the present method of setting diocesan registrars' fees has weaknesses as well as strengths. Not the least of the problems is that, as noted earlier, it appears to have resulted in many registrars being significantly underpaid by way of annual fees (the retainer), which has potentially damaging consequences for the future viability of the ecclesiastical law specialism. The Commission will not feel confident in making recommendations on fees over the longer term unless it is better able to understand a number of underlying issues related to the present pattern of registrars' work and likely future trends. The Commission has therefore set up a review with the aim of (a) gathering the information required if it is to have a full picture of the current, complex, position and (b) exploring the issues in depth and examining different options for fees mechanisms.
13. The Commission stresses that in initiating this review it has no particular overall expenditure outcome in mind. Reform of the system might have the effect of increasing the cost of legal services. The Commission's sole aim is to arrive at a method of establishing fees that will ensure the continued provision of high-quality legal services to the Church over the long term at a price that is fair to all parties.
14. The review will be conducted on the Commission's behalf by an independent review team. Following a substantial fact finding exercise, which will also seek the views of providers, users and funders of legal services, the review team will be asked to set out options for further consideration by the Commission, and any subsequent recommendations for change will be made by the Commission itself. The Commission hopes that it will be able to report at least the emerging findings of the review to the Synod in July 2013.

ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2012

15. The Ecclesiastical Judges, Legal Officers and Others (Fees) Order prescribes fees for faculty proceedings and certain other proceedings in ecclesiastical courts, and also provides for the fees of the Provincial Registrars and the Vicars-General and other fees for Synod elections.
16. In past years, the Commission has restricted the increase in the fees payable under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order to the same figure used to calculate the increase in the Legal Officers (Annual Fees) Order, but always without an additional upgrade. In the period 1997–2002 this resulted in an annual upgrade calculated on the basis of the 'usual inflationary formula' (as defined in paragraph 5 above) whilst the

inflation figure used in 2003 and 2004 was based on RPI alone⁵. The 2005 – 2011 Orders were based on the usual inflationary formula.

17. In May 2012 the Commission agreed that the policy outlined above should again be applied in calculating the fees payable under the 2012 Order, which have therefore been increased by 2.625%.

On behalf of the Commission

J Alpass

May 2012

⁴ It should be noted that the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2004 (based on RPI alone) was approved by the Synod in July 2004.

Annex – 2011 Diocesan Registrars’ Retainers: a statistical report

Introduction

Each year since 1994 the Archbishops’ Council’s Research and Statistics Department (formerly the CBF Statistics Unit) has presented a report to the Fees Advisory Commission based on figures supplied by diocesan registrars for the work carried out in the previous year. The data have shown a wide gap between the size of the overall retainer and the monetary value of the work covered by the retainer.

Median Diocese

The concept of a ‘median diocese’ has been used in each report. The median of a set of values is defined as the middle point when the values are arranged in order of size and is used as a measure of ‘average’ that is not unduly affected by extremes.

The table below show diocesan median values of the hours worked, of the monetary value of work done and of the retainer from 2001 to 2011.

Year	Median hours worked	Median monetary value of work done	Median retainer	Median retainer as percentage of median value of work done	Gap
2001	532	£46,700	£32,800	71%	29%
2002	491	£48,900	£34,500	68%	32%
2003	531	£59,800	£36,300	68%	32%
2004	473	£57,200	£36,900	64%	36%
2005	547	£65,800	£37,800	59%	41%
2006	555	£74,100	£39,100	59%	41%
2007	588	£78,000	£40,600	52%	48%
2008	611	£83,045	£42,835	55%	45%
2009	583	£84,100	£43,900	59%	41%
2010	501	£81,345	£43,931	59%	41%
2011	525	£80,353	£46,088	56%	44%

The table shows the median number of hours worked fluctuated over the period, increasing year on year 2004 to 2008 before falling until 2010 and then increasing in 2011.

The Median Retainer as percentage of median value of work done was 71% in 2001 and in 2011 was 56%, this represents a net drop of 15% over the period.

The gap between the monetary value of the work and the median retainer fluctuated, reaching its lowest level (since data was collated in 1993) of 29% in 2001. This gap increased progressively from 2001 to 2007, before dropping from a high of 48% (2007) to 39% (2010) and then finally increasing to 44% (2011).

It should be noted that the table above does not take into account the nature of the work or the level of personnel performing it. In addition, there are variations between dioceses from year to year in the retainer as a percentage of the value of the work done which are not addressed in this analysis.

Value of the work done

In 2011 the total retainer paid across the forty two dioceses receiving it was 48% of the value of the work undertaken. This is almost exactly the same was in 2010. The table below indicates the

significant spread in this proportion across the dioceses in 2011. Whilst the retainer varied for different dioceses between £36,831 and £70,992, the value of the work done was generally estimated to be considerably greater. Individual diocesan patterns in the retainers vary from year to year but the overall spread remains similar.

Retainer as percentage of value	Number of dioceses
Up to 20%	1
20 – 29%	5
30% - 39%	2
40% - 49%	10
50% - 59%	5
60% - 69%	3
70% - 79%	6
80% - 89%	3
90%-99%	4
100% & over	3

Dioceses may be divided into three groups. For sixteen dioceses the retainer in 2011 was equal to two thirds or more of the value of the work undertaken. For seven it was between two thirds and half while for nineteen it was equal to less than half the value. At the opposite ends of the spectrum, the retainer more than covered the work in three dioceses.

Research and Statistics Department

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